

# CHINA (PRC)

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2026 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that USTR maintain China on the Priority Watch List in 2026 and that China be monitored under Section 306 of the Trade Act.<sup>1</sup>

**Executive Summary:** Market access restrictions remain the primary driver behind persistent, evolving, and rampant piracy in China. For example, the severe restrictions on (i) the distribution of digital content, (ii) lengthy delays and deterrence concerns in court cases, and (iii) legislative and procedural shortcomings all hamper rights holders' ability to effectively utilize and protect their copyrighted content. These and other longstanding obstacles drive Chinese consumers to domestic and foreign online piracy services to access often unapproved foreign content. More recently, Chinese companies have discovered and exploited the profitability of exporting pirated content, piracy services, and piracy devices (PDs) from China to foreign markets. In 2025, this troubling piracy-as-an-export trend expanded to cloud storage services that disseminate infringing content through popular Chinese social media platforms, e-commerce platforms, and piracy linking sites.

We are grateful to the National Copyright Administration of China (NCAC) for its regularized campaigns against piracy. Some of their activities even meaningfully lead to criminal actions. However, we still do not see meaningful reductions in most commercial-scale online piracy across all categories of content, and administrative penalties remain low. NCAC usually takes no action against geo-blocked piracy services that are not accessible within China, even when their operators or servers are located within China; such targets include the *LokLok* app (and its variations), and the *MagisTV* boxes (and variations) as well as well-known piracy services like *UnblockTech* and *SVI Cloud*. Addressing unauthorized content on social media and e-commerce platforms remains challenging, partly due to overly burdensome procedural requirements imposed by these platforms. In 2025, rights holders reported significantly decreased cooperation from many platforms. Rights holders welcome further clarifying, strengthening, and streamlining the application of copyright laws regarding civil, criminal, and administrative enforcement actions brought in China. Current measures remain insufficient to deter piracy across the board.

IIPA was pleased to see the 2021 amendments to the Copyright Law include some positive developments. Yet, many aspects of these amendments remain unimplemented four years later which has not helped to address the uncertainty in China's copyright protection and enforcement framework. Moreover, the amendments to the Copyright Law omitted several critical reforms, including extending the term of protection to match the international standard of at least 70 years and amending the scope of the making available to the public right.

Finally, China remains one of the most challenging markets in the world for the distribution of copyrighted content. Extensive market access barriers, both in law and in practice, severely limit foreign participation in the market and leave the market open to pirated content and services. Notably, some of these barriers are in violation of China's multilateral and bilateral obligations with the United States. Rather than continue to pursue policies that impede access to its market, which exacerbate Chinese domestic and global piracy, China should meet its trade commitments, eliminate market access barriers, and take the necessary steps to open its marketplace to the U.S. creative industries.

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<sup>1</sup> For more details on China's Special 301 and Section 306 monitoring history, see previous years' reports at: <https://www.iipa.org/reports/reports-by-country/>. For the history of China's Special 301 placement, see <https://www.iipa.org/files/uploads/2026/01/Appendix-C-FINAL-2026.pdf>.

## **PRIORITY ACTIONS REQUESTED IN 2026**

### **Enforcement**

- Fully implement the *2019 Guidelines on Strengthening the Protection of Intellectual Property Rights*.
- Improve the transparency effectiveness of administrative enforcement.
- Improve the effectiveness of civil and criminal enforcement.
- Increase accessibility and efficiency of customs enforcement.

### **Legal Reforms**

- Implement the 2021 amendments to the Copyright Law, including by accelerating the formulation and promulgation of the new Regulations on Implementation of the Copyright Law (we continue to await a draft for public comment as of this filing), now long overdue.
- Address shortcomings in China's Copyright Law and Criminal Law related to the protection and enforcement of copyrighted works.
- Fully implement the intellectual property (IP) enforcement commitments of the U.S.-China Phase One Agreement.
- Improve laws, regulations, and procedures for online enforcement on China's online platforms and service providers.
- Ensure legislative proposals related to artificial intelligence meet the standards set forth by the G7 Hiroshima AI Process.
- Fully implement the *Judicial Proposals on Enhancing IP Protection and Serving Promotion of High-Quality Development of Film Industry*.

### **Market Access**

- Abandon the slew of longstanding regulations and proposals that discriminate against U.S. producers and distributors of creative content.
- Immediately and fully implement all the terms of the 2012 U.S.-China Film Agreement and fulfill the Phase One services purchasing obligations.
- Increase the number of approvals for foreign video games to match the number of domestic approved video games.
- End China's burdensome content review regime for books intended for other markets, lift content review procedures for imported physical sound recordings, and avoid instituting troublesome regulations for online games.
- Repeal discriminatory and additional impediments to China's market for U.S. audiovisual content.
- Adopt a voluntary, age-based classification system to help eliminate disparate treatment of U.S. content and ensure that China's content review process is transparent, predictable, and expeditious.

## **ENFORCEMENT**

China is a significant market for the creative industries with an expanding online marketplace. China leads the world in the number of cinemas and China's total box office revenue was US\$5.9 billion in 2024, down 23% from 2023. China was also the fifth largest music market in 2024 with year-on-year growth of 9.6%. For video games, China had a record 722 million players in 2024 with revenues of US\$49.2 billion. Unfortunately, China's market for legitimate, licensed content continues to be harmed by piracy, which is only exacerbated by the market access restrictions discussed below that entirely restrict or delay the availability of legitimate, licensed content.

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 2024, China ranked eleventh in the world in the 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 13<sup>th</sup> in the world for unauthorized file-sharing of console-based video games and 12<sup>th</sup> for PC-based video games. Video game piracy in China is sophisticated and difficult to combat. Current video game piracy trends in China include: game cracking and hacking; private server operations; reskinning and cloning; direct code theft; substantially similar code duplication; and gameplay cloning. Reskinning can involve making minor modifications to the source code of original games before releasing them but involves more intricately copying elements of the pirated game, such as text, images, audio-visual materials, gameplay, and rules. These actions, by virtue of modifying the original game, pose greater challenges in establishing infringement compared to traditional piracy. As online games have become more sophisticated and the development costs for original developers have risen, these newer forms of piracy pose a growing threat. Counterfeit merchandise and misappropriation of video game IP are also common.

Online journal piracy remains a significant and persistent challenge. Given the lack of deterrence in 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 facilitate access to infringing content online in several other ways, including by providing users with search tools using Internet bots, and by bypassing TPMs to gain unauthorized access to legitimate online services. 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. *Lib-Gen*, a repository of large volumes of pirated content, remains among the top sites by Chinese Internet users and is mimicked by Chinese-language piracy platforms. 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. There has been some progress as several domains of the piracy site *Sci-Hub* were blocked in January 2024, and the efficacy of the blocks has since stabilized. Also in early 2024, access to the piracy site *Z-Library* and many of its mirrors was disrupted because of action by the police.

Music piracy remains a problem despite the positive market movement, hampering the development of the legitimate market to its full commercial potential. A major issue is unlicensed use of music on user-uploaded content (UUC) platforms such as *Xiaohongshu*, *Xigua*, *Ximalaya* and *Youku*. From January to June 2025, a total of over 100,000 infringements were reported across various UUC platforms. While the platforms may remove reported infringements, removal times are long and vary and the platforms take no measures to prevent the same recordings from immediately reappearing on their services or against repeat infringers.

Structurally, there is an increase in the availability of pirated content on cyberlockers such as domestic cloud-based storage providers like *Baidu Pan*, *Xunlei Cloud*, *Aliyun* and *Kua Ke (Quark)*. The infringing content on these storage services is then disseminated through popular Chinese social media platforms, e-commerce platforms, and piracy linking sites. Further exacerbating this problem are the cyberlockers' inconsistent and slow processing times for takedown notices alongside burdensome requirements to prove ownership before any action is taken. Pirate streaming sites (such as *Allanime*, *Ddys*, *Vidhub*, *Meijutt*, *Dy2018* and *Czzy77*), illicit streaming devices (such as *SVICloud*, *EVPad*, *Unblock Tech*), Internet protocol TV (IPTV) services and apps (such as *Wang Fei Mao*, *MagisTV*, *99kubo*, *Juhe yingshi*, *WanMei*, and *YingShi DaQuan*, *Hanju TV*, *LokLok*), and Piracy-as-a-Service (PaaS) providers directed to global audiences that are operated from within China remain a growing problem in 2025. For example, companies that run apps like *LokLok* (also known as *Lokiok*, and *LokTV*) which target Southeast Asian markets, companies that manufacture, promote, distribute, and export PDs such as *MagisTV* (rebranded as *FlujoTV*) which target Latin American markets, and sites like *GIMY* which target Taiwan, are just some of the growing number of piracy operations that focus their illicit behavior outside of China.

China is also a large exporter of high-quality counterfeits, such as CDs and “deluxe edition” collection sets that have almost identical artwork and packaging to the genuine products and that contain genuine-looking source identification codes. The production of counterfeit vinyl is also an issue in China. For example, following a criminal investigation initiated in 2022 into the “Sound of Vinyl,” a prominent seller on the Taobao platform, 13 defendants were

convicted of copyright infringement offenses relating to the production of 1.2 million vinyl products, infringing the rights in 1,000 sound recordings (local and international repertoire). The sale of digital storage devices pre-loaded with unauthorized music content is also prevalent and has been pursued by administrative and criminal action. For example, in 2024 the operator of an e-shop on *Pinduoduo* that sold 35,000 USBs containing over 200 infringing sound recordings was subject to administrative penalties by the Heng Yan cultural law enforcement agency. What is more, stopping the distribution of counterfeit projects remains challenging with some major marketplaces (e.g. *Pinduoduo*) not complying at all with takedown requests and in some cases, will take down the infringements but not take meaningful action against sellers.

Given these significant piracy challenges in China, IIPA and its members strongly encourage China to take the following priority actions.

- **Fully implement the 2019 *Guidelines on Strengthening the Protection of Intellectual Property Rights*.**

In late 2022, the China National Intellectual Property Administration (CNIPA) published a three-year Plan (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.<sup>2</sup> CNIPA's plan specifies 114 measures related to IP in six categories (with deadlines). The Plan contains items, which remain unimplemented to date, related 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."

As noted in the *Guidelines*, China should separately define criminal violations regarding the circumvention of TPMs or trafficking in circumvention technologies. 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 allow the downloading and playing of infringing video games on "modded" consoles or handhelds. The harm they cause is not limited to console and handheld makers because almost all games developed for play on consoles or handhelds, including those developed and published by third parties, can be illegally downloaded from the Internet. In addition, some Chinese software developers have started exporting software that circumvents TPMs used by legitimate digital music services such as Spotify.

Additionally, two other measures in the *Guidelines* 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 as China remains the hub for the manufacture, promotion, and distribution of PDs, such as illicit streaming devices (ISDs), and TPM circumvention devices, including ones that are mass exported from China, which fuels much of the world's piracy problems.<sup>3</sup>

- **Improve the transparency and effectiveness of administrative enforcement.**

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<sup>2</sup> See, e.g., IIPA 2020 Special 301 Report at 23 for additional information on the 2019 *Guidelines on Strengthening the Protection of Intellectual Property Rights (the Guidelines)*, which were issued jointly by the Communist Party of China's Central Committee (CPCCC) and the State Council.

<sup>3</sup> This concern is so rampant that the entire Asia-Pacific Economic Cooperation (APEC) member community has examined the landscape for legal protections on this issue, Singapore and Malaysia have already enacted and implemented laws to crack down on PD/ISD resellers, meaning the Government of China can do more to tackle this problem.

Rights holders acknowledge NCAC's efforts against copyright piracy, which sometimes are referred to local law enforcement agencies for follow-up. Such efforts have had an active role in addressing the unauthorized online distribution of music, helping the Chinese recorded music industry to rise to the fifth largest music market in the world.<sup>4</sup>

Unfortunately, many cases do not progress meaningfully after referral to local law enforcement agencies, thus having little lasting impact or deterrence. Prior IIPA filings have documented in detail the significant challenges rights holders have with administrative enforcement in China.<sup>5</sup> One major challenge remains the NCAC's traditional unwillingness to tackle China-based piracy websites and China-based services that are geo-blocked in China but are used outside China to infringe content at commercial scale. This growing, problematic situation presents an urgent challenge for China's enforcement agencies to take meaningful action against these nefarious operations. While there was a recent conviction in China over a notorious but geo-blocked piracy website targeting users in Japan, and other criminal prosecutions against subscription-style websites including a couple of ongoing cases, these anecdotal examples have not succeeded to date in creating a more fertile ground for administrative enforcement against these actors to flourish. The following highlights existing and ongoing concerns rights holders have with China's administrative enforcement of copyrighted works:

1. Administrative authorities are unwilling to act against previously sanctioned entities unless the rights holder files a new complaint for the same infringing conduct. Repeat infringers also rarely receive enhanced penalties.
2. Rights holders must meet lengthy procedures involving repetitious and complicated evidentiary requirements.
3. China's administrative enforcement entities remain unprepared to meet the emergence of modern technologies and services for enabling mass infringement, especially in the online and mobile environments.
4. While the annual "Sword Net" campaigns and administrative outcomes are regular NCAC activities, IIPA would like to see more timely and detailed information across all provinces regarding the results of administrative actions, including next steps. We encourage NCAC to take administrative action against piracy services that are not accessible within China, even when they are hosted or their operators are located within China. Otherwise, China-based operations that target users outside China are simply able to evade enforcement action by geo-blocking their own services from access within China or serving a separate set of content to users accessing these services from within China. The scope of these actions should also include targets such as PaaS providers, entities that manufacture, promote, distribute, or export PDs, and entities that allow unauthorized movie broadcasts in mini-Video-on-Demand (VOD) locations.<sup>6</sup>
5. Most administrative enforcement agencies, including NCAC, local Copyright Administrations (CAs), and Cultural Law Enforcement Agencies (CLEAs) lack the resources and trained personnel necessary to tackle China's persistent piracy. Cross-regional coordination between these administrative enforcement authorities is also lacking and the general capacity to deal with online piracy in different regions varies widely.
6. The transfer of copyright cases from administrative to criminal authorities for investigation and prosecution is not streamlined and uneven in practice, timelines are lengthy, and the transfer process is inefficient.
7. There is no efficient mechanism between NCAC, the Ministry of Industry and Information Technology (MIIT), and Internet service providers (ISPs) for shutting down infringing websites operating without a business license (consistent with the Guidelines).

<sup>4</sup> IFPI Global Music Report 2025.

<sup>5</sup> See previous years' reports on China at: <https://www.iipa.org/reports/reports-by-country/>.

<sup>6</sup> The Motion Picture Association (MPA) submitted 15 targets to the National Copyright Administration of China (NCAC) under the 2024 "Sword Net" campaign and 20 targets in 2025 "Sword Net" campaign. MPA has only seen a few meaningful actions taken by local enforcement agencies with regard to the targets.



8. Chinese authorities seem unable to tackle a growing problem of pirate services established outside China but targeting Chinese consumers.

- **Improve the effectiveness of civil and criminal enforcement.**

The past few years have seen several positive civil and criminal piracy enforcement cases signaling that Chinese courts, including the judiciary, may be slowly improving how these cases are handled and ultimately decided. On the civil side, courts in the past have been conservative in their damage awards granted in copyright infringement cases, rendering civil enforcement ineffective. However, on August 22, 2025, *Tencent* won two major final appellate judgments against *Kuaishou* in the Guangdong and Chongqing Higher People's Courts for copyright infringement. The courts awarded *Tencent* approximately US\$12.5 million in total damages, including substantial punitive damages. Both courts found *Kuaishou* liable for contributory infringement, and the Guangdong court found *Kuaishou* liable for direct infringement. The decisions cited *Kuaishou*'s failure to remove infringing content despite repeated complaints, active promotion of infringing videos, and technical ability to prevent such acts. The rulings ordered *Kuaishou* to implement takedown and filtering measures but did not impose a service-wide injunction. These are notable developments, but it remains to be seen if courts will start granting such punitive damages more broadly and in cases involving foreign rights holders.

Additionally, a new judicial interpretation entitled "*Interpretation on Several Issues concerning the Application of Law in Handling Criminal Cases of Infringement upon Intellectual Property Rights*" ("JI") came into force on April 26, 2025. Under the JI, it appears intermediaries could be treated as accomplices to IP crimes. Specifically, the JI provides that joint criminal liability could be imposed when one knows that another person is committing an intellectual property infringement crime and still provides services or support such as funding, payment and settlement, business location, transportation, storage, delivery and posting, Internet access, server hosting, online storage, and communication transmission. While the JI appears to include potential liability on intermediaries providing services such as online storage and server hosting, it remains to be seen if any proactive and effective enforcement action will be taken against such services.

Additionally, the existing delays, costs, and procedural burdens associated with civil and criminal enforcement, contrasted with usually lower damages or non-deterrent penalties, pose significant challenges for IP rights holders. The following are some areas where China can improve the effectiveness of its civil and criminal enforcement.

**Penalties:** Chinese courts must issue deterrent-level civil and criminal penalties against operators of piracy websites. Judgments from courts in different regions can reach contrasting penalties despite cases involving similar facts, impacting judicial certainty and credibility.

**Injunctions:** China should provide a full range of broad injunctive relief for civil enforcement, including injunctions to halt the operation of piracy services (e.g., apps), and including injunctions where appropriate against intermediaries. Injunctions should also 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 of a law enforcement action, but which remains available. Moreover, when injunctions are granted, the relief is limited to only the infringement of titles at issue in a litigation rather than any future infringements of a rights holder's copyright works.

**Identifying Piracy Operators:** Since the operation of piracy services may often be overseas or multinational, cross-border enforcement cooperation is critical and needs to be improved. For example, many piracy websites use overseas servers and have applied for personal information protection from overseas domain registrars, making it effectively impossible for copyright holders to collect information and lodge a complaint

with Chinese enforcement agencies. Chinese enforcement agencies should reach out to other law enforcement agencies to unmask operators of piracy services.

**Formalities:** China should rely on presumptions of copyright ownership and reduce documentation requirements (such as requiring copyright registration certificates in every instance) to establish copyright ownership in all legal cases.

**Territoriality:** Because of uncertainties surrounding the legal liabilities for copyright infringements occurring outside China's jurisdiction, but under the control of a Chinese individual or entity, rights holders find it difficult to take action against these individuals or entities through Chinese courts.

**Multiple Jurisdictions:** Rights holders are facing new enforcement complications in China with respect to the Regulations on the Jurisdiction of Cross Provincial Corporate Crime Cases issued on March 5, 2025. In the months following the Regulations' entry into force, certain Public Security Bureaus (PSBs) have refused to take actions in criminal cases involving defendants in multiple jurisdictions, citing a need to obtain approval from each local PSB with jurisdiction. Very few PSBs will agree to take new cases, and those who have are placing new cases on hold. Because many IP enforcement cases involve defendants from multiple jurisdictions, this regulation has created significant procedural delays extending into late 2025. As local legal experts have noted, cross-jurisdictional enforcement can be valuable to rights holders, "particularly when local PSBs lack expertise in IP issues, have limited capacity, or when there are concerns about local protectionism."<sup>7</sup> Clarifications are necessary to permit IP enforcement cases to move forward expeditiously.

**Cases with Multiple Works:** When filing civil cases, if there are several copyright works and recordings that are infringed by the same infringer, rights holders are required by some Local People's Courts to file separate cases (i.e. are forced to file a series of separate cases with only one work involved per case), instead of allowing rights holders to file a single case in respect to all the infringed works/recordings involved. This practice leads to an artificial increase in the number of cases accepted by the courts, but also unnecessarily increases rights holders' litigation costs, the workload of the courts, and judicial waste. This burdensome narrow form of civil action in copyright cases is a major shortcoming because it covers up the severity of copyright infringement when often thousands of titles are pirated by the same; this may make it more difficult, for example, to claim punitive damage caused by the massive copyright infringement. Historically, penalties for single-title infringement have often been much lower than warranted (except, for example, in the case of a highly popular work) and if a case involved multiple counts of infringement, the results might be different. These lower remedies would likely not be considered deterrent, considering the overall scope of piracy by the infringer.

As China makes progress on improving these civil and criminal concerns, it can make exemplary effective and deterrent actions against a range of well documented notorious piracy services, including pirate streaming sites (such as *Allanime*, *Ddys*, *Vidhub*, *Mejutt*, *Dy2018* and *Czyy77*.), illicit streaming devices (such as *SVICloud*, *EVPad*, *Unblock Tech*), IPTV services and apps (such as *Wang Fei Mao*, *MagisTV*, *99kubo*, *Juhe yingshi*, *WanMei*, and *YingShi DaQuan*, *Hanju TV*, *LokLok*), and PaaS providers.

- **Increase accessibility and efficiency of customs enforcement.**

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 solely in Chinese and does not support any other languages. It would be helpful for the database to support other languages, at least English, to

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<sup>7</sup> See Hou, Sophia, *Jurisdictional Challenges in China's Criminal Enforcement Landscape*, May 30, 2025, available at <https://rouse.com/insights/news/2025/jurisdictional-challenges-in-china-s-criminal-enforcement-landscape>.

reflect the transnational nature of infringement activity across China's borders. Additionally, the database should allow for automatic updating as opposed to a manual entry process, which is both time-consuming and inefficient.

## **LEGAL REFORMS**

- **Implement the 2021 amendments to the Copyright Law, including by accelerating the formulation and promulgation of the new Regulations on Implementation of the Copyright Law (we continue to await a draft for public comment as of this filing), now long overdue.**

Prior IIPA filings documented in detail developments in the Chinese legal system for the protection of copyright.<sup>8</sup> While IIPA was pleased to see the 2021 amendments to the Copyright Law include many positive developments, China's failure to fully implement these amendments, including by making needed updates to the *Regulations on Copyright Collective Administration*, *Regulations for the Implementation of the Copyright Law*, and *Regulations on the Protection of the Right of Communication through Information Networks*, continues to create uncertainty in China's copyright protection and enforcement framework. This four-year delay is puzzling as this work was prioritized in the State Council's 2025 Legislative Work Plan.<sup>9</sup> The following are some positive copyright-related provisions in the 2021 amendments and related challenges caused by a lack of new implementing regulations:

**Rights of public performance and broadcasting for producers of sound recordings:** It is vital that China ensures the 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. Specifically, China and the United States are both World IP Organization (WIPO) Performances and Phonograms Treaty (WPPT) members, and the United States grants Chinese rights holders full national treatment with respect to sound recordings. Nevertheless, Chinese Courts are denying protection for foreign, including U.S. sound recordings, on the erroneous grounds that China has not withdrawn its reservation on Article 15 of the WPPT. This acts as a major disincentive for U.S. companies to invest in the Chinese music market. The NCAC should issue guidance clarifying that China grants sound recording public performance and broadcast rights to foreign rights holders through national treatment.

**Damages and enforcement procedures:** The Copyright Law amendments also include some positive reforms that will improve the enforcement environment in China, including increasing the maximum 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, other than the encouraging outcome in the *Kuaishou* decision from August 2025, in which *Tencent* was awarded significant punitive damages, and while the government reports increased instances of punitive damages in IP cases, more generally, damages remain largely non-deterrent, application of statutory damages can remain elusive, broad and some forms of injunctive relief against the entire service remain unavailable as cases are "title-based" focusing on the infringement of a particular work involved in a case rather than the operation of the infringing service. On damages, it can often be difficult to obtain evidence to quantify the financial gain made by an infringer in civil or criminal actions, sometimes leading the authorities to struggle for an appropriate deterrent remedy. Courts reportedly claim to be concerned, without basis, that larger damages awards will encourage "copyright troll" behaviors and cause significant caseloads. Lastly, in order to address high volume unauthorized usages online, the civil procedure law should allow for U.S.-style disclosure or U.K.-style pre-action disclosure procedures that are also available in many other jurisdictions.

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<sup>8</sup> See previous years' reports on China at: <https://www.iipa.org/reports/reports-by-country/>.

<sup>9</sup> See [https://www.gov.cn/gongbao/2025/issue\\_12066/202505/content\\_7025478.html](https://www.gov.cn/gongbao/2025/issue_12066/202505/content_7025478.html).



**Three-step test:** 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. 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).

**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 implement these amendments to ensure the protections for and against circumvention of TPMs are adequate and effective. For example, protections should apply to TPMs that control and manage authorized access to copyright works (“access controls”) and a prohibition against circumvention should apply to both access controls and TPMs that protect rights (including against unauthorized copying) in those works (“copy controls”). China should also ensure that rights holders have standing to bring suit in cases in which the TPM was employed by a licensee platform.

- **Address shortcomings in China's Copyright Law and Criminal Law related to the protection and enforcement of copyrighted works.**

Despite the above improvements, the Copyright Law as amended in 2021 did not address several deficiencies in China's legal framework. Instead, China should make the following changes to its copyright framework to keep up with global best practices, emerging technological advances, and new digital business models:

1. Match the international standard of at least 70 years of protection for sound recordings and works, including audiovisual.
2. Clarify the legal basis for 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.<sup>10</sup>
3. Improve available online liability rules and notice-and-takedown provisions to encourage intermediaries to act in a more expeditious, efficient, and effective manner.
4. Now that courts are no longer relying on the “server test,” (which once required that the act of making available occurs via copies stored in China), laws and regulations should, where the opportunity arises, clarify and confirm that the test is no longer applicable, which will pave the way for the authorities to take action against piracy even when elements of it may occur outside China.<sup>11</sup>
5. Provide protection against unauthorized retransmissions of copyrighted content over the Internet (including criminal liability for live streaming of pirated content).

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<sup>10</sup> 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 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.

<sup>11</sup> 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 servers outside of China; and by clarifying the right of “communication over information networks” to reject the “server principle” and provide a clear legal basis under which piracy services may be held liable for IP infringements carried out by third parties using their services or networks. Furthermore, the adoption of the “server principle,” which requires that the act of making available occur via copies stored in China, can hinder enforcement actions against unlicensed services operating outside China. In recent years, Chinese enforcement authorities, including the courts, appear to be moving away from the “server principle,” whereby they would act favorably against an infringer only when there was proof that the infringing materials were stored on a server in China. In particular, courts in Beijing, Shanghai, and elsewhere are no longer denying relief based on this principle, although it is still advantageous for rights holders to show a nexus between the pirate operator and the pirate content stored on the operator's server. However, the problem remains that administrative enforcement authorities cite limited resources and the ability to investigate as a reason not to enforce, as they are unable to collect needed evidence to take effective action.

6. Clarify that only passive and neutral intermediaries that do not contribute to infringement are eligible for the safe harbors from monetary liability, and that such intermediaries adopt and implement a repeat infringer policy.
7. Marketplaces should be required and all relevant intermediaries encouraged to institute a “know your business customer” (KYBC) policy to ensure they keep up to date and accurate information about their customers and to allow rights holders to obtain accurate information to protect their rights against direct infringers.

Additionally, legislation and judicial practices in China currently cannot respond to the evolution in commercial-scale video game piracy, especially regarding the newer forms of video game piracy mentioned above. Unfortunately, the copyright protections and remedies needed to stem these new forms of illicit video game modification are unavailable. In practice, under the copyright law, rights holders must either divide the online video game into individual copyrighted works—such as text, art, or music—which incurs high litigation costs and difficulty in evidence collection or must protect the entire online game as a type of audiovisual work. Nevertheless, the lack of explicit classification of online video games as a type of work under copyright law leads to uncertainty for game companies seeking to protect their rights.

Finally, the Government of China should also adopt reforms that address shortcomings in China’s Criminal Law. In particular, China should meet its obligations in the WTO TRIPS Agreement by revising the criminal threshold to ensure that criminal penalties are available for all online piracy on a “commercial scale.”<sup>12</sup> The Government of China should also separately define criminal violations regarding trafficking in devices, technologies, or services that circumvent TPMs; and separately criminalize the manufacture and distribution of PDs that are exported for the primary purpose of infringing or facilitating infringement.

- **Fully implement the IP enforcement commitments in the U.S.-China Phase One Agreement.**

IIPA welcomed the conclusion of the Phase One Agreement, signed by United States President Trump and Chinese Vice Premier Liu on January 15, 2020. In the agreement, China made several enforceable commitments that address certain concerns identified in these comments, particularly regarding IPR enforcement. Unfortunately, some IP-related commitments remain not fully or consistently implemented. For example, the Government of China committed to improve the transfer of cases from administrative enforcement to criminal enforcement (Article 1.26) and provide deterrent level penalties (Article 1.27). IIPA reports that implementation of these two commitments is wholly inconsistent, and in some situations, completely lacking. Additionally, China committed to improve its efforts to tackle online infringement, including the proper handling of counter-notification (Article 1.13(d)). While China’s “e-commerce” law does require platform operators 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, the law (Article 43) does not explicitly adopt effective practices for handling counternotices. This means sellers of infringing products could avoid responsibility by merely objecting to rights holders’ notices of infringement. 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.

- **Improve laws, regulations, and procedures for online enforcement on China’s online platforms and service providers.**

Notice-and-takedown procedures on major China-based online platforms and service providers are ineffective at addressing large-scale piracy abuses on their services and have worsened over the past year. Specifically, cooperation remains challenging between platforms/ISPs and rights holders, with platforms/ISPs adopting additional onerous formality requirements on copyright holders’ takedown notices or rejecting otherwise acceptable notices on dubious grounds. For example, *Quark* and *XiaoHongShu* rejected the Motion Picture Association (MPA) Beijing Office’s

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<sup>12</sup> China should clarify that a single episode of a television program counts as one copy toward the threshold.

takedown requests by groundlessly questioning the office registration certificate issued by Beijing Municipal Public Security Bureau. Challenges compound if notices are sent from outside of China (which can happen in practice if the Chinese service is available outside of China). These growing excessive formality hurdles include requirements to register IP and burdensome documentation to prove ownership before being able to send takedown notices and limiting the number of infringements that can be reported or processed in a given period, these formalities are also out of step with the Berne Convention. Additionally, these notice-and-takedown procedures often include opaque or inconsistent approaches to acting on takedown notices, as well as extended delays in processing takedown notices.

Further, even if platforms delete the links upon receipt of notices, in some cases, this deletion happens days after the infringing content is posted, when the damage has already occurred. Equally problematic, when the same content reappears, many platforms do not take any measures against users who repeatedly upload infringing content, including repeated piracy facilitated through cloud-based hosting services such as *Baidu Pan* and on unlicensed short-form video platforms (such as *XiaoHongShu*). Additionally, even if the platforms do accept the complaint, they will often delist only the specific infringing items and generally do not take any further action to suspend or close the online shop that has been engaged in repeated infringing activity. Infringing content is also widely made available on UUC platforms and apps, and administrative remedies have had limited effect to curb infringement, including against repeat infringers. The absence of clarity regarding the liability for UUC platforms also leads to large-scale availability of unlicensed content online.

As China takes steps to clarify the legal basis for mechanisms that ensure platforms and 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, as introduced in a previous section, it should take measures to address the above challenges rights holders currently face in enforcing their rights on China's online platforms and service providers.

In the meantime, NCAC should encourage various online platforms to comply in good faith with the existing provisions on takedown procedure in the current laws and regulations, and they should formulate and advocate for new enforceable guidelines or best practices on takedown procedures which take into account time-sensitive content. NCAC should also encourage online platforms and service providers to keep pace with other similarly sized services across the globe that provide prompt and consistent processing of takedown requests, apply rigorous filtering technology to identify and block the upload of infringing content, and take more effective action to suspend or terminate accounts of repeat infringers. Finally, NCAC should be empowered to play a larger role in encouraging platforms to reduce practical barriers to reporting infringements at scale, including by encouraging more robust inter-industry cooperation.

- **Ensure legislative proposals related to artificial intelligence meet the standards set forth by the G7 Hiroshima AI Process.**

On several occasions throughout the last two years, the Government of China discussed regulating artificial intelligence (AI). In particular, China published *Cybersecurity Technology – Labelling method of content generated by artificial intelligence* in February 2025 and the *Measures for the Identification of Artificial Intelligence-Generated and Synthetic Content* in March 2025. Both of which will be legally binding and took effect on September 1, 2025. On copyrights in particular, reports in 2024 indicated that NCAC was in the process of drafting a decree that may have introduced a text and data mining (TDM) exception. However, reports in late 2025 suggest NCAC may no longer be considering this concerning approach. As China looks to possibly regulate AI, IIPA strongly encourages the Government of China to look towards the G7 Hiroshima AI Process, which has set forth important rules of the road for the development of AI systems.

For example, the International Code of Conduct for Organizations Developing Advanced AI Systems includes the following: “Organizations are encouraged to implement appropriate safeguards, to respect rights related to privacy

and intellectual property, including copyright-protected content.” The International Guiding Principles for Organizations Developing Advanced AI Systems includes the following principle: “Implement appropriate data input measures and protections for personal data and intellectual property.” In the June 17, 2025, G7 Leaders’ Statement on AI for Prosperity, the G7 Leaders indicated they would “leverage the outcomes of the Hiroshima AI Process (HAIP) to foster trust.” The Leaders further committed to “[p]romote economic prosperity by supporting SMEs to adopt and develop AI that respects personal data and intellectual property rights, and strengthen their readiness, efficiency, productivity and competitiveness” and stated, “We recognize the need to respect intellectual property rights in enabling these efforts.”<sup>13</sup> China should also provide meaningful stakeholder engagement and due process regarding this type of work, including by affording adequate opportunity to review and comment on legislative and regulatory proposals governing copyright and AI.

- **Fully implement the Judicial Proposals on Enhancing IP Protection and Serving Promotion of High-Quality Development of Film Industry.**

In November 2023, the Supreme People’s Court (SPC) released *Judicial Proposals on Enhancing IP Protection and Serving Promotion of High-Quality Development of Film Industry* (Proposals). 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. The Government of China should appropriately implement the *Proposals*.

## **MARKET ACCESS**

- **Abandon the slew of longstanding regulations and proposals that discriminate against U.S. producers and distributors of creative content.**

The piracy and enforcement concerns outlined above are exacerbated by China’s pursuit of policies that impede foreign creators’ and rights holders’ access to the Chinese marketplace, thereby restricting the supply of legitimate products to Chinese consumers while piracy enjoys free reign. China is also 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. After the case concluded in 2009, China eased several market access restrictions, but many core activities of copyright industries remain restricted or prohibited. For example, the Special Administrative Measures for Foreign Investment Access (the “Negative List”), revised in 2024, continues to prohibit, among other things, foreign investment in the “editing, publication and production of books, newspapers, periodicals, audio and video products, and electronic publications,” and in “online publishing services, online audio and video program services.” This continues to have a chilling effect on foreign investment, including in online publishing services where, prior to the rules, some latitude appeared to have been granted.<sup>14</sup> However, the 2024 Negative List continues to permit foreign investment in online music services, which remains a welcome positive step. Rather than continue to pursue policies that impede access to its marketplace, China should meet its trade commitments and take

<sup>13</sup> See G7 Leaders’ Statement on AI for Prosperity, June 17, 2025, available at <https://g7.canada.ca/assets/ea689367/Attachments/NewItems/pdf/g7-summit-statements/ai-en.pdf>.

<sup>14</sup> 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).

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.

- **Immediately and fully implement all the terms of the 2012 U.S.-China Film Agreement and fulfill its Phase One services purchasing obligations.**

Chinese companies are investing heavily in content and media, with a greater number of co-productions and financing from China. IIPA urges China to meet its trade commitments and open its marketplace to U.S. producers instead of continuing down its current protectionist path. These policies are unacceptable and should be reversed, particularly when China is the second largest film market in the world. As discussed below, China should instead focus its attention on the complete implementation of the 2012 U.S.-China Film Agreement (Film Agreement) and fulfill its Phase One services purchasing obligations, including on the IP licensing of audiovisual works, as well as other market-opening steps for the motion picture and television industries.

Hailed as a “breakthrough,” the Film Agreement promised to economically uplift U.S. and Chinese producers and distributors. Unfortunately, more than twelve years after its signing, China has failed to meet its obligations under the Film Agreement. The result of not implementing key provisions of the Film 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 the box office.<sup>15</sup> Furthermore, the official quota on revenue-sharing releases of 20-plus-14 (enhanced format) remains. However, review and additional compensation have 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 were 792 in 2023),<sup>16</sup> as well as around 81,000 theatrical screens in 2024.<sup>17</sup> 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 have virtually eliminated U.S. independent films from China’s theatrical marketplace, reducing their share of the market to the point near exclusion. Since 2012, the independents’ share of the market 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 the Independent Film and Television Alliance (IFTA). The situation as of this filing 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 Film Agreement 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 Chinese Film Administration (CFA) 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 Film Agreement that any properly licensed Chinese enterprise may distribute imported

<sup>15</sup> This practice is inconsistent with global best practices, where cost of sales is 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. Online ticket sales platforms and related fees postdate the MOU and shifted the cost of ticket sales—which had not been deducted from Box Office calculations from cinemas to third parties/platforms.

<sup>16</sup> Statista, Film industry in China - statistics & facts, May 22, 2024, available at <https://www.statista.com/statistics/260392/number-of-feature-films-produced-in-china/>.

<sup>17</sup> According to Beacon Data, the actual running screens in 2023 is 77,323.



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 the 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 Film Agreement, including the requirement to enhance compensation in 2017 (such review has been delayed for over eight 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 films from the current 25% to a level consistent with international norms and ensure online ticketing fees are not deducted from the gross box office reducing U.S. revenue film share to less than 25%.
  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" 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. Allow flexibility for new VOD content quota and sub-quotas by country and genre, allow roll-over quotas, and ensure the overall quota for foreign content does not fall below the 30% limit to the detriment of U.S. content.
  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. Remove the home country premiere and high rating requirement.
  8. Establish defined and prescribed content review time frames for theatrical and online distribution that are no more than four weeks from the time of submission; increase the frequency of submission windows for foreign VOD content review from the current twice-a-year to no less than a quarterly basis; allow for content review of VOD content before the entire season has been produced; establish a fast-track online registration system with a turnaround time of not more than two weeks for already approved foreign content; and establish an independent expedited review approval process for foreign content on a special case-by-case basis.
  9. 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.
- **Increase the number of approvals for foreign video games to match the number of domestic approved video games.**

In June 2016, China updated its content approval regulations for mobile video games that make it extremely difficult for foreign publishers of mobile games to access the Chinese market. While there has been an annual increase in the number of imported game licenses approved in China since 2022, the percentage of these imported games originally published by U.S. publishers or adapted from U.S. IP has continued to decrease each year—four out of 44 in 2022, five out of 58 in 2023, and six out of 75 as of late 2024. In some positive news, as of September 24, 2025, China had approved 79 imported online games in 2025, indicating a notable pickup versus 2024's pace. However, only nine of those are from U.S. publishers, a significant underrepresentation of the contribution of U.S. game publishers to

the global video game market. Overall, parity with domestic approvals has not yet been reached. China should increase the number of approvals for foreign video games to match the number of domestic approved video games and ensure games originally published by U.S. producers or adapted from U.S. IP have equal access to the Chinese market.

- **End China's burdensome content review regime for books intended for other markets, lift content review procedures for imported physical sound recordings, and avoid instituting troublesome regulations for online games.**

Censorship of the U.S. creative industries by the Government of China not only blocks access into China, but also impacts the content brought to the worldwide marketplace. For example, China appears to extend its content review regime even to books merely being printed in China but otherwise intended for distribution in other markets. Books that were previously printed in and exported from China without issue now appear 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, that, 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. These requirements should be removed.

Finally, in December 2023, China's National Press and Publication Administration (NPPA), the primary regulator for video game publication, approval, and supervision, released for public comment a proposed bill entitled *Measures for the Administration of Online Games*. This draft provides a framework for the establishment of online video game publishing and operating entities, management, and supervision of online video games. It reflects the Chinese government's heightened and detailed oversight of online video games, emphasizing content compliance, protection of minors, and promotion of cultural values. Key provisions include: (1) extended license review period; (2) video game license management; (3) video game mechanics and monetization restrictions; (4) loot box controls; (5) beta testing requirements; (6) digital payment system requirements; (7) cultural content promotion; (8) enhanced penalty framework; (9) domestic server and storage requirements; and other requirements. While the video game industry actively supports the goals of online safety and digital wellness, these proposed regulations and burdensome licensing requirements may unfairly impact IP rights holders by targeting the business models that many video game companies have come to rely on. It is imperative that this proposal not place an undue burden on the video game industry, including by creating vacuums that can be filled with demand for pirated games.

- **Repeal additional impediments to China's market for U.S. audiovisual content.**

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 inhibiting its 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 issuance of the new administrative licensing requirement formalizes the obligation for online audiovisual works, although the restrictive practice has been in place since 2019. Furthermore, imported films with public screening permits are now required to be resubmitted for online distribution approval, which means a second content review and further delays. 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, 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, resulted 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. Foreign titles that have already premiered in the home country must have a rating score of above six out of ten on online platforms like Douban or IMDb before submission. These policies have significantly curtailed 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 significantly less than 30%. Bans or caps on U.S. content in China create a vacuum of demand that can be filled by pirated content, as unauthorized content remains freely accessible without such restrictions, 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.

The 2016 *Online Publishing Rules*, which were 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. However, China’s recent accession to the Apostille Convention on November 7, 2023, a welcome development, is expected to ease burdens for rights holders who suffered from previous documentation requirements. IIPA is closely monitoring the rollout of the Apostille Convention in China, particularly considering the inconsistent application of still-present legalization requirements in certain types of enforcement actions. For example, in a recent case where four China-based manufacturers were accused of exporting infringing video game controllers abroad, a Chinese court was unwilling to accept properly legalized foreign evidence stemming from the seizure of the infringing controllers by Belgian customs officials, where the evidence identified the manufacturers as the source of the infringing controllers.

In July 2023, the revised Anti-Espionage Law, originally introduced in November 2014, came into effect. The revisions significantly broaden the scope of what constitutes “espionage” and grant relevant authorities enhanced powers to investigate and prosecute suspected espionage activities. Many provisions in the revised law were previously included in existing regulations, such as the Anti-Espionage Law’s Implementing Rules from 2017, which outlined enforcement procedures; and the Provisions on Anti-Espionage Security Precautions from 2021, which have largely been integrated into the updated law. The consolidation of these amendments into a single, powerful Anti-Espionage Law with broad applicability is significant. The most significant change is the expanded definition of “espionage,” which now encompasses the collection, storage, or transfer of any information deemed to be relevant to national security interests, including “documents, data, materials, or items.” This definition was previously limited to classified information and state secrets. Such a broad interpretation could lead to uncertainties even in the context of friendly collaborations, including when foreign investment is permitted, such as in online music services. For example, Chinese companies may now be unwilling or cautious to share with potential foreign investors key financial or business-related information that would be considered necessary to establish a joint partnership.

- **Adopt a voluntary, age-based classification system to help eliminate disparate treatment of U.S. content and ensure that China’s content review process is transparent, predictable, and expeditious.**

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 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. Such a system will attract investment and boost China's potential as a regional film and television production hub.

## **COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES**

As noted above, China is still not in full compliance with the WTO's market access case (DS 363). Many of the market access barriers discussed above raise concerns under China's international obligations, including under the General Agreement on Trade in Services (GATS), TRIPS Agreement, and the Phase One Agreement (including Article 1.2 to ensure fair and equitable market access to persons that rely upon IP protection). In terms of copyright protection and enforcement, the deficiencies outlined above regarding criminal enforcement procedures (e.g., thresholds that are too high or unclear, uncertainties regarding increased penalties against repeat offenders) are inconsistent with enforcement obligations under TRIPS, including Articles 41, 42, and 61. Finally, China must follow through on commitments it has made in other bilateral engagements, including the Phase One Agreement and prior commitments, specifically addressing many of the issues discussed above, including full implementation of the U.S.-China Film Agreement, enhanced enforcement against PDs, improved enforcement against online piracy, and enhanced protection of academic journals, including strengthening library copyright protection.