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Laura Buffo
Chair of the Trade Policy Staff Committee
Office of the United States Trade Representative
1724 F Street, NW
Washington, DC 20006

Re: 2024 China WTO Compliance Report - International Intellectual Property Alliance's Notice of Intent to Testify and Summary of Testimony and Written Comments in Response to "Request for Comments and Notice of Public Hearing Concerning China's Compliance with World Trade Organization (WTO) Commitments" (89 FR 63462, August 5, 2024)

To the Trade Policy Staff Committee:

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to submit these written comments in response to the above-captioned Federal Register Notice on China's compliance with its World Trade Organization (WTO) commitments. IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve copyright protection and enforcement abroad and to open foreign markets closed by piracy and other entrenched market access barriers. Members of the IIPA include: Association of American Publishers (www.publishers.org), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association (www.motionpictures.org), and Recording Industry Association of America (www.riaa.com).¹

Notice of Intent to Testify

We hereby notify the Trade Policy Staff Committee (TPSC) that the following person wishes to testify orally at the above-referenced hearing on behalf of IIPA:

Pete Mehravari
Director of Policy and Legal Affairs
International Intellectual Property Alliance

¹ Collectively, IIPA's five member associations represent over 3,200 U.S. companies producing and distributing copyrightable content. The materials produced and/or distributed by IIPA-member companies include: video games for consoles, handheld devices, personal computers, and online; motion pictures and television programming distributed in all formats (including cinema, television, online, mobile, DVD, etc.); music recorded in all formats (from digital files to CDs and vinyl) for streaming and other online services, as well as broadcasting, public performance, and synchronization in audiovisual materials; and fiction and non-fiction books, educational, instructional and assessment materials, and professional and scholarly journals, and databases.

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Summary of Testimony and IIPA Comments on China's WTO Compliance

China is a significant market for the creative industries, and China's online marketplace continues to expand. China also leads the world in the number of cinemas, with over 78,000 movie screens as of 2023—most of which support 3D, and many of which offer enhanced formats such as IMAX and China Giant Screen. China's total box office revenue was \$7.73 billion (RMB 54.9 billion) in 2023, up 83% from 2022.² Further, in 2023, China was the fifth largest music market and had the fastest rate of growth in any top 10 market at 25.9%,³ and the second largest market for video games, where in 2023 China reported a record 668 million gamers and revenues of \$42.27 billion (RMB 303 billion).⁴ Yet China's market for legitimate, licensed content continues to be devastated by piracy, discriminatory and restrictive market access policies, and long-standing unfulfilled international obligations to open the market to foreign creators and rights holders.

China's 2021 amendments to its Copyright Law introduced the rights of broadcasting and public performance for producers of sound recordings, which are essential protections for the music industry. Additional positive developments include enforcement reforms, including a ten-fold increase in maximum statutory damages and the ability to shift the burden of proof to the accused infringer; protections for technological protection measures (TPMs), which enable digital trade of copyrighted works; and the elevation of certain elements of the three-step test into the law to appropriately confine exceptions and limitations.

While these amendments are laudable, it is critical that the implementing measures for these amendments expected in late 2024 meet global best practices and China's international commitments. Additionally, the amendments did not include several reforms that remain necessary to align the standard of copyright protection and enforcement with global norms and best practices to effectively meet the challenges of the digital age. China should fully implement its commitments under the 2019 *Guidelines on Strengthening the Protection of Intellectual Property Rights (Guidelines)*,⁵ including to regulate websites and digital platforms to remove pirated materials, and under the Economic and Trade Agreement Between the United States and China (Phase One Agreement), including to make a meaningful increase in purchasing audiovisual products for video-on-demand (VOD) services. Following through on these commitments would help China

² Patrick Frater, *Variety*, "China Box Office Surges by Annual 83% in 2023 to \$7.73 Billion," January 3, 2024, available at <https://variety.com/2024/film/news/china-box-office-2023-surge-1235860299/>; beginning January 1, 2024, China raised the ticket pricing for imported films, RMB 30 for 2D films (from RMB 20), RMB 35 for 3D films (from RMB 25), and RMB 40 for high quality formats such as CINITY and IMAX (from RMB 30).

³ International Federation of the Phonographic Industry (IFPI) Global Music Report 2023, p. 14.

⁴ Josh Ye, *Reuters*, "China's video games market recovers in 2023, domestic sales surpass \$42.6 bln." December 15, 2023, available at <https://www.reuters.com/technology/chinas-video-games-market-recovers-2023-domestic-sales-surpass-426-bln-2023-12-15/>.

⁵ See, e.g., IIPA 2020 at 23 for additional information on the *Guidelines*, which were issued jointly by the Communist Party of China's Central Committee (CPCCC) and the State Council.

address its substantial and growing piracy problems and remove barriers that prevent U.S. creative industries from fully accessing the Chinese market on a level playing field.

Unfortunately, in many respects, China has been moving in the opposite direction, introducing several measures intended to restrict its growing market for creative works from foreign competition and maintaining tight national control over content and distribution. China's implementation of its WTO obligations—including the outcomes of the 2009 WTO dispute settlement decisions—remain inadequate, incomplete, or delayed. These comments spell out some of these problems, with particular focus on the following:

- (1) Increased market access barriers to the distribution of creative content, including online, and ongoing production and investment restrictions;
- (2) Continued gaps and deficiencies in China's legal regime, including both copyright law and enforcement measures;
- (3) The need for enhanced enforcement to address existing and evolving online piracy threats that are having a negative global impact, including a continued focus on online journal piracy, emerging forms of piracy such as apps that facilitate infringement, the proliferation of Piracy Devices and circumvention devices, unauthorized theatrical camcording, and infringing content on unlicensed streaming platforms;
- (4) The need for an immediate and full implementation of the U.S.-China Film Agreement signed in 2012 by then-Vice President Biden and then-Vice President Xi, including the review obligations outstanding since 2017.

IIPA believes that progress on these issues is crucial to successful U.S. trade and economic policy plans with China. As far back as the 2012 round of the U.S.-China Strategic and Economic Dialogue (S&ED), the Chinese government recognized the importance of increasing sales of legitimate intellectual property-intensive products and services in line with China's status as a globally significant marketplace. It follows from this recognition that real progress on copyright protection and enforcement, as well as on market access for copyright-dependent goods and services, must be measured based on whether sales and licensing of those copyright-intensive products have significantly increased. For IIPA members, this significant increase has yet to be fully realized. IIPA appreciates the inclusion of intellectual property (IP) licensing in the Phase One purchasing commitments and encourages the Chinese government to move expeditiously to meet its Phase One obligations to expand trade. However, we urge that progress in China be measured by legitimate industry sales and licensing in the country. We appreciate the efforts already undertaken by the U.S. government to develop appropriate sales metrics measuring progress on key commitments and ensuring they translate into tangible results for U.S. industries and U.S. economic and job growth.

Previous IIPA comments and testimony have thoroughly documented the challenges faced by the motion picture and television, music, publishing, and entertainment software industries, and the 2024 IIPA Special 301 country report on China provides details on these challenges as they

stood in January 2024.⁶ The following discussion highlights both potential WTO compliance issues in China and how addressing the four key areas of change noted above can secure positive commercial gains for the creative industries going forward, which remains the ultimate goal of IIPA members' efforts in China.

I. Increasing Discrimination Against Foreign Creative Content

The development of a robust marketplace for copyrighted works in China requires that foreign rights holders have the legal right to enter that market on a non-discriminatory basis. Unfortunately, U.S. and other foreign rights holders have long faced certain restrictions and prohibitions on core copyright activities in China that impede foreign creators' access to the Chinese marketplace, thereby restricting the supply of legitimate products to Chinese consumers. For example, China is still not in compliance with the WTO's ruling in the landmark market access case (DS 363) brought by the United States regarding many market access barriers in music, audiovisual products, and publications.⁷ After the case concluded in 2009, China eased several market access restrictions,⁸ but many core activities of copyright industries remain restricted or prohibited. For example, the Negative Investment List, revised in 2021, continues to prohibit, among other things, foreign investment in the "publication and editing of books, newspapers, journals, audiovisual products and electronic publications," and foreign investment in audiovisual production studios, movie distribution, and online video services. While the prohibition of foreign investment in audiovisual production studios is also a barrier facing U.S. record labels in China, Item 15 of the 2021 Negative Investment List permits foreign investment in online music services, which is a welcome and positive step. Rather than continue to pursue policies that impede access to its marketplace, China should meet its trade commitments and take steps to open its marketplace for the music, publishing, video game, and motion picture and television industries by eliminating the market access barriers discussed below.

Unfortunately, the Government of China continues to employ a variety of measures that appear intended to further undermine market access for the U.S. creative industries. Censorship of the U.S. creative industries by the Government of China not only blocks access into Chinese markets, but also impacts the content brought to the worldwide marketplace. For example, books merely being printed in China but otherwise intended for distribution in other markets now also

⁶ See IIPA's 2024 Special 301 submission on China (IIPA 2024), available at <https://www.iipa.org/files/uploads/2024/01/CHINA-2024.pdf>.

⁷ China—Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, WT/DS363/AB/R, December 21, 2009, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds363_e.htm.

⁸ China eased investment restrictions for some sectors in amendments to the Catalogue of Industries for Guiding Foreign Investment. In late 2013, the Shanghai Free Trade Zone (FTZ) was opened to foreign investment, allowing the introduction of game consoles into China for the first time, and easing restrictions on foreign audio and audiovisual product distribution (although confirmation that distribution of "music videos" is permissible, and that a foreign-invested entity established in the Shanghai FTZ may distribute music throughout China, would be helpful, as it remains unclear whether these activities are permitted). In 2015, China eliminated most restrictions on gaming consoles, paving the way for video game companies to manufacture consoles in all of China, although manufacturers and publishers must still comply with strict regulations including those for pre-sale content review. China also agreed to allow foreign entities to choose their licensees for online music distribution, and to engage in content self-review of music for the first time. New incentives were also introduced for more film co-productions in China.

appear subject to China's burdensome content review regime. Books that were previously being printed in and exported from China without issue appear to be subject to the more stringent application of the regime. Extending the reach of its burdensome content review regime to books merely being printed in the country but otherwise intended for distribution in other markets places an arbitrary and unjustified discriminatory burden on foreign publishers, who, for decades, have used printing partners in China, and is arguably a disguised restriction on international trade. Additionally, sound recordings that are imported into China in a physical format are required to undergo a strict content censorship procedure, comply with a series of formalities, and receive approval before distribution in the market. This requirement should be lifted.

A. Online Market Access Concerns

As we have previously noted, the 2016 Online Publishing Rules, which appear to expand the scope of longstanding restrictions on the involvement of foreign entities in online publishing activities, are having a chilling effect on foreign investment in online publishing services where, prior to the rules, some latitude appeared to have been granted.⁹ Furthermore, when China revised its Foreign Investment Catalogue in June 2019, the country lifted certain restrictions, but production and distribution of audio-visual products and "network publication services" remained on the "Prohibited" list. The Ministry of Industry and Information Technology's (MIIT's) 2017 Regulations on Management of Internet Domain Names, among other things, requires all Internet domain names available in China to be registered through a licensed, domestic service provider. The regulations have unfortunately led to increased use of reverse proxy services by most piracy services targeting China.

In addition to existing online barriers, China has introduced several alarming draft measures that, if implemented, would discriminate against U.S. producers and distributors of creative content. For example, the draft Radio and Television Bill released by the National Radio and Television Administration (NRTA) in March 2021 could tighten regulation standards for online audiovisual programs and restrict foreign producers from participating in radio and television activities, including online. In May 2016, the former State Administration of Press, Publication, Radio, Film and TV (SAPPRFT) proposed policies that, if implemented, would provide state-owned media companies with voting control over leading online platforms for films and TV content. In June 2016, China published new content approval regulations for mobile video games that would make it extremely difficult for foreign publishers of mobile games to access the Chinese market. China has approved fewer than ten video games from American publishers since June 2021. China should increase the number of approvals for foreign video games to match the number of domestic approved video games.

B. Audiovisual Market Access Concerns

China continues to introduce additional impediments to its market for U.S. audiovisual content, limiting the U.S. creative industry's ability to fully access and compete fairly, and

⁹ Among other things, these rules unfortunately restrict the distribution of foreign audiovisual content on online video platforms, even if the distributor has received a home entertainment permit from the former General Administration of Press and Publication (GAPP).

inhibiting potential growth in this massive and fast-growing market. In June 2022, the NRTA issued a new system of administrative licensing for domestic online audiovisual works, essentially applying the same censorship rules and standards for offline (theatrical) and online (VOD) content. The practice has been in place since 2019; the issuance of the new administrative licensing requirement formalizes the obligation for online audiovisual works. This reflects a further tightening of government oversight and the push for a higher censorship standard for the online content industry in China.

In 2014, the government-imposed rules capping the online distribution of foreign films and TV dramas at 30% and requiring online distributors to register content, obtain permits, and submit content for review, resulting in extended delays and further uncertainty. Furthermore, because there are only two opportunities to submit content for registration and review per year, U.S. producers are unable to submit a full season of a television series when that season is current due to the nature of television production. These rules have substantially reduced the number of U.S. film and television programs licensed in China for online distribution and in practice further reduced the foreign content caps to less than 30%. Bans or caps on U.S. content in China creates a vacuum of demand that can be filled by pirated content, which damages investment in the Chinese creative sector.

In September 2018, the NRTA proposed two draft regulations expanding the 30% cap for online distribution of foreign audiovisual content to broadcasting and applying the cap on a genre-basis to film, TV, animation, documentaries, and "other" programs. While these regulations have not been officially promulgated, provisions to further tighten the content review process for imported content have been implemented, and IIPA is concerned that industry-wide application of the genre-based restrictions began in early 2020, in particular for animation, further exacerbating the uncertainty and uneven playing field faced by U.S. audiovisual companies.

In July 2023, the revised Anti-Espionage Law, first introduced in November 2014, came into effect. The revisions significantly broadened the scope of what constitutes "espionage" and gave the relevant authorities new powers to investigate and prosecute suspected espionage activities. Many of these provisions were already present in other existing rules, such as the Anti-Espionage Law's Implementing Rules, released in 2017 which dealt with enforcement procedures; and the Provisions on Anti-Espionage Security Precautions from 2021, which have now largely been copied in the revised Anti-Espionage Law. Still, the consolidation of these amendments into a single, powerful Anti-Espionage Law with broad applicability is significant. The most notable change is the broadened definition of "espionage," which can now involve the collection, storage, or transfer of any information deemed to be relevant to national security interests, including "documents, data, materials, or items." The definition was previously more limited to classified information and state secrets. The broadened definition potentially raises uncertainties even under friendly collaborations.

Chinese distributors have delayed or decreased licensing activity through multiple layers of restrictions under a non-transparent content review system, significantly delaying and limiting Chinese consumers' ability to access the most valuable current U.S. television content within a reasonable period of the U.S. release, which has created fertile ground for increased piracy. To help ensure the content review process is transparent, predictable, expeditious, and does not have

a disparate impact on U.S. content, China should adopt a voluntary, age-based classification system or at least provide transparency as to the criteria used by content approval authorities and clear, predictable timelines. China should also shorten the time for content review to provide certainty of release, increase frequency of content review windows, remove the burden of resubmitting film and television programs that have already been approved, and establish a fast-track system for content review under special circumstances. Such a system will attract investment and boost China's potential as a regional film and television production hub.

In addition, the 2016 Rules clearly intended to promote domestic Chinese radio and television programs at the expense of foreign content have negatively impacted U.S. producers and appear to contravene China's WTO obligations. A March 2016 Notice allowing refunds from the Film Development Fund to cinemas that report favorable annual box office receipts from the screening of Chinese films incentivizes cinemas to screen more Chinese domestic films, further disadvantaging the competitiveness of foreign films in the Chinese market. Another obstacle for U.S. producers in China is that private Chinese distributors, including VOD platforms, arbitrarily, without clear explanation, request from U.S. producers an excessive and particularly burdensome amount of legalized documentation regarding production and distribution to complete a license agreement or obtain government approvals that permit access to China's online marketplace. These types of documentation requests (unique to China's marketplace) cause uncertainty and additional expense that slow or kill negotiations for licensing films to China.

China also maintains numerous, longstanding, discriminatory restrictions in the audiovisual sector that continue to harm the U.S. industry. For example, China prohibits foreign-owned investment in online video services, which would appear to violate China's General Agreement on Trade in Services (GATS) commitments. China also prohibits foreign investment in audiovisual production studios and distribution. As noted above, the December 2021 revision of the Negative Investment List maintained these prohibitions.¹⁰ U.S. firms are highly competitive globally in these sectors, and these restrictions, including against direct-to-consumer audiovisual online services, undermine the ability of U.S. content creators and distributors to compete in the Chinese marketplace, hurting their growth.

China should meet its trade commitments and open its marketplace to U.S. producers

¹⁰ Other examples include: China limits foreign investment in cinemas and in-home video distribution companies to 49% and prohibits all foreign investment in television; local cable networks cannot carry foreign satellite channels without government approval or landing permits, which are limited to Guangdong and a handful of foreign channels; foreign satellite channels beaming into China are required to downlink from a government-owned encrypted satellite platform and may only be shown in three-star hotels and above and in foreign institutions, and the annual fee for each channel remains excessively high (US\$100,000); foreign television and film programming are limited to no more than 25% of total airtime, and other foreign programming to no more than 15% of total air time; foreign programming is banned during prime time and may not constitute more than 30% of pay television channels; foreign TV series and movies are limited to 50 episodes; foreign animation is restricted to no more than 40% of total airtime, and importers of foreign animation must produce a like amount of domestic animation; under State Council regulations as well as the 2017 Film Promotion Law, public screening of foreign films must not exceed one-third of the total annual screen time; China requires home-video license agreements to be for a duration of at least three years, an unnecessary intrusion into copyright owners' contractual rights; and China continues to require digital film prints to be replicated in local laboratories, impeding rights holders' ability to control the print quality or trace the source of camcording piracy.

instead of continuing down its current protectionist path. It is critical to send a strong message that these policies are unacceptable—particularly when China is now the largest film market in the world—and should be reversed. As discussed above, China should instead focus its attention on complete implementation of the 2012 U.S.-China Film Agreement discussed below and fulfill its Phase One services purchasing obligations, including IP licensing of audiovisual works, as well as other market-opening steps for the motion picture and television industries.

II. Legal Reforms

A. Copyright Law

After years of IIPA and other stakeholders pressing for progress on amendments to the Copyright Law, in November 2020, the National People's Congress (NPC) passed amendments that entered into force in June 2021 but have not yet been implemented. IIPA encourages China to expedite the process to revise the Regulations on the Implementation of the Copyright Law to ensure proper implementation of the amendments, as discussed below.

IIPA is satisfied that the amendments to the Copyright Law include rights of public performance and broadcasting for producers of sound recordings. This critical reform is vital for the future of the music industry in China, including both foreign and domestic rights holders, reflecting that these traditional “secondary uses” have become critical aspects of core revenue for record companies as the industry has transitioned from sale of products to licensing of uses. It is vital that China ensure effective implementation and application of these new performance rights, including the protection of foreign sound recordings, ensuring the effective exercise and management of these rights in accordance with international best practices, and providing an adequate framework for tariffs that reflect the economic value of the use of the rights in trade.

The Copyright Law amendments also include some positive reforms that will improve the enforcement environment in China, including increasing the maximum for statutory damages tenfold and, upon prima facie evidence, shifting the burden of proof to the accused infringer to show the use was authorized by the rights holder or is otherwise permissible under the Copyright Law. However, while the government reports increased instances of punitive damages in IP cases generally, in copyright cases, damages remain largely non-deterrent, application of statutory damages can remain elusive, and some forms of injunctive relief remain ineffective particularly in “title-based” cases that focus on the infringement of a particular work involved in a case rather than the behavior of the infringing service. In addition, the amendments elevate certain elements of the three-step test from the Berne Convention and the TRIPS Agreement into the law to appropriately confine exceptions and limitations. China should ensure all exceptions to and limitations on copyright protection in the Copyright Law are appropriately narrow in scope and otherwise consistent with the three-step test.

IIPA is encouraged that the amendments include protections against the circumvention of TPMs, including prohibitions against the act of circumvention as well as trafficking in circumvention devices or components. It is critical that China properly implements these amendments to ensure these protections are adequate and effective. For example, protection should apply to TPMs that control and manage authorized access to copyright works (“access controls”)

and prohibition against circumvention should apply to both access controls and TPMs that protect rights (including against unauthorized copying) in those works (“copy controls”). As China is the world’s leading exporter of video game circumvention devices and software components, the law should prohibit the export of circumvention devices or components that drives significant amounts of online video game piracy around the world. Furthermore, certain exceptions—including for educational or scientific research, encryption research, and reverse engineering—appear overbroad (certainly broader than those found in U.S. law). Implementation of these exceptions should ensure they do not undercut the exclusive rights of copyright owners. China should also ensure that circumvention devices or components are effectively removed from the channels of commerce, and that rights holders have standing to bring suit in cases in which the TPM was employed by a licensee platform. Lastly, China should clarify that criminal liability is available not only for circumvention of TPMs, but also for the manufacture, distribution, and exportation of circumvention devices and software components and the trafficking of circumvention services. If necessary, China should further revise the Copyright Law to address these issues and ensure adequate and effective protections of TPMs.

Other positive aspects of the amendments include: requiring destruction or removal of the materials, tools, and equipment used to produce infringing copies from commercial channels without compensation; enabling “competent authorities” to investigate matters relating to the alleged illegal conduct, perform on-site inspections of the premises where the alleged illegal conduct took place, inspect and copy documents or materials related to suspected illegal acts, and seal or seize premises and articles involving suspected illegal acts; providing new presumptions of ownership; and adding a pre-injunction remedy to prevent further harm to rights holders.

Nonetheless, the amendments failed to address several deficiencies in China’s legal framework. To address these deficiencies, China should further revise its legal framework to:

- Ensure adequate and effective enforcement against apps and websites that facilitate unauthorized access to copyrighted works stored on remote servers by clarifying the right of “communication over information networks” to reject the “server principle”;¹¹
- Provide a clear legal basis under which Internet Service Providers (ISPs) may be held liable for IP infringements carried out by third parties using their services or networks;¹²
- Provide protection against unauthorized retransmissions of copyrighted content over the Internet (including live streaming);
- Consistent with the requirements of the *Guidelines*, clarify the legal basis for mechanisms that ensure ISPs can impose effective relief to address infringement, including, where

¹¹ The “server principle” that has been adopted is causing enforcement problems. While Chinese enforcement authorities (including courts) have taken action against infringing websites that are hosted outside China, they have done so only limited to instances in which the act of making available occurs via copies stored in China, thus limiting rights holders’ abilities to enforce against sites with copies stored outside of China.

¹² While secondary liability for IP infringement is available under Chinese law, the basis for such liability should be clarified to ensure more predictable liability decisions by Chinese judges.

applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities, especially in cases where the sites are operated outside of China or where the identities or locations of the website owners are unknown;¹³

- Clarify that only passive and neutral intermediaries are eligible for the safe harbors from monetary liability and that such intermediaries must fulfill certain conditions, including adoption and implementation of a repeat infringer policy;
- Clarify that, upon obtaining knowledge of infringement (including through a notice) or otherwise becoming aware of circumstances from which infringement is apparent, intermediaries should promptly take steps to limit, stop, and prevent further infringement, including expeditious takedown of infringing content and other measures demonstrated to be effective in preventing or restraining infringement;
- Require marketplaces and encourage all relevant intermediaries to institute a "know your business customer" (KYBC) policy;
- Provide a minimum copyright protection term of at least 70 years from publication for the protection of sound recordings and works, including audiovisual;
- Revise the criminal threshold to ensure that criminal penalties are available for all online piracy on a "commercial scale";¹⁴
- Provide an express prohibition against trafficking in circumvention devices, technologies, and services; and
- Criminalize the manufacture and distribution of piracy devices (PD) when it is clear that these devices are exported for the purpose of infringing or facilitating infringement.

Further, a previous provision to provide mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities, had been removed from an earlier version of the Copyright Law Amendment (in 2012). The recorded music industry continues to lobby the government to provide such mechanisms through separate regulations. In January 2021, the Cyberspace Administration of China (CAC) released the draft Measures on Administration of Internet Information Services (revised draft for public consultation) that appeared to stipulate a similar mechanism, although further clarifications

¹³ Once the law is enacted, the government should monitor test cases brought to ensure the law operates effectively and fairly for all parties. The Cyberspace Administration of China (CAC) released draft Measures on Administration of Internet Information Services in January 2021, which appears to stipulate a mechanism that would provide for no-fault injunctions similar to procedures in place and successfully enforced in some 35 countries worldwide that provide an essential tool to rights holders by disabling access to piracy websites. Many piracy websites offering pirated music to Chinese Internet users have moved their hosting out of China, underscoring the need for this remedy, as well as improved enforcement cooperation measures in foreign territories.

¹⁴ China should clarify that a single episode of a television program counts as one copy toward the threshold.

were required to ensure that rights holders could request the relevant governmental agencies to require Internet access providers to prevent access to infringing websites (and other online services). However, there has been no further movement on the draft by the CAC or on the implementation of the 2019 *Guidelines* that included similar mechanisms.

China's 11th amendment to its Criminal Law was issued in December 2020 and entered into force in March 2021. Among other things, the reform included some positive changes to the provisions on criminal copyright infringement (Articles 217 and 218 of the Criminal Law), including increased criminal penalties for copyright infringement.¹⁵ In addition, the reforms expanded the scope of criminal liability to include the right of transmission over an information network, performers' rights, and the prohibition on circumvention of TPMs (although there is no express prohibition against trafficking in circumvention devices, technologies, and services). Finally, "disseminating to the public through information network" was explicitly added as a prohibited act of criminal copyright infringement.

The Government of China should also adopt reforms that address shortcomings in China's Criminal Law that IIPA has identified in previous filings. In particular, China should meet its obligations in the WTO TRIPS Agreement by revising the criminal threshold (which can now more flexibly be met through a combination of numerical and monetary thresholds) to ensure that criminal penalties are available for all online piracy on a "commercial scale" (which is addressed in the *Guidelines* and which will now be further explored through the recently issued Three-Year Plan);¹⁶ separately define criminal violations regarding trafficking in devices, technologies, or services to circumvent TPMs used by copyright owners to protect their works in the digital environment; and separately criminalize the manufacture and distribution of PDs when it is clear that these devices are exported for the purpose of infringing or facilitating infringement.

B. Enforcement Reforms

IIPA welcomed the conclusion of the Phase One agreement, signed by the United States and China on January 15, 2020. In the Agreement, China made several enforceable commitments that address certain concerns identified in these comments, particularly regarding intellectual property rights (IPR) enforcement. While implementation is ongoing, in August 2020, the State Council took an encouraging step by clarifying that, in accordance with Article 1.26 of the Phase One Agreement, transfers of administrative intellectual property cases for criminal enforcement are required upon "reasonable suspicion" that the criminal thresholds have been met. The requirement that rights holders show that criminal thresholds have been met for a case to be transferred to criminal authorities has been a longstanding enforcement concern for IIPA members, and IIPA is hopeful that this new rule will be effectively applied by both transferring administrative authorities and receiving criminal authorities, although implementation by local law enforcement and public security authorities has so far been uneven. IIPA is also encouraged by recent measures enacted or proposed by the Supreme People's Court (SPC) and the National Copyright Administration of China (NCAC) to implement aspects of the Agreement that hopefully will

¹⁵ Criminal detentions are no longer applied to the crime of copyright infringement (Article 217) and the crime of selling infringing copies (Article 218). The minimum criminal punishments are fixed-term imprisonment, with the maximum sentence raised from seven years to ten years imprisonment for the crime of copyright infringement and from three years to five years imprisonment for the crime of selling infringing copies.

¹⁶ China should clarify that a single episode of a television program counts as one copy toward the threshold.

improve the enforcement framework in China. IIPA urges China to follow through on its Phase One commitments and encourages the U.S. government to work with China to ensure full implementation.

C. Other Instruments

China's "e-commerce" law requires platform operators to take "necessary measures" against infringing goods or services and, importantly, the standard of knowledge for a platform operator to take action is that the platform "knows or should know" that the good is infringing. Unfortunately, Article 43 does not explicitly adopt effective practices for handling counter-notices, raising the concern that sellers of infringing products could avoid responsibility by merely objecting to rights holders' notices of infringement. As IIPA reported previously, the new Civil Code and SPC's Official Reply on Issues of Application of Laws for Disputes Related to Internet IP Infringement provide for improved takedown procedures that are consistent with Article 1.13 of the Phase One Agreement. It is critical that implementation of the e-commerce law is consistent with the Phase One Agreement, supports rights holders' actions to prevent illegal trafficking of infringing goods on e-commerce platforms, and does not upset existing voluntary arrangements between rights holders and some e-commerce platforms where there is already good cooperation.

Most recently, in November 2023, the SPC released new Judicial Proposals on Enhancing IP Protection and Serving Promotion of High-Quality Development of Film Industry. The Proposals, supported by multiple associations of the local film industry, call for the enhancement of IP protection for a specific industry (film). They include four key objectives for the film industry: (i) accelerate accomplishment of high-quality development of film industry under the rule of law, and advocate and execute industry practices that encourage innovation and creation; (ii) intensify copyright awareness, strictly implement the Copyright Law, improve protection of film copyright and copyright-related rights, including respecting the rights of screen writers, directors, cinematographers, lyricists, composers, and performers; (iii) utilize technical measures of content protection (for example, block chain and digital water marking) and innovate the license system to reduce infringement from the source; and (iv) actively and widely publicize IP protection during the process of disseminating films, for example, through industry forums and public service advertisements with the theme of anti-piracy and anti-camcording. These judicial proposals should be fully implemented.

III. Need for Enhanced Enforcement to Combat Substantial Piracy

A. Fully Implement the 2019 Guidelines on Strengthening the Protection of Intellectual Property Rights (Guidelines)

Late in 2022, the China National Intellectual Property Administration (CNIPA) published a three-year Plan (replacing the prior 2020-2021 plan) implementing the *Guidelines*, which were jointly released by the Office of the Chinese Communist Party's (CCP) Central Committee and the Office of the State Council in November 2019. CNIPA's plan specifies 114 measures related to intellectual property in six categories (with deadlines). The Plan contains items relevant to the copyright industries, and IIPA is monitoring these developments closely. Industry has identified at least 24 of the 114 measures as having direct relevance to the protection and enforcement of

copyright, including lowering criminal thresholds; streamlining evidence processes; establishing a list of repeat infringers; and regulating websites to “remove infringing content, disrupt pirated website links, [and] stop the dissemination of infringing information.”

Moreover, China should separately define criminal violations regarding circumvention of TPMs or trafficking in circumvention technologies as noted in the *Guidelines*. As the world's primary manufacturer, producer, supplier, and exporter of video game circumvention devices and software components, China drives significant amounts of online video game piracy around the world. Game copiers or modification chips are devices commonly used to bypass TPMs in a video game console to download and play infringing video games on “modded” consoles. These devices allow infringing games distributed over the Internet to be played on handhelds or consoles. The harm they cause is not limited to console makers because almost all games developed for play on consoles, including those developed and published by third parties, can be illegally downloaded from the Internet.

Additionally, two other measures will help advance the protection and enforcement of copyright, including measure 56, to “[p]ush IP Courts to hear IP criminal cases, continuously push reform of ‘Three in One (criminal, civil, and administrative cases in one court)’ IP trial mechanism,” and measure 51, to “[f]urther enhance management of website platforms, push fulfillment of platform accountability, and based on opinions of related departments, dispose suspected IP infringement information/content online, in accordance with laws.” The “Three in One” approach is one that IIPA members would like to see fully implemented, particularly against not only the piracy app ecosystem but also against the massive proliferation of the manufacture and distribution of PDs, also known as illicit streaming devices or ISDs, that are ravaging copyright holders' legal businesses and are mass exported from China. The fact that the entire Asia-Pacific Economic Cooperation (APEC) member community is considering soft-law approaches to this issue, and Singapore and Malaysia have enacted statutes and implemented them to crack down on local sales of the infringing activities of PD/ISD resellers, indicates that the government of China can do more to tackle this problem; it is hoped the Three in One approach will be effective.

B. Overcoming a Legacy of Non-Deterrent Enforcement

China has recently increased its enforcement efforts, contributing to improved protection and development of the legitimate marketplace for some creative sectors. However, these helpful actions are not enough to deter widespread piracy, particularly when compounded by China's many informal and formal barriers that restrict the distribution of legitimate foreign content in the country. China's growing Internet user base creates opportunities for rights holders, but China's enforcement deficiencies, including unsettled application of the “server principle,” an uncertain interpretation of ISP safe harbor rules, have kept the creative marketplace from reaching its full potential, hampering the development of legitimate services.¹⁷ IIPA is hopeful that China will fully implement commitments under the Phase One agreement to improve its enforcement framework,

¹⁷ It is important to understand the broader context in which U.S. creative industries operate in China. In addition to causing exceedingly low licensing revenues, this market failure compounds current enforcement challenges in China because, for example, compensatory damages are calculated at relatively low levels, and numerical and monetary thresholds triggering criminal liability, while increasingly flexible, remain difficult in some cases to reach, and could be questioned as not high enough to encompass all “commercial scale” piracy.

which would make progress in addressing some of the concerns identified below.

The annual “Sword Net” anti-piracy campaigns have produced some good results, but there is a need for greater transparency, including providing rights holders with timely and detailed information regarding the process and the results of administrative action and more consistent treatment of actioned cases as results have varied among provinces. It is also hoped that the IP Key Programme will continue its engagement with the Ministry of Public Security so that more copyright infringement cases eventually could be addressed by the criminal authorities. Administrative enforcement should be improved by expanding the resources and capability of the NCAC, local Copyright Administrations (CAs), and Cultural Law Enforcement Administrations (CLEAs) and improving the mechanism between NCAC, the MIIT, and ISPs for shutting down infringing websites operating without a business license (consistent with the *Guidelines*). Administrative enforcement should also be improved by imposing enhanced penalties for repeat infringers without the need for a new complaint. In addition, the Government of China should, consistent with the *Guidelines*, take immediate steps to guide and regulate management of all types of websites to “remove infringing content, disrupt pirated website links, [and] stop the dissemination of infringing information.”

China's Customs Database allows rights holders to record IP and authorized licensees for use in preventing infringing items from being exported from or imported into China. However, the database is available only in Chinese. It would be helpful for the database to support other languages, at least English, to reflect the international nature of infringement activity across China's borders.

Additionally, NCAC should provide measures demonstrated effective in preventing or restraining infringement. Further, NCAC should be empowered to prevent platforms from imposing practical barriers to reporting infringements at scale – including burdensome formalities and limitations on the number of infringements that can be reported or processed. Infringing content is widely made available on unlicensed user uploaded content (UUC) platforms and apps. Administrative remedies have had limited effect to curb infringement via unlicensed user uploaded content (UUC) platforms. The absence of clarity regarding the liability for UUC platforms leads to large scale availability of unlicensed content online. Finally, improvements should be made for the prompt, more efficient, and transparent transfer of administrative complaints to the criminal authorities for investigation and prosecution.

Pirate streaming sites, cyberlockers, IPTV services, and Piracy-as-a-Service (PaaS) providers directed to a global audience yet operated from within China, continue to be a growing problem. China enforcement agencies have taken limited enforcement actions in recent years. A more comprehensive enforcement strategy coupled with strong deterrent penalties are required to reduce the major piracy services sourced from China.

While the enforcement actions China has taken are helpful, they are not enough to deter widescale piracy, particularly when compounded by China's many informal and formal barriers that restrict the distribution of legitimate foreign content in China. Chinese courts should issue deterrent-level civil and criminal penalties against operators of piracy websites that make available a massive amount of infringing content and ensure timely enforcement of monetary damages. Also,

effective relief should be sought against companies that run apps like *LokLok*, which massively infringe outside of China but are geo-blocked in China, thus evading enforcement. In fact, there is a general lack of clarity on enforcement against Chinese companies or individuals who operate or engage in the business of infringement outside China, even as these related piracy services are geo-blocked in China. Further, China remains the hub for the manufacture and distribution of PDs, and its enforcement response is lacking, making it incumbent on the Chinese government to closely examine this issue and crack down on such activities that are fueling much of the world's IPTV piracy landscape. (Indeed, enforcement actions taken against distributors in Singapore and Malaysia, after new laws were enacted and went into force in both countries, as well as in Taiwan in Q3 2023, indicate the need for China, as the source of the problem, to take action to fix it.)

Civil and criminal enforcement against copyright infringement involves challenges for IP rights holders, including, among other things, costly and burdensome civil litigation requirements contrasted with low damages awards. The combined result of such "high costs and low benefits" of bringing civil cases is to force rights holders to rely on administrative and criminal enforcement rather than civil litigation. While the situation might improve with the recent introduction of "Internet Courts" in several cities, for the time being, the effectiveness of copyright enforcement in China remains dependent on the action of the State in taking up rights holders' administrative and criminal complaints. Chinese courts should streamline procedures for civil and criminal enforcement, including by reducing documentation requirements to establish copyright ownership and infringement and to ensure timely enforcement of monetary damages.

In some industries, notice-and-takedown procedures on major platforms have proven ineffective at addressing large-scale piracy abuses on their services. Platforms are frequently reluctant to take action against infringing activity occurring on the platform, and some have onerous requirements to file takedown notices (including requirements to register IP or entities, or providing burdensome documentation to prove ownership, before being able to file takedown notices); opaque or inconsistent approaches to taking action on takedown notices, and/or extended delays in processing takedown notices. Even if platforms delete the links upon the receipt of notices, in some cases, this deletion happens hours or days after the infringing content is posted when the damage has already occurred. Further, the same content reappears, and many platforms do not take any measures against users that repeatedly upload infringing content. In addition, most infringing websites and apps use overseas servers and domain registration agencies to hide their identity, making it difficult to find the real operators of infringing websites and apps. These rogue services effectively cannot be sued.

Because the operation of piracy services is often overseas or multinational, cross-border enforcement cooperation is critical and needs to be improved. Many piracy websites have applied for personal information protection with overseas domain registrars, which makes it impossible for copyright holders to collect information and lodge a complaint with related enforcement agencies in China, which require such personal information. Even when rights holders can identify the infringers, China's system creates a barrier to action by requiring extensive documentation even to commence a civil action. There are also often delays by the courts in formally accepting cases. More broadly, China should provide a full range of injunctive relief for civil enforcement, including injunctions against intermediaries, and should ensure that courts enforce injunctions in a timely manner, including simple and expeditious orders of contempt for failure to comply.

Injunctions also should be available against ISPs in copyright cases, including against access providers, requiring them to stop providing access to unlicensed copyrighted content that has been subject to administrative law enforcement action, but which remains available.

The scope of making available to the public right needs to be improved due to the existing “server principle” which requires that the act of making available occurs via copies stored in China. This can hinder enforcement actions in relation to unlicensed services operating outside China. China should therefore eliminate the “server principle.” While courts in Shanghai and Beijing are beginning to shift away from this principle in practice, courts nationwide should follow suit.

Despite some of the mentioned shortcomings of the civil enforcement system, Chinese courts have also issued judgments with some notable improvements in damages awards and recognition of copyright. In November of 2021, Perfect World, a gaming and entertainment company, filed suit against another gaming company for the unauthorized use of character names, biographies, and the relationship between characters in Jin Yong's *Wuxia* novels. The Beijing IP Court upheld the judgment of the first instance and granted damage awards of RMB20 million (US\$2.81 million). In December of 2021, the High People's Court of Guangdong Province affirmed the decision of the Guangzhou IP court that recognized that the map of a multiplayer online battle arena (MOBA) game operated by Tencent was copyrightable. It should be noted that burdensome procedural requirements for launching civil litigation by foreign plaintiffs can, if not remedied, undermine the effectiveness and availability of enforcement action in China. China's recent accession to the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, which entered into force on November 7, 2023, has already eased burdens for rights holders who used to suffer from previous documentation requirements.

C. Enforcement Must Meet Evolving Piracy Challenges

Online piracy in China—including illegal downloading and streaming of copyrighted content through piracy websites, apps, and devices—has evolved extensively in recent years and remains a significant concern. For example, the Entertainment Software Association (ESA) reports that in 2023 China ranked 6th in the world in number of connections by peers participating in the unauthorized file-sharing of ESA member video game titles on public peer-to-peer (P2P) networks. According to this same metric, China ranked 4th in the world for unauthorized file-sharing of console-based video games; however, the level of unauthorized file-sharing for mobile game titles decreased dramatically – bringing the country to a rank of 117th in the world in this category. Moreover, the music industry reports that 75% of surveyed users in China admitted to using unlicensed or illegal sources to listen to music.¹⁸ A more holistic enforcement response is needed to effectively combat the entire online piracy ecosystem, which poses the greatest threat to the continued growth of legitimate businesses in China.

In addition to illegal downloading and streaming of copyrighted content, online journal piracy remains a significant and persistent challenge. Given the unfortunate lack of deterrence in

¹⁸ International Federation of the Phonographic Industry (IFPI), *Engaging with Music 2023*, p. 13, available at [IFPI-Engaging-With-Music-2023_full-report.pdf](https://www.ifpi.com/downloads/engaging-with-music-2023-full-report.pdf).

the marketplace, online platforms engaged in providing unauthorized copies of journal articles and academic textbooks continue to operate. These platforms host unauthorized PDF copies of academic monographs, edited collections, and textbooks and also facilitate access to infringing content online in several other ways, including by providing users with search tools, through the use of Internet bots, and by bypassing TPMs to gain unauthorized access to legitimate online services. Administrative enforcement measures are without lasting impact, as administrative authorities are unwilling to act against previously sanctioned entities unless the rights holder files a new complaint for the same infringing conduct. Rights holders must meet lengthy procedures involving repetitious and complicated evidentiary requirements. Pirated print publications and compromised log-in credentials continue to be available on e-commerce sites, which also serve as platforms through which producers of pirated and counterfeit textbooks advertise and sell the infringing copies. In part due to the inadequate online enforcement framework (often with complex evidentiary requirements), sending notifications of infringement to remove these products remains unduly complicated.

Sci-Hub and *Library Genesis*, repositories of large volumes of pirated content, remain among the top piracy sites for Chinese Internet users and are often mimicked by Chinese-language piracy platforms. There are multiple mirror sites facilitated by Chinese domain registrars. Some Chinese copycat sites have also added payment processing services to their cloned repositories of infringing book and research content, while the copied pirate repositories lack such processes.

At present, domestic e-commerce platforms have onerous formal requirements for complaints from rights holders or agents, and if they accept the complaint, they will delist only the specific infringing items and generally do not take any further action to suspend or close the online shop. Depending on the scale of infringement, local cultural enforcement authorities will pursue a warning and removal of infringing content, administrative penalties, and closure of the online shop, or refer to the public security authorities for criminal investigation.

The emergence of these new technologies for enabling mass infringement, especially in the online and mobile environments, requires a vigorous enforcement response. China should provide in its legal system mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities.

The continued existence of unregulated "mini-VOD" locations that show unauthorized audiovisual content is also causing significant problems in China. Regulations on mini-VOD cinemas and chains entered into force in March 2018, but thousands of these entities are still operating in different cities across China without proper licenses and are routinely screening U.S. content without authorization. In early 2019, China's investigation of four illegal camcording syndicates revealed that most illegal camcorded copies were destined for mini-VOD theaters. In August 2019, the China Film Administration (CFA) clarified that mini-VOD cinemas and chains are "entertainment premises" and, therefore, must license rights for theatrical screening, not for online VOD. Instead of legitimizing the operations of these facilities, China should severely penalize or shut down these businesses if they violate the Copyright Law. Several Chinese rights holders have an active litigation strategy against such "mini-VOD" locations. China should also reduce documentation requirements to commence civil action.

IV. Full Implementation of the U.S.-China Film Agreement

China still has not implemented certain key provisions of the 2012 U.S.-China Film Agreement signed by then-Vice President Xi and then-Vice President Biden. Hailed as a “breakthrough,” the Agreement promised to economically uplift U.S. and Chinese producers and distributors.¹⁹ Unfortunately, more than 12 years after its signing, China has failed to meet its obligations under the Agreement. The result of not implementing key provisions of the Agreement has been a steady further deterioration of U.S. producers’ ability to access China’s theatrical marketplace, as well as the broader marketplace for other types of distribution in China, such as via VOD and television (especially for independent producers).

As part of the Film Agreement, China committed that in 2017 it would make a meaningful increase to compensation for revenue-sharing theatrical releases, as the current 25% U.S. share of revenue is far below comparable markets and the international norm. In practice, distributors are deducting ticket distribution fees before calculating the U.S. studio share, reducing the actual allocation to less than 25% of box office²⁰. Furthermore, the official quota on revenue-sharing releases of 20-plus-14 (enhanced format) remains. However, review and additional compensation has never occurred, and China must be pressed to comply with its obligations. In addition, China has imposed artificial limits on market access for imported films, despite a large number of domestic productions (which was 531 in 2022),²¹ as well as around 86,300 theatrical screens in 2023.²² In the case of “flat fee films,” which are imported by private distributors outside of the box office revenue-sharing quota system, China has enforced restrictions, including an informal cap on the number of these films that can be imported. Furthermore, China has retained governmental control of key elements of distribution, severely limiting the ability of private Chinese distributors to import and distribute any foreign content.

These barriers virtually eliminated U.S. independent films from China’s theatrical marketplace, with the independently produced and distributed films share of the theatrical market in China drastically reduced and nearly blocked. Since 2012 the independents’ share of the market

¹⁹ According to a 2012 White House Press Release: “This agreement with China will make it easier than ever before for U.S. studios and independent filmmakers to reach the fast-growing Chinese audience, supporting thousands of American jobs in and around the film industry,” said Vice President Biden, who spent the day in the Los Angeles area with Vice President Xi Jinping of China. “At the same time, Chinese audiences will have access to more of the finest films made anywhere in the world.” See <https://obamawhitehouse.archives.gov/the-press-office/2012/02/17/united-states-achieves-breakthrough-movies-dispute-china>.

²⁰ This practice is inconsistent with global best practices, where cost of sales are not deducted from gross box office calculations, a point reinforced by the fact that for public reporting of “Gross Box Office” Chinese distributors still state the amount without netting out such fees. [NB Online ticket sales platforms and related fees post date the MOU and shifted the cost of ticket sales- which had not been deducted from Box Office calculations from cinemas to third parties/platforms].

²¹ Statista, Film industry in China - statistics & facts, August 31, 2023, available at <https://www.statista.com/statistics/260392/number-of-feature-films-produced-in-china/>.

²² Patrick Frater, *Variety*, “China Box Office Surges by Annual 83% in 2023 to \$7.73 Billion,” January 3, 2024, available at <https://variety.com/2024/film/news/china-box-office-2023-surge-1235860299/>.

has decreased from 10% of U.S. films released in China to 2.6% at the end of 2019. In 2021, there were just nine independent theatrical releases in China, representing the lowest percentage of slots (1.8%) ever allocated for independent films recorded by IFTA. The situation through 2024 remains the same for the independent film and television industry. U.S. independent producers who rely on private distributors and the payment of minimum guaranteed or flat license fees to raise production financing and secure distribution have seen their licensing revenues plummet and, in many cases, stop altogether.

China further committed in the Agreement (and reconfirmed in commitments at the June 2015 U.S.–China Strategic and Economic Dialogue (S&ED)) to promote and license privately owned Chinese distributors to engage in national theatrical distribution of imported films without the involvement of any state-owned enterprise. This requirement has also not been implemented. The CFA, which replaced SAPPRFT in 2018, still permits only one film importer, the China Film Group (CFG) and two distributors of foreign films: CFG and Huaxia Film Distribution Company Ltd. While China affirmed in the Agreement that any properly licensed Chinese enterprise may distribute imported films, CFA has yet to approve any new private Chinese distributors. CFG also determines the release dates and length of theatrical runs of foreign films, often restricting the ability of U.S. producers to obtain full commercial value of films.

IIPA recommends that China immediately act in a transparent and expedited manner on the following issues, which have been long delayed:

1. Fully implement all the terms of the 2012 U.S.-China Film Agreement, including the requirement to enhance compensation in 2017 (such review has been delayed almost 5 years), liberalize the distribution market for private third-party Chinese distributors, and finalize a new Memorandum of Understanding (MOU);
2. Substantially increase U.S. producers' share of revenues for the box office revenue share of films from the current 25% to a level consistent with international norms;
3. Allow U.S. producers more control over release dates, address the problem of U.S. films being locked out from the prime release dates, and end the practice of "double booking" international theatrical releases;
4. Eliminate informal restrictions on the number of imported "flat fee" films so that independent producers have unimpeded access to the Chinese market;
5. Further relax the quota for revenue-sharing films and VOD products for online video websites so filmmakers and audiovisual companies may have fair and equitable access to the rapidly growing marketplace for films and TV in China;
6. Ensure U.S. producers receive timely responses to quota allocations and content review determinations, and effective access to ticketing system information to ensure proper reporting of revenues;
7. Establish defined and prescribed content review time frames for theatrical and online

- distribution; increase the frequency of content review windows; remove the burden of resubmitting film and television programs that have already been approved; and establish a fast-track system for content review under special circumstances; and
8. Streamline the payment of deposits, guarantees, and royalties by local distributors to U.S. producers, and do not establish any regulation or policy that impedes the collection of license fees by American IP owners.

V. Conclusion

IIPA appreciates this opportunity to provide the Office of the United States Trade Representative (USTR) and the TPSC our views on China's compliance with its WTO commitments. As discussed above, the motion picture and television, music, publishing, and entertainment software industries continue to face significant challenges in China. It is critical that China fully implements its WTO obligations, including by dismantling the barriers that prevent U.S. creative industries from fully accessing the Chinese market by taking the necessary steps to adequately address China's growing piracy problems. We look forward to working with you to meet the goals identified in this submission.

Respectfully submitted,

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