Northwestern Journal of International Law & Business

Volume 38
Issue 1 *Fall*

Fall 2017

In Light of China's New Film Industry Promotion Law: Implications For Cross-Border Transactions between China and the U.S. in the Film Industry

Rebecca Xiaomeng Zhang

In Light of China's New Film Industry Promotion Law: Implications For Cross-Border Transactions between China and the U.S. in the Film Industry

*Rebecca Xiaomeng Zhang**

Abstract: After several years of rapid growth, the Chinese box market saw a sharp decline in revenue in 2016. One major factor was the mismatch between demand and supply in what would attract the audience and the movies actually brought to them. Large film studio failed to develop the potential market of migrant workers and rural farmers because of their detachment to their lives and thoughts. To revitalize the film industry, China issued the Film Industry Promotion Law in 2016 to promote the quality and diversity of movie production, with a focus on developing the rural box office. By taking a closer look at this new law, this note intends to analyze its impact on and implications for both Chinese and international participants in the Chinese entertainment industry.

*The author would like to thank the Northwestern Journal of International Law and Business editorial staff for their help in refining this note.

On November 7, 2016, the Standing Committee of the National People's Congress of China voted in favor of the Film Industry Promotion Law, officially recognizing the new rules and principles in the 2015 draft.[1] In light of the disappointing performance of the Chinese box office in 2016, where the revenue only grew by 3.7% as compared to the 48.7% growth in 2015, the new law is expected to stimulate the market back to its golden days.[2] The new law gives more freedom to domestic film producers, offers favorable tax and insurance treatments and reduces the administrative costs in obtaining cinema approval.[3]

---

[1] *The Standing Committee of the People's National Congress Approves the Film Industry Promotion Law*, STATE ADMIN. OF PRESS, PUBLICATION, RADIO, FILM, AND TELEVISION OF THE PEOPLE'S REPUBLIC OF CHINA (Nov. 18, 2016), http://www.sarft.gov.cn/art/2016/11/8/art_33_31987.html.

[2] Yue Wang, *Consider China's Disappointing 2016 Box Office An Anomaly, Not A Trend*, FORBES (Jan. 5, 2017, 10:19PM), http://www.forbes.com/sites/ywang/2017/01/05/hollywoods-gain-after-disappointing-2016-for-china-at-the-box-office/#76656a014bdb.

[3] Yang Liu, *The Film Industry Promotion Law Gets Approval: Fewer Items for Approval,*

What changes will the new law bring to the film market? On the one hand, the reduced costs will contribute to the financing for small to mid-size film producers, allowing them to participate in the film market and compete with large entertainment companies.[4] Increased competition in the market will drive producers to improve the quality of the films to get a greater bite of the pie. On the other hand, the new law will likely promote the cooperation between large domestic entertainment companies and international media conglomerates (led by the six major U.S. film studios).[5] Because the new law focuses on creating favorable conditions for smaller domestic producers, large domestic producers might consider taking advantage of the internationally famous casts, award-winning directors and world-famous production studios that only they can afford.

This note will take a close look at the new law considering the developments of the Chinese film market, analyze its implications for both Chinese entertainment companies and international production studios (majorly U.S. studios), and most importantly, discuss how to avoid the risks and fully make use of the current legal frameworks for film production.

Introduction

In 2015, the Chinese box office—the second largest film market—reached an epic high at $6.78 billion with a growth rate of 48.7%, leading many market analysts to believe that in 2017 China will become the world's biggest box office with ticket sales poised to increase 22% to $10.4 billion.[6] It is hard to believe that only five years ago, the gross revenue was only $1.51 billion. However, in 2016, the growth rate suddenly slumped to 3.7%, falling for the first time in several years to a single digit percentage, surprising both the regulators and the filmmakers.[7] Thus, the question is: why are some of the moviegoers not going to the cinemas anymore?

The short answer is: they are still going to the movies, but only some

Greater Share for Domestic Films, MTIME.COM (Nov. 7, 2016, 12:43PM), http://news.mtime.com/2016/11/07/1562720.html.

[4] Ziqian Jiang, *The Survival of Movies Made By Small and Mid-Sized Production*, Culture Herald (May 2, 2017), http://paper.stardaily.com.cn/html/2017-05/02/content_166360.htm.

[5] The "Big Six" Hollywood studios collectively command approximately 80 – 85% of U.S. and Canadian box office revenues. These studios are: 20th Century Fox, Warner Bros., Paramount Pictures, Columbia Pictures, Universal Pictures and Walt Disney Pictures.

[6] Jeanne Yang & Lee Miller, *China Box Office Seen Surpassing U.S. Next Year Despite Slump*, Bloomberg News (Aug. 16, 2016), http://www.bloomberg.com/news/articles/2016-08-16/china-box-office-seen-surpassing-u-s-next-year-despite-slump; *see also* Wang, *supra*, note 2.

[7] Patrick Brzeski, *China Box-Office Growth Slowed to 3.7 Percent in 2016, Official Data Shows*, THE HOLLYWOOD REPORTER (Jan. 1, 2017, 7:11PM), http://www.hollywoodreporter.com/news/china-box-office-growth-slows-37-percent-2016-official-data-shows-960217.

of them.[8] On the Lunar New Year's Day of 2016, Hong Kong director and comedian Stephen Chow debuted his movie *The Mermaid* in the cinemas and hit $100.5 million on a single day, which set a 78 percent increase as compared to the record set during the last Lunar New Year holiday.[9] On February 19, 2016, *The Mermaid* also became the highest-grossing film in China of all time, with a total box office of 3.39 billion Chinese Yuan (about $500 million USD).[10] Several factors contributed to the success of *The Mermaid*, including Chow's unusual popularity and publicity, the holiday timing, and the quality of the story.

Born in the 1960s and raised in Hong Kong, Chow was one of the most famous actors when the Hong Kong film market enjoyed its prime time.[11] He starred in many of the classic Hong Kong comedies that were imported to mainland China after the Reform and Opening-up of China in the late 1980s.[12] Although his early films were not available in cinemas, people would rent his movies in the video shops and watch them with friends; others simply went for the pirated versions for a good laugh. Therefore, for many people, Stephen Chow is more than a director; his unique sense of humor and exaggerated style of performance made him an icon of pop culture and a rebel of the orthodox narrative.[13] Such popularity and fame made it easy to promote *The Mermaid* to the audience: people would spread the words among themselves, not to mention that Chow's most loyal fans would go to every movie he makes—whatever the topic, story, or cast.[14] Besides, the story itself is solid in quality. It is intended to bring awareness to environmental preservation by telling the love story between a mermaid with the mission to seduce and kill, and her target, a businessman who plans to destroy the mermaid's habitat. The major and supporting roles all had vivid and intriguing characters, bringing the audience both laughter and tears.

The success of Chow and *The Mermaid* was rather unprecedented and proved that domestic films can generate even greater commercial value than the Hollywood blockbusters: especially since even the beloved *Zootopia*—produced by Disney and ranked second in the 2016 Chinese market—only

---

[8] Patrick Brzeski, *China Box Office: Stephen Chow's 'Mermaid' Powers Record Single Day*, THE HOLLYWOOD REPORTER (Feb. 9, 2016, 4:39AM), http://www.hollywoodreporter.com/news/china-box-office-mermaid-powers-863257.

[9] *Id*.

[10] China Box Office, ENTGROUP, *Highest-Grossing Film of All Times*, http://www.cbooo.cn/Alltimedomestic (last visited Nov. 14, 2016).

[11] *Xingchi Zhou*, http://baike.baidu.com/view/5081.htm (last visited Feb. 4, 2017).

[12] *Id*.

[13] *Stephen Chow: He Is The Style*. JUZI ENTERTAINMENT (Feb. 4, 2016, 09:29PM), http://www.happyjuzi.com/movie/46796.html.

[14] *Id*.

achieved half of the revenue of *The Mermaid*.[15] The contrast between the single success of *The Mermaid* and the slowdown of the general growth in the Chinese box office has several important indications for both investors and regulators: first, there is still substantial room for the Chinese film market to grow, yet moviegoers will only pay for those of quality; second, a good domestic movie might have greater commercial value than Hollywood productions because of its deep cultural and sentimental ties to the audience.

Currently, however, movies are still primarily targeted at the city population—even *The Mermaid* tells a story of a businessman and a mermaid that tries to save the ocean from his excessive modern real estate projects. However, there is an especially large group that has always been overlooked by the big production studios and entertainment companies—the countryside population.[16] According to the World Bank, the rural population in China accounted for 44% of the entire population in 2015.[17] At least two groups of audiences within the countryside population remain unexplored by the film makers: first, for the more than 250 million migrant workers[18] who came from rural areas and now regularly reside within big cities like Beijing and Shanghai, popular themes like college romance are not worth the tickets for them—they lack the experience to resonate with the story;[19] second, for the families of the migrant workers that are still living in the villages and engage mostly in agricultural production, stories about city life, commercial wars, and science fictions seem too far away from the reality they live in.[20]

It is under such background that the Chinese government purports to further reform the original regulatory framework for film production. By providing favorable conditions for smaller local producers that offer fresh perspectives and cater better to the tastes of local audiences, the new law essentially serves as a regulatory tool and is aimed at bringing sustainable growth in the Chinese box office.

However, although the law has a clear domestic focus, its impact will

---

[15] China Box Office, *2016 Chinese Box Office Ranking*, ENTGROUP, http://www.cbooo.cn/year?year=2016 (last visited Feb. 8, 2017).

[16] Guoxi Tu & Yujie Zhang, *Country Life Themed Movies Face Hardship In The Movie Market*, SOHU FINANCE (Sep. 25, 2014, 11:39AM), http://business.sohu.com/20140925/n404640845.shtml.

[17] *Rural Population (% of total population)*, WORLD BANK, http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS (last visited Feb. 2, 2017).

[18] *Migration of Workers in China*, FACTS AND DETAILS, http://factsanddetails.com/china/cat11/sub72/item150.html#chapter-3 (last visited Feb. 2, 2017.

[19] Yuner Yuan, *Is There Tomorrow For College Romance Movies?* PEOPLE.CN (Sept. 8, 2016 07:23AM), http://media.people.com.cn/n1/2016/0908/c40606-28699385.html

[20] Haiying Meng, *Development of Rural Movies in China: Bright Yet Undeveloped*, PEOPLE'S DAILY (Sept. 1, 2010), http://news.mtime.com/2010/09/01/1439820.html.

be rather global. Specifically, the cross-border investments and cooperation between Chinese and U.S. production studios might reach a new high for two major reasons: for one, Chinese media conglomerates will likely expand their businesses to the global market to maintain their competitiveness in the domestic market and generate more revenue from a larger audience. For another, the new law provides foreign investors with new directions for a larger Chinese market share and new entities in which to invest—the smaller production studios.

First, with growing competition in the Chinese market and favorable new laws for smaller and locally based production studios, the large entertainment companies that used to monopolize film production and the box office will face an unprecedented wave of competition because they lack the flexibility and cultural roots to produce films targeted at a specific region.[21] Although the large companies could always invest in these smaller studios or build their own, to keep up the profits, it might be better for these large entertainment companies to also head towards the global market, because the resources and experiences of producing blockbusters are their unique advantages.[22] In fact, the five biggest media companies—Dalian Wanda Group, Huayi Brothers Media Corporation, Polybona Films, Le Vision Pictures, and Beijing Enlight Media— accounted for 57% of the market shares.[23] Thus, it is reasonable to expect that in the coming years more and more Chinese entertainment giants would seek opportunities to co-produce with Hollywood studios such as the Big Six, pursue merger or buyouts and gradually build up their own names internationally. However, the increased national security scrutiny and the unstable Sino-U.S. trade relationship might be extra hurdles the Chinese companies need to overcome, in addition to gaining the trust of shareholders and investors in a foreign market.[24]

Second, investing in smaller local film studios as well as online streaming services might become a popular way of international capital

[21] Huiyu Zhang, *The Change and Challenge for Chinese Movies With a More Rational Audience,* PEOPLE.COM (Feb. 9, 2012), http://media.people.com.cn/GB/17061903.html.

[22] In 2016, Dalian Wanda Group's acquisition of Legendary Entertainment ranks as the fifth largest Chinese investment in the United States. *See* Ellen Sheng, *The 5 Biggest Chinese Investments In The U.S. In 2016*, FORBES.COM (Dec. 21, 2016, 06:30AM), http://www.forbes.com/sites/ellensheng/2016/12/21/5-biggest-chinese-investments-in-us-2016/#67b5dec877d3.

[23] *Report on the 2016 Film Industry: Le Vision Grows the Fastest, Moving Up to Second in the Market*, ENTGROUP (Dec. 29, 2016), http://www.entgroup.cn/MarketingNews/2938166.shtml.

[24] Erich Schwartzel, *Congressman Calls for Review of Wanda Group's Hollywood Ambitions*, THE WALL STREET JOURNAL, Oct. 7, 2016, http://www.wsj.com/articles/congressman-calls-for-review-of-wanda-groups-hollywood-ambitions-1475796556 (last visited Oct. 7, 2016).

investment, just like angel investors in Silicon-Valley start-ups. While ticket sales slumped, the revenue from paid online video streaming services grew by 241% in 2016 (nine times the growth rate in the United States), achieving a total of 75 million users.[25] In the coming years, we might expect large companies and funds, not limited to entertainment companies, offering to fund the local productions and the online platforms to fully take advantage of the favorable laws and policies. Moreover, China is expected to increase its quota for foreign films in 2017 and enter into negotiations about further cooperation with Hollywood.[26] The World Trade Organization (WTO) agreement that allowed China's quota system was signed in 2012 and valid for only five years; before January 1, 2018, China is obligated to produce a new deal with the United States or otherwise be subject to procedural actions in the WTO.[27]

From a legal perspective, the synergies between China and the United States in terms of movies and theatres have always been complicated. On the one hand, the Chinese government uses the quota system to secure more show time for domestic movies and to filter out any values that are contrary to the core socialist values[28] and make sure that sensitive information is blanketed out for Chinese viewers.[29] For foreign movies, the newly-promulgated Film Industry Promotion Law in China will further stand in their way of breaking into Chinese cinemas on their own. With the many favorable policies reserved for Chinese movies and strong enforcement of the quota for foreign produced movies, cinemas will incline to use more native productions than the imported Hollywood blockbusters.[30] On the other hand, the U.S. government scrutinizes deals between Chinese and U.S. entertainment companies in the fear that U.S. production studios and theatres will become propaganda tools for the Chinese government.[31]

---

[25] Cuiping Liu, *Report on China's Paid Video Streaming Industry*, ENTGROUP (Jan. 17, 2017), http://www.entgroup.cn/Views/38420.shtml.

[26] Ryan Fergus, *China Exceeds Quota on Hollywood Films Amid Box-Office Slowdown*, CHINAFILMINSIDER (Oct. 24, 2016), http://chinafilminsider.com/china-abandons-quota-hollywood-films-amid-box-office-slowdown/.

[27] Anousha Sakoui, *Trump Threatens Hollywood's Growth in China*, BLOOMBERGBUSINESSWEEK (Feb. 8, 2017, 1:07PM), https://www.bloomberg.com/news/articles/2017-02-08/trump-threatens-hollywood-s-growth-in-china.

[28] Dongmei Sheng, *Defending Against the Western Cultural Invasion With Cultural Confidence*, QSTHOERY.CN (Nov. 18, 2016, 04:54PM), http://www.qstheory.cn/zhuanqu/bkjx/2016-11/18/c_1119942752.htm.

[29] China Promotes Core Socialist Values, CHINADAILY (Dec. 24, 2013), http://usa.chinadaily.com.cn/china/2013-12/24/content_17192145.htm.

[30] *A Look at the Blockbuster Economy: Competition of Capitals Behind the Big Screen*, SOHU.COM (Jan. 27, 2017, 09:24PM), http://mt.sohu.com/yule/d20170128/125235103_467447.shtml.

[31] Daniel Nussbaum, *Congressman Urges DOJ Scrutiny of Chinese Investments in Hollywood*, BREITBART.COM (Oct. 6, 2016), http://www.breitbart.com/big-hollywood/2016/

Several large acquisitions of U.S. cinema chains and production studios have attracted much attention from the government and now face political pressure to be the target for close scrutiny—those traditionally only enjoyed by the aerospace industry.

This note aims to analyze these regulatory frameworks for U.S.-China transactions in the film industry in both countries and discuss the implications for investors in both countries. Specifically, this Note will first take a closer look at the new Film Promotion Law with a comparison to the regulations of the Motion Picture Association of America (MPAA); and then compare the general regulatory frameworks for foreign investment and cross-border transactions in the film industry production in China and the United States, with an emphasis on the consideration of national security; and finally this note will discuss the implications of these new developments in the regulatory framework for investors in both the United States and China and possible ways for them to better structure deals and invest reasonably.

The Film Industry Promotion Law: A Closer Look

On November 7, 2016, the Standing Committee of the National People's Congress officially approved the new Film Industry Promotion Law of the People's Republic of China, which came into effect on March 1, 2017 (hereinafter "the Film Promotion Law").[32] To fully understand its implications for both Chinese and U.S. investors in the entertainment industry, we need to conduct a thorough analysis of the law itself. In this part, we will first look at the three most important policy changes the law will bring about and the reasons behind such change. We then move on to compare the two versions of the drafts of the Film Promotion Law and analyze the reasons behind the differences and their implications for both local governments and participants in the film industry; we will then look at the regulatory framework for films in the United States and discuss its implications for the new Chinese framework.

Highlights of the New Law

As the first legislation to directly address the rules and policies in the regulation of the film industry, the Film Promotion Law focuses more on the general principles than on specifying the process and rules for the actual application of these principles: for example, in fact, Article 17 specifically

10/06/lawmaker-urges-doj-scrutiny-chinese-investments-hollywood/.

[32] Zhonghua Renmin Gonghe Guo Dianying Chanye Cujin Fa (中华人民共和国电影产业促进法)[Film Industry Promotion Law of People's Republic of China](promulgated by the Standing Comm. Nat'l People's Cong., Nov. 7, 2016, effective March 1, 2017), http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=283839&keyword=电影产业&EncodingName=&Search_Mode=accurate.

authorizes that the "departments under the State Council that are in charge of film regulation shall further improve and perfect the specific procedures and standards for the review of the films and shall release them to the public."[33] Even so, there are enough details in the new law for us to find out the fundamental principles in the regulation of this area.

Local Governments: More Freedom, Greater Burden

In the Film Industry Promotion Law, the term "people's governments of the provinces, autonomous regions, and directly-governed municipalities" (hereinafter "the provincial governments and same level authorities") appeared for a total of 11 times.[34] This signifies one of the most important changes brought by the new law—the provincial governments and same level authorities are given more freedom than ever to regulate the film industry on their own, while at the same time, they now have the legal responsibility to support the film industry with necessary resources and favorable policies.[35] The new law thus creates both opportunities and challenges for the local governments.

The freedom and authority to review and approve films will likely boost the effectiveness of the administrative process for films that are competing for earlier release date, longer promotion periods and a wider range of topics to choose from.[36] Specifically, Article 17 authorizes the provincial governments and same level authorities to review and approve films on their own.[37] This creates several advantages for smaller production studios. First, smaller studios might run a tighter budget. The shorter they have to wait, the quicker they could put the film into market, or, if denied approval, could make changes as early as possible to avoid further expenses. Second, as explained before, because of the large disparities in different parts of China, provincial governments and same level authorities are better judges for what are truly representative and valuable to preserve and promote in the local culture.[38] Thus, applying for approval in the local level will allow smaller studios that represent the diverse culture of different regions to be appreciated and promoted.

Article 17 goes on and further improves the efficiency of the review

---

[33] *Id.* at art. 17.

[34] *See id.*, art. 13, art. 17, art. 18, art. 21, art. 22, art. 24, art. 35, art. 52.

[35] Mathew Alderson & Grace Yang, *China Enacts New Film Promotion Law*, CHINA FILM INSIDER (Nov. 9, 2016), http://chinafilminsider.com/china-enacts-new-film-promotion-law/.

[36] Mu Qing, *What Are the Highlights of The Film Industry Promotion Law?* CULTURE & CREATIVE NEWS (Nov. 8, 2016*),* http://news.vsochina.com/column/7656.html.

[37] The Film Industry Promotion Law, *supra* note 32, at art. 17.

[38] Xiaochou Fei, *Delegation of Power to Local Governments: The Film Industry Promotion Law Lets the Provinces Decide for Themselves?* MTIME.COM (Nov. 12, 2016, 06:06PM), http://news.mtime.com/2016/11/12/1562994.html.

process, both on the national level and the local level by requiring that:

> [T]he departments in charge of film regulation in both the State Council and provincial . . . governments should issue the decision for the review within 30 days of application. If the application complies with the laws and regulations, the department should allow such films to be released and the department should issue the release permit; if application is denied, the department should disallow the release, notify the applicant in writing and inform the reasons for the denial.

Film Industry Promotion Law of People's Republic of China, *supra* note 32, at art. 17.

This hard requirement on the length of review will further ensure that all applications will be timely dealt with and no purposeful delaying would be allowed on the government's part.

However, for local governments that have not been so keen on developing the film industry, the new law is requiring them to do more. Article 5 requires that both State Council and local governments should include the development of the film industry into its own annual Economic and Social Development Planning.[39] Although the government should and could take into consideration the special features and characteristics of the societies when making such plans,[40] the local governments might have more obligation than freedom. Article 39 further explains this obligation, stating that:

> [L]ocal governments . . . shall include the construction and renovation of movie theatres into the Economic and Social Development Plan, land use plans, urban and rural plans, taking into consideration the need of the film market and the need of the people; the local governments . . . shall also make sure that the movie theatres' need for land use are sufficiently met, fully make use of the current land resources, and support the construction and renovation of the theatres.

Film Industry Promotion Law of People's Republic of China, *supra* note 32, at art. 39.

At the risk of repeating itself, Article 39 again emphasizes that the local governments must make sure the development of the film industry will not be less of a priority compared to other aspects of the economy.[41] Most importantly, as the entity that controls the land, the government is required to accommodate the building and further construction of new

---

[39] *Id.* at art. 5.
[40] *Id.*
[41] *Id.*

theatres.[42] This is because the local governments in fact controls issuing permits for the use of land, and in the past, such authority has largely been abused to generate additional income for the local governments instead of putting the land resources to the most efficient and reasonable use.[43]

By directly making it an obligation to support the film industry, the new law forces local governments to prioritize the development in the third industry to ensure continual GDP growth and promote the transition of economy in smaller cities and rural areas.[44] Moreover, the local governments' efforts are the first step in making the pie bigger. To get the rural people out and watch movies, they need to build cinemas first.

The National Government: Direct Financial Support

Besides imposing new requirements for the local governments, the national government also takes on many substantial obligations to facilitate the development of the film industry in addition to many policy-like principles.[45]

First, the State shall increase the funding for the film industry by directing and guiding the use of the special funding for cultural industries and shall conduct stricter auditing of the use of such funds.[46] This means not only that in the construction and renovation of movie theatres the developers might be able to get direct funding from the national government; but also that for the smaller production studios, government funding will be available to cover part of their expenses, although the specific mechanisms of allocating the funds and setting up the standards for qualification for such subsidy still awaits further construction by the department that is in charge of the regulation of the film industry.[47]

In addition to funding, Article 38 also specifies that, "the State shall implement necessary tax reduction policies to promote the development of the film industry, and the specific measures will be determined by the department in charge of tax under the State Council in accordance with tax and administrative laws and regulations."[48] Moreover, developers and production studios can also expect favorable products offered by state-owned financial institutions, insurance companies, and financial guarantee

---

[42] *Id*.

[43] Xingpeng Jia, *A Dangerous Signal: Land Sales Have Become the Major Source of Government Income*, PEOPLE.CN (Feb. 23, 2014), http://finance.people.com.cn/n/2014/0223/c1004-24436578.html.

[44] *Id*.

[45] The Film Industry Promotion Law, *supra* note 32. (Article 6 states that "the State encourages the research, development, and application of film technologies . . . .").

[46] *Id*. at art. 37.

[47] *Id*. at art. 27.

[48] *Id.* at art. 38.

institutions.[49]

Why are these funding and subsidies necessary? Without them, people might be reluctant to watch movies.[50] As suggested by the slump in growth in 2016, the withdrawal of subsidies in the online ticket purchasing forums was also a significant factor that contributed to the slowdown.[51] When the online ticketing services first started, they offered steep discounts to online tickets, largely because of the competition between the several rival tech giants (Alibaba, Baidu and Tencent) behind these services.[52] In 2016, these online services platform stopped making such generous offerings, driving the ticket price to an average of $3.35 (as compared to $2.54 in 2015).[53] Considering the fact that rural families generally earn less than city families, they will even be more sensitive to the price of the tickets, making government subsidy necessary to really get people out and into the cinemas.

The National Government Still Has the Final Say

Even though lower governments now have more authority to regulate the local film industry, such power is not absolute. The national government still controls the basic principles and standards in making decisions about individual films, while the local governments can make their own judgments while applying these standards.[54] In the new law, two provisions lay out the general principles the national government wants to adhere to when reviewing the individual works.[55]

Article 16 specifies the forbidden content in any film: 1) those that violate the Constitution, encourage such violation or the violation of any laws or regulations; 2) those that threaten national security, leak national secrets, promote terrorism and aim to create hatred among different ethnic groups; 3) those that belittle and despise different cultural traditions of different ethnic groups, or willfully distorts the history of different ethnic groups, such that will injure people's sentiments and undermine the unity of the country; 4)those that incite people to disobey the national policies about religions and promotes superstition and cults; 5)those that endanger social morality, disturb social order and undermine social stability, or promotes pornography, gambling, drug use, violence or terror; 6) those that would endanger the mental and physical health of the youth; 7) those that

---

[49] *Id.* at art. 40.

[50] Patrick Brzeski, *What's Behind China's Sudden Box-Office Slump?* THE HOLLYWOOD REPORTER (July 20, 2016, 01:55AM), http://www.hollywoodreporter.com/news/whats-behind-chinas-sudden-box-912718.

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *See* The Film Industry Promotion Law, *supra* note 32.

[55] *Id.* at art. 16, art. 36.

constitute defamation of others or invades others' privacy rights; and 8) any other works that violate any law or regulation of the land.[56]

Compared to Article 16, which illustrates the standards from the negative side, Article 36 lists what types of films the state is trying to promote: 1) those that promote the Chinese culture and the Socialism core values; 2) those that promote the healthy growth of the youth; 3) those that promote the development and creativity of the art; 4) those that promote the development of science education and the general knowledge of science and technology; and 5) those that comply with the principles supported by national policies.[57]

These two articles serve as an important guard for the overall control and regulation of the market. While authorizing lower governments with more power in making decisions for the film market and providing various incentives to the participants in the market, the national government tries to reach a balance. On the one hand, the national government correctly decided that it will need to give up some controls in the micro-management to truly bring energy to the market economy; however, it needs to have the ultimate authority to set standards, settle disputes and distribute resources to avoid a "race-to-the-bottom" attitude and irrational competition, where developers try to build as many movie theatres as possible without considering the realities of the specific towns and villages they're dealing with, and studios favor topics with little artistic value but are merely profane and eye-catching to attract audiences.

Learning from the Differences Between the Two Versions of Drafts of the New Law

Before the final approval by the Standing Committee, the Film Industry Promotion Law went through two drafts, with significant changes in the second draft. In the second draft, the government's intention to facilitate further growth and further regulate the film market is evidenced by various preferential treatments in tax, insurance policy, and relaxation of licensing requirement, as well as giving more authority to state governments in terms of localized rule making and enforcement.[58]

Specifically, the second version of the draft does multiple things: 1) it expands the definition of film industry to include films played on online

[56] *Id.* at art. 16.

[57] *Id.* at art. 36.

[58] Zhonghua Renmin Gonghe Guo Dianying Chanye Cujin Fa (Cao An) (Erci Shenyi Gao)(中华人民共和国电影产业促进法（草案）（二次审议稿）)[Film Industry Promotion Law of People's Republic of China (Draft) (Second Version)](promulgated by the Standing Comm. Nat'l People's Cong., September 3, 2016, http://www.npc.gov.cn/npc/flcazqyj/2016-09/02/content_1996541.htm (last visited October 27, 2016).

forums in addition to traditional theatres;[59] 2) it encourages towns and villages (as compared with cities) to build more theatres by including the constructions into annual fiscal plans;[60] 3) it emphasizes again the focus on promoting locally produced movies by requiring their screening time to be at least two thirds for the theatres;[61] and 4) it requires all movies to be approved by censoring committees comprised of at least three experts in the provinces (although we do not know who would qualify as such experts), with appellate divisions on the national level (Article 17 and Article 18).[62]

Here, one would naturally ask, why is the Chinese government so geared towards developing the film industry by expanding it to the countryside? Will the new law have the expected effects in stimulating the movie market in rural China?

First, aiming at the rural area is likely the correct direction, because at the end of the day, the key in growing the film industry is to get the inactive movie-watchers out and on the go. But the current movie market produces few works that would truly attract the countryside audience—because most movies telling stories about the "good old days" and puppy love in college, farmers and blue-collar workers could not relate to them at all.

At the core is the gap between city and rural culture in China. After more than 40 years of market economy, the level of development in cities and villages are largely different. One of the most popular TV series—*Countryside Love Story*, developed by actor Benshan Zhao, once a farmer and performer in a small village himself—tells the story of the romance, troubles and happiness of a large family and their friends in a village in Liaoning Province.[63] People in the series worry about bad weather ruining the crops, and the newly built resort destroying the environment and ripping the farmers their fair share of profits when they provide what attracts people to the resort.[64] The story is also always up-to-date with what happens in real life: in the most recent season, which was released in February 2017, there is an episode about the women in the village competing for the best lipsticks and best photo-shopped pictures on their social media, the WeChat Friends Circle.[65]

---

[59] *Id.* at art. 2.

[60] *Id.* at art. 39.

[61] *Id.* at art. 29.

[62] *See Id.* at art. 17-18.

[63] Pengfei Bai, *The Success of Countryside Love: A Love Story Down to the Earth*, QKZZ.NET, http://doc.qkzz.net/article/f23be6b4-fce8-4aec-8e99-59bf6e4d09b9.htm (last visited Feb. 9, 2017).

[64] *Countryside Love Story,* BAIKE.BAIDU.COM, https://baike.baidu.com/item/%E4%B9%A1%E6%9D%91%E7%88%B1%E6%83%85%E6%95%85%E4%BA%8B/8463952?fromtitle=%E4%B9%A1%E6%9D%91%E7%88%B1%E6%83%85&fromid=6906089&type=syn. *(last visited Sept. 21, 2017)*

[65] *Countryside Love Story*, Season 9, Episode 5 (Shanghai Tencent Puenguin Pictures

To encourage people like Benshan Zhao, who has the knowledge and passion to create artistic works featuring stories that would attract the rural crowd, the new law now gives part of the national government's power to review films to provincial government, which would better understand its own people, their interests and tastes. It is with the same purpose that the new law streamlines the process of the review and limit it to 30 days to encourage people with local roots, but fewer resources, to reduce the cost of making the movie and get them to into theatres faster.

Second, the Film Industry Promotion Law has made it clear that the law is also applicable to the online streaming of motion pictures on the internet, telecommunication networks and radio networks.[66] This indicates that unlike before, the online streaming services, both in their role as providing a platform for the traditional movies, and their role as independent production studios, will face more regulation. In fact, in 2015, the State Administration of Press, Publication, Radio, Film and Television ("SAPPRFT") issued an administrative order specifically regulating the independent shows and mini-films produced by the online streaming platforms.[67]

A Comparative Look: United States Film Industry Regulation

To fully understand the new regulatory framework for the Chinese film industry, it is helpful to take a comparative look at one of the most developed framework—the film rating system used by the U.S. Just like in other areas of legislation, it is possible that Chinese authorities might find inspirations for specific rules in areas where they lack the practical experience. Thus, a closer look at the American system might prove useful to predict certain trends as the SAPPRFT, further develop the details of law.

In the United States, films have been subjected to greater censorship as compared to other artistic mediums, since the first days of cinema.[68] For example, in 1915, the Supreme Court decided in *Mutual Film Corporation v. Industrial Commission of Ohio* that First Amendment does not apply to films because they are a pure form of business, not an exhibition of opinion.[69] Since then, states possessed wide powers to censor, edit, and

Co., Ltd. & Benmountain Media Group 2017).

[66] The Film Industry Promotion Law, *supra* note 32.(Article 2 states that "Films. . .refers to works . . . recorded on film or digital media").

[67] Guanyu Jinyibu Jiaqiang Wangluoju, Weidian Yingdeng Wangluo Shiting Jiemu Guanli Detongzhi (关于进一步加强网络剧、微电影等网络视听节目的通知)[Order On Enhanced Regulation On Shows And Mini-Films In Online Media Form](promulgated by the State Administration of Press, Publication, Radio, Film and Television, effective July 6, 2012), http: http://www.sarft.gov.cn/art/2014/3/19/art_113_4861.html.

[68] A Brief History of Film Censorship, NCAC, http://ncac.org/resource/a-brief-history-of-film-censorship (last visited Feb. 1, 2017).

[69] *Mut. Film Corp. v. Indus. Com. Of Ohio*, 236 U.S. 230, 244 (1915) (Stating that "It

even ban films based on their contents, resulting in many city ordinances that forbade immoral and sacrilegious contents.[70] This decision was not overturned until 1952 when *Joseph Burstyn, Inc. v. Wilson* came out, and the Court concluded that expression by motion pictures was included within the free speech and free press guarantees of the First and Fourteenth Amendments.[71]

The film studios in Hollywood, in light of growing censorship regulations, created the Motion Pictures Producers and Distributors Association in 1922 (the Motion Pictures Association of America ("the MPAA") as of 1945) as a self-regulatory organization.[72] From 1930 to 1968, the Association adopted and enforced the Motion Picture Production Code (also known as the Hays Code) as the moral guidelines for proper contents in movies, and which later was replaced by the MPAA film rating system.[73]

The MPAA film rating system, as compared to its predecessors, is more advisory and voluntary in nature, unlike mandatory government censorship that would inhibit free speech and artful expressions. Based on how much violence, nudity, substance abuse, and sexual content is displayed, movies are categorized with different labels to advise viewers, especially parents.[74] The MPAA rating system also has a masterpiece exception for films that would normally receive a NC-17 rating.[75] Albeit arbitrary as argued by some critics, this carve-out shows that the rating system is not stiff.[76] Moreover, even films that are unrated or rated NC-17 can still get to the market through other mediums, if not on the big screens.[77] In comparison, under the Chinese system, films that are deemed improper under the SAPPRFT criteria will be generally prohibited to be distributed, projected, imported, or exported-essentially, blocked for

---

cannot be put out of view that the exhibition of moving pictures is a business pure and simple, originated and conducted for profit, like other spectacles, not to be regarded, nor intended to be regarded by the Ohio constitution, we think, as part of the press of the country or as organs of public opinion.").

[70] GREGORY D. BLACK, HOLLYWOOD CENSORED: MORALITY CODES, CATHOLICS, AND THE MOVIES 3-18 (1996).

[71] *Joseph Burstyn v. Wilson*, 343 U.S. 495, 502 (1952).

[72] *Who We Are,* MOTION PICTURES ASSOCIATIONS OF AMERICA, MPAA.ORG, http://www.mpaa.org/our-story/. (last visited Sept. 21, 2017).

[73] *History of Ratings,* FILMRATINGS.COM, http://filmratings.com/History. (last visited March 3, 2017).

[74] *Film Ratings,* MOTION PICTURE ASSOCIATION OF AMERICA, MPAA.ORG, http://www.mpaa.org/film-ratings/. (last visited Sept. 21, 2017).

[75] *Id*.

[76] Julie Hilden, *Free Speech and the Concept of "Torture Porn": Why are Critics So Hostile to "Hostel II"*, July 16, 2007, http://writ.news.findlaw.com/hilden/20070716.html (last visited Oct. 4, 2016).

[77] *Id*.

viewers.[78]

A rating system like the MPAA system is particularly useful for the Chinese system to further implement the new law. Although Article 16 and Article 36 lay out the negative and positive standards for both national and local governments to make judgments in the review and regulation of specific films, the standards are more abstract than practical. It can be expected that, in the actual application of these two articles, the government agency in charge of formulating policies situation will need to formulate a more detailed guideline of substance to carry the law into effect. The specific standards used by the MPAA might provide a general idea for producers who intend to make films for the Chinese market.

Future Implications for Cross-Border Transactions in The Film Industry

With the clear intention to promote the development of domestic film industry, the new law will have a significant impact on synergies in the Chinese film market. On the one hand, the spirits of foreign production studios and investors are high while the exact ways to legally participate in the market are still unclear. On the other hand, large entertainment companies in China are more than eager to look for ways to increase their reputation and profit share in the global market, to make up for their lost shares of the domestic market due to the competition from smaller local productions.

Foreign Producers and Investors

Foreign producers and investors will look at the law with mixed emotions. While the new law provides a once-in-a-life-time favorable environment for investing in films targeted at Chinese cinemas, it does not specifically mention the rules for films independently produced by foreign studios, or jointly produced by Chinese and foreign studios.[79] During the Press Conference held by SAPPRFT, the director of the film regulation division further explained the situation. [80]

[78] Dianying Guanli Tiaoli(电影管理条例)[Regulations on the Administration of Movies](promulgated by the State Council of the People's Republic of China, Dec. 25, 2001, effective Feb. 1, 2002), CLI.2.38120(EN) (Lawinfochina). http://www.lawinfochina.com/Display.aspx?lib=law&ID=2253.

[79] *See* Zhonghua Renmin Gonghe Guo Dianying Chanye Cujin Fa (中华人民共和国电影产业促进法)[Film Industry Promotion Law of People's Republic of China](promulgated by the Standing Comm. Nat'l People's Cong., Nov. 7, 2016, effective March 1, 2017), http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=283839&keyword=电影产业&EncodingName=&Search_Mode=accurate.

[80] Hao Jiemei, *National People's Congress voted through the "Film Industry Promotion Law", the State Press and Publication of SARFT Policy and Law Division, the film office for the relevant circumstances*, China Film News (Nov. 7, 2016), http://mp.weixin.qq.com/s/hsAPZi46FF52lqsfgrKmgQ.

First, the Film Industry Promotion Law is primarily intended to develop the domestic film industry from perspectives of legislative principles, systematic construction and legal responsibilities.[81] The primary focus of the law is on the domestic market, its development and protection.[82]

Second, the new law touches on regulations over hosting and attending international film festivals,[83] and any cooperation between Chinese and foreign studios in the post-production process.[84]

Third, any regulation related to foreign productions and joint productions will be further amended and specified in the revision of the Regulation on the Administration of Movies.[85]

This means that foreign studios are still faced with the old framework, and their hands are tied as to how to get their work and money into the market. And it is still unclear whether foreign capital could directly fund production studios in making movies.

Limited Types of Cooperation Between Chinese And Foreign Production Studios

This brings us to a closer look at the type of legal entities foreign capital might use to participate in the market and the type of work they could send into the Chinese market. Generally, there are two major categories: importing and joint production.

First, foreign films can be directly imported into China, but are governed by strict quota requirements: 1) only 34 foreign imported films are allowed each year, and 2) foreign studios may only retain 25% of the Chinese box office revenue.[86]

Second, to avoid the limitation imposed by a strict quota, foreign producers and investors can seek to engage in joint productions with a Chinese company or companies. There are three forms of joint ventures foreign studios may enter, all governed by the China Film Co-Production Corporation ("CFCC"), an organization founded in 1979 solely authorized by the SAPPRFT relating to Chinese-foreign film co-productions.[87]

---

[81] The Film Industry Promotion Law, *supra* note 81, at art. 1-5.

[82] *Id*.

[83] *Id*. at art. 21.

[84] *Id.* at art. 22.

[85] Dianying Guanli Tiaoli (电影管理条例)[Regulations on the Administration of Movies] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 12, 2001, effective Feb. 1, 2002) CLI.2.38120(EN) (Lawinfochina).

[86] In the Film Industry Promotion Law, supra note 81, Article 29 requires that at least 2/3 of the time of film screening should be devoted to films produced by Chinese studios.

[87] *About China Film Co-Production Corporation*, CHINA FILM CO-PRODUCTION CORP., http://www.cfcc-film.com.cn/introeg/intro.html, (last visited Oct. 17, 2016).

Specifically, a "co-production" is a film co-financed by the Chinese and foreign investors, who share the profits proportionately. An "assisted production" is a film solely financed by the foreign investor, produced with the help of the Chinese side. A "commissioned production" refers to a film commissioned by the foreign investor and made by the Chinese side alone.[88]

On this point, the situation seems to be outside the control of foreign studios and investors. Although the number of imported films exceeded the quota in 2016, with favorable treatment opened to Indian producers,[89] it is still uncertain whether the quota will substantially increase or even be abolished (which is unlikely).[90] Until the Chinese government officially increases the quota and relaxes the standards for co-production and commissioned production, the quantity of films that could get into the Chinese market will always be limited. In the interim, the best strategy is conducting a closer review of the films that are intended for the Chinese market and ensuring that they comply with the new standards set forth in Article 16 and Article 39.[91] This will increase the likelihood of the producers and investors seeing their production approved by the SAFPPRFT and get enough show time in the cinemas.

National Security Concerns

In addition to the quota and restricted forms of cooperation, the scope and substance of state censorship in film production has not been relaxed by the new law. The restrictions coupled with the inherent unpredictability of industry administrative regulation could further decrease the chance of successfully getting the film into Chinese cinemas.

While in China, the censorship framework is constituted by various regulations and governed by two major government agencies. First, the State Administration of Press, Publication, Radio, Film and Television of the People's Republic of China (the "SAPPRFT"), formerly known as the State Administration of Radio, Film and Television (the "SARFT"), is an executive branch under the State Council of the PRC in charge of state-

[88] The Provisions on the Administration of Chinese-foreign Cooperative Production of Films (promulgated by the St. Admin. for Radio, Film and Television, July 6, 2004, effective Aug. 10, 2004; rev'd by the St. Admin. For Radio, Film and Television, May 4, 2016), art.5, CLI.4.54329(EN) (Lawinfochina).

[89] Clifford Coonan, *China Film Import Quota Will Open Up in 2017, Says Top Local Producer*, THE HOLLYWOOD REPORTER (April 16, 2014, 9:25 AM), http://www.hollywood reporter.com/news/china-film-import-quota-increase-696708.

[90] Fergus Ryan, *China Exceeds Quota on Hollywood Films Amid Box-Office Slowdown*, CHINA FILM INSIDER (Oct. 24, 2016), http://chinafilminsider.com/china-abandons-quota-hollywood-films-amid-box-office-slowdown/.

[91] The Film Industry Promotion Law, *supra* note 81, at art. 16, art. 39.

owned media companies as well as censorship of media content.[92] The current standards for film censorship comes from the Regulations on the Administration of Movies, an Order of the State Council of the PRC issued on December 12, 2001, and were reiterated by a Circular issued by SARFT in 2008 "to give priority to protecting the healthy development of minors and social welfare."[93]

Second, the National Administration for the Protection of State Secrets ("NAPSS") is an institution of the State Council of the PRC responsible for the protection of national security in terms of classified information.[94] Much like a combination of the National Security Agency in the U.S., NAPSS enforces the censorship within criminal law when contents leak national and party secrets.[95]

Foreign investors who are "unfortunate" enough to have picked films with forbidden contents face the possibility of losing the market completely because the public might have no knowledge of the existence of such productions, because the vast majority of Chinese audiences depend on filtered search engines and censored news media to learn about new movies in the cinemas. Even though these "unfortunate" producers might still promote these films in the Chinese communities in other countries, the purpose of profiting from the huge box market in mainland China will be frustrated with minor recoveries. This unique and stricter censoring process in China is different from the rating system in the United States. In the United States, films with different ratings are originally targeted at different groups of audiences. Thus, even if theatres refuse to show them, the American audience could still see advertising and trailers, and then purchase them from designated stores if they comply with the age requirements.

This cautions investors in the Chinese film market that complying with the censorship requirements is a vital part of successful investment. Before the Chinese government conducts its own regulation, it is prudent to make sure that 1) for films produced outside China, the parts that might trigger strict censorship and prohibition are taken out and 2) for films co-produced with Chinese entertainment companies, it is reasonable to defer to their judgments as to fully comply with the requirements.

---

92 See SARFT (2017), http://english.gov.cn/state_council/2014/09/09/content_281474986284063.htm (last visited Feb 9, 2017).

93 *SARFT Reiterates Film Censor Criteria*, H.K. TRADE DEV. COUNCIL, Apr. 1, 2008, http://info.hktdc.com/alert/cba-e0804c-2.htm (last visited Oct. 2, 2016).

94 Jessica Grimm, Note: *The Import of Hollywood Films in China: Censorship and Quotas*, 43 Syracuse J. INT'L L. & COM. 155, 162 (2015).

95 *Agencies Responsible for Censorship in China*, CONG.-EXECUTIVE COMMISSION ON CHINA, available at http://www.cecc.gov/agencies-responsible-for-censorship-in-china#sarft (last visited Oct. 8, 2016).

Chinese Entertainment Companies' Outbound Strategies

The new Film Industry Promotion Law may also increase the amount of outbound investments by some large entertainment companies. While these large companies have been the beneficiaries of a film market that was hard to break into because of the high cost of production, they might have a strong incentive now to explore the global market.

Why Look Outside?

By lowering production costs and directly promoting increased participation by local forces and smaller studios in the market, the new law is trying to slice a larger piece of the box office profits for these new players. The advantages of these large companies, ample resource and star casts, become less significant considering the favorable policies the smaller studios and local governments might enjoy. Strategically, it is better for these large entertainment companies to explore the global market because this would fully utilize their unique advantages that smaller studios do not possess: resources to afford a more expensive production; ability to recruit internationally-famous production teams and casts; and the scope to make films that will not only attract domestic audiences but also audiences in other parts of the world, which is essentially the Hollywood model.

Further, under the rigorous censorship laws, competing in the global film market is also a good way for these large entertainment companies to diversify their business portfolios. Take Dalian Wanda Group's film business as an example: it owns large cinema chains in Europe, Australia and the United States, and has its own production studio and distribution company.[96] An obvious step for people like Mr. Jianlin Wang (also known as the richest man in China), the owner of Dalian Wanda Group, is to partner with the Hollywood studios and eventually acquire them, so that his own company could take advantage of the established reputation, audience, technology, and management of these Hollywood studios, evidenced by the acquisition of Legendary Entertainment for $3.5 billion.[97]

In fact, Mr. Wang has even publicly announced that his goal is to "buy Hollywood companies and bring their technology and capability to China . . . if one of the Big Six would be willing to be sold to us, we would be interested."[98] The bold moves and obvious ambition by the Chinese

[96] *See*, WANDA GROUP, https://www.wanda-group.com/culture/film_holdings/(last visited Sept. 24, 2017).

[97] Natalie Robehmed, *With $3.5B Deal For Legendary Entertainment, Chinese Billionaire Is Pursuing Trans-Pacific Vertical Integration*, FORBES, (January 12, 2016, 10:52 AM), https://www.forbes.com/sites/natalierobehmed/2016/01/12/dalian-wanda-group-acquires-thomas-tulls-legendary-entertainment-for-3-5-billion/#23f938121883 (last visited Sept. 21, 2017).

[98] Nancy Tartaglione & Anita Busch, *Hollywood & China: Wanda Again In U.S.*

entrepreneur have raised concerns of national security in the U.S. government about possible propaganda plans attached to these business moves.[99] After his purchase of the theatre chain AMC Entertainment Holdings for $2.6 billion in 2012 and production company Legendary Entertainment in 2016 for $3.5 billion, Mr. Wang has engaged in active talks with Paramount Pictures, Sony Entertainment and announced plans to buy Carmike Cinemas, making his holdings the biggest film exhibiter in the world.[100]

Legal Issues in Chinese Companies' Acquisition of U.S. Companies and Production Studios

In the United States, the national security review over mergers and acquisitions by foreign investors is under the authority of the Committee on Foreign Investment in the United States ("CFIUS"). CFIUS is an inter-agency committee that reviews transactions involving a foreign investor acquiring an "existing U.S. business" and gaining control.[101] CFIUS is known for its broad power, secrecy, and unpredictability.[102] As Mr. Jianlin Wang's publicly disclosed plans for more acquisition of Hollywood studios attract political attention, CFIUS reviews might function as a substantive hurdle for any of these further transactions. In fact, this possibility has made Paramount withdraw from selling its stocks to Wanda.[103]

In addition to the CFIUS investigations, the Chinese investors might face more legal challenges from a variety of different laws and regulations.

First of all, as companies with ample financial resources require increasingly more Hollywood studios, there might be potential concerns that such practice might violate the antitrust laws in the U.S. Specifically, as illustrated by a line of cases decided by the Supreme Court and highlighted

Government's Crosshairs; Who's Pushing The Hot Button? DEADLINE, October 6, 2016, http://deadline.com/2016/10/china-hollywood-u-s-government-wanda-propaganda-media-1201832236/ (last visited October 9, 2016).

[99] Erich Schwartzel, *Congressman Calls for Review of Wanda Group's Hollywood Ambitions*, THE WALL STREET JOURNAL (Oct. 7, 2016, 9:05 AM), https://www.wsj.com/articles/congressman-calls-for-review-of-wanda-groups-hollywood-ambitions-1475796556.

[100] Erich Schewartzel ET AL., *China's Richest Man, Dalian Wanda's Wang Jianlin, Makes His Move on Hollywood*, THE WALL STREET JOURNAL (September 30, 2016, 1:33 PM), http://www.wsj.com/articles/chinas-richest-man-makes-his-move-on-hollywood-1475256816 (last visited October 9, 2016).

[101] 31 C.F.R. § 800.204-226 (2016).

[102] Xingxing Li, *National Security Review in Foreign Investments: A Comparative and Critical Assessment on China and U.S. Laws and Practices*, 13 Berkeley Bus. L.J. 255, 271 (2016).

[103] Doug Young, *Spurned by Paramount, Wanda Settles for Sony*, FORBES, (September 23, 2016, 9:05 AM), http://www.forbes.com/sites/dougyoung/2016/09/23/spurned-by-paramount-wanda-settles-for-sony/#4969fd033b0e (last visited October 9, 2016).

by the seminal case of *United States v. Paramount Pictures*, it is possible that courts might intervene theatre chains from blocking distribution and raising ticket pricing.[104] As Wanda Group acquires a variety of cinemas, the U.S. government might intervene with ticket prices on the basis of potentially controlling market price—a classic violation of antitrust laws.

Moreover, The Foreign Agents Registration Act ("FARA") requires those acting as agents of foreign countries to publicly disclose their relationship with the government.[105] Specifically, FARA requires that any person acting "as an agent of a foreign principal" shall "file with the Attorney General, in duplicate, a registration statement, under oath on a form prescribed by the Attorney General" that discloses a comprehensive list of information including "the nature and amount of contributions, income, money . . . that the registrant has received within the preceding sixty days from each such principal."[106]

FARA defines "foreign principal" to include "a government of a foreign country and a foreign political party,"[107] and defines "agent of a foreign principal" to include "any person who acts in any other capacity at the order, request, or under the direction or control . . . of a person any of whose activities are directly or indirectly supervised, directed, controlled, *financed*, or subsidized in whole or in major part by a foreign principal, *and* who directly or through any other person . . . acts within the United States . . . in the *interests* of such foreign principal."[108]

Under such definitions, it could be argued that the large Chinese entertainment companies with direct funding or investment from the Chinese government are in fact the agents of China, and thus, unless they disclose all required information in compliance with FARA, they should be denied access to the U.S. market for violating the law.

All these regulations bring additional hurdles to Chinese investors looking to combine with or acquire U.S. film studios, not to mention the difficulty Chinese investors face in obtaining enough U.S. dollars under the restriction on foreign capital put in place to preserve China's capital reserve.[109]

---

[104]Alexandra Gil, Note, *Breaking the Studios: Antitrust and the Motion Picture Industry*, 3 N.Y.U. J.L. & Liberty 83, 121 (2008).

[105]*See* 22 U.S.C. §612 (1938).

[106]*Id*.

[107]*Id.* at §611(b)(1).

[108]*Id.* at §611(c)(1) (emphasis added).

[109]David Lieberman, *Dick Clark Production Owner Scraps $1B Sale to Wanda Group*, DEADLINE (March 10, 2017, 6:20 AM), http://deadline.com/2017/03/dick-clark-productions-owner-scraps-sale-wanda-group-1202040693/(last visited Sept. 12, 2017).

Implication for Chinese investors

The above discussion shows that for Chinese investors hoping to break into the U.S. film market, the overall environment is far from ideal. Although businesses like Dalian Wanda Group might have accumulated enough capital to acquire large studios, they are more likely to be turned down by the management teams of those studios for the best interest of the current shareholders: it is better for these large studios to maintain a good relationship with the government and avoid potential antitrust investigations as well as heightened scrutiny in fear of Chinese propaganda.

To better diversify such risks and push for successful negotiation, Chinese investors should fully disclose their relationship with the Chinese government and propose sustainable and long-term plans for the development of the studios; generally, shareholders would favor strategic buyers instead of financial buyers, and having no criteria in choosing acquisition targets and no case-specific business plans for each target are both signs of a financial buyer. It is best for Chinese investors to first make clear its overall business strategy, and then win the heart of the management team as well as the shareholders to further make way for its global success.

Conclusion

As the Chinese film market continues to grow, the new Film Industry Promotion Law will serve as an effective tool to facilitate the development of the diversity and richness of the Chinese entertainment industry. Focused on the less-developed areas of the country and recognizing the flexibility and expertise of local governments, the new law obligates both the local governments and the national government to provide various types of policy incentives to attract investment in the construction of physical facilities as well as the making of films, both by larger and more experienced producers and smaller studios with local roots.

However, the influence of the new law will not be limited to the domestic market. The cross-border transactions in the film industry can be expected to reach a new high. On the one hand, foreign producers and investors are eager to take advantage of the favorable policies and get as many films into Chinese theatres as possible to generate more profits, yet they face the unchanged quota on imported movies, restraints on the co-production of films, and the stringent forms in which foreign capital could providing funding for the smaller studios. Until further developments in relevant legislation, the best strategy for these entities is to fully make use of the quota and conduct better market research so that the limited number of movies submitted for government approval would pass the censorship and maximize the audience count.

On the other hand, large entertainment companies are more passionate to explore the global market, not only because the expected emergence and competition of smaller productions will dilute their share of revenue in the domestic market, but also because they have accumulated enough resources and experience to take their businesses to the next phase. However, in the most popular destination and the best place to start their journeys, the United States, these companies face various legal challenges, including heightened scrutiny, antitrust litigation, regulatory actions, and suspension of business activities based on the allegation that they are being used as propaganda tools by the Chinese government. Strategically, it is in the best interest of these companies to fully disclose their financial information, makeup of their management teams, and their long-term strategy to ensure the success of the deals as well as the support and confidence of the shareholders in the target companies.

The challenges lie with great opportunities. If participants in the film industry could fully comply with the relevant legislation, their cross-border transactions in the film industry will be more likely to generate considerable profit both in the short-term and long run.