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

**Re: 2025 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" (90 FR 40136, August 18, 2025)**

To the Trade Policy Staff Committee:

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to submit these written comments to the Office of the United States Trade Representative (USTR) Trade Policy Staff Committee (TPSC) 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 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
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[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 its online marketplace continues to expand. 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 2023 with the fastest rate of growth, 25.9%, of any top ten market. For video games, China was the second largest market in 2023 with a record 668 million gamers and revenues of US$42.27 billion.

Unfortunately, market access restrictions remain the primary driver behind persistent, evolving, and rampant piracy in China. While significant piracy in China's domestic market remains an enduring challenge, the exporting of pirated content, piracy services, and piracy devices (PDs) from China to foreign markets is a growing and equally troubling global trend. Longstanding market access concerns, including the inability for foreign rights holders to freely engage in distribution of video-on-demand (VOD) services or online video games, timing and deterrence concerns in court cases, and remaining legislative shortcomings all hamper rights holders' ability to distribute and effectively protect their copyright content, including holding back the Chinese creative marketplace from reaching its full potential.

China's 2021 amendments to its Copyright Law included positive developments such as the introduction of the rights of broadcasting and public performance for producers of sound recordings, a ten-fold increase in maximum statutory damages, the introduction of punitive damages, and the ability to shift the burden of proof to the accused infringer; protections for technological protection measures (TPMs); and the elevation of certain elements of the three-step test into the law. While these developments are laudable, regulations for this law and other judicial proposals and guidelines must be fully and properly implemented. 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, amending the scope of the making available to the public right, and adopting a more effective online liability framework.

The Supreme People's Court (SPC) continues to steadily improve the position of rights holders generally by clarifying, strengthening, and streamlining the application of copyright laws with respect to civil, criminal, and administrative enforcement actions brought in Chinese courts. The National Copyright Administration of China (NCAC) also pursues administrative actions against certain online services that facilitate piracy, but these actions alone are not sufficient to meaningfully deter widespread and commercial-scale online piracy. Other serious enforcement challenges in China include unauthorized distribution of journal articles, the manufacture and worldwide distribution of piracy devices (PDs, also known as illicit streaming devices or ISDs) and TPM circumvention devices, and the operation of pirate servers to host illegally installed video games, among many other concerns.

While China's accession to the 1961 Hague Convention Abolishing the Requirement of

Legalization for Foreign Public Documents (the Apostille Convention) in 2023 was a welcomed development–although inconsistent implementation is being closely monitored–China remains one of the most challenging markets in the world for the distribution of copyright content. Extensive market access barriers, both in law and in practice, severely limit foreign participation in the market. Notably, some of these barriers are violative of China's multilateral and bilateral obligations to 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 other steps to open its marketplace for the U.S. creative industries. These comments spell out some of these problems, with particular focus on the following:

(1) Additional 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 that significantly impacts Chinese and international markets; and

(4) The need to immediately and fully implement all the terms of the 2012 U.S.-China Film Agreement and fulfill Phase One Agreement services purchasing obligations.

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. IIPA greatly appreciates 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 2025 IIPA Special 301 country report on China provides details on these challenges as they stood in January 2025.[2] The following discussion highlights both potential WTO compliance

[2] See IIPA's 2025 Special 301 submission on China (IIPA 2025), available at https://www.iipa.org/files/uploads/2025/01/CHINA-2025-Copyedited-122024.pdf.

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

### A. Longstanding Regulations and Proposals that Discriminate Against U.S. Producers and Distributors of Creative Content

The piracy and enforcement concerns outlined below are exacerbated by China's pursuit of policies that impede foreign creators' access to the Chinese marketplace, thereby restricting the supply of legitimate products to Chinese consumers. 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.[3] After the case concluded in 2009, China eased several market access restrictions,[4] 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." However, the newly revised 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 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.

### B. Reconsider Measures Prohibiting Foreign Involvement in Online Publishing Activities, Allow Distribution of Audiovisual Content on Online Video Platforms, and Increase the Number of Approvals for Foreign Video Games to Match the Number of Domestic Approved Video Games

As we have noted in prior reports, the 2016 Online Publishing Rules, which appear to expand the scope of longstanding restrictions on the involvement of foreign entities in online publishing activities, continue to have a chilling effect on foreign investment in online publishing services where, prior to the rules, some latitude appeared to have been granted.[5] Furthermore, when

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[3] China–Measures Affecting Trading Rights And Distribution Services For Certain Publications And Audiovisual Entertainment Products, WT/DS363/AB/R, December 21, 2009, at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/ds363/ab/r*%20not%20rw*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#.

[4] 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 video game 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.

[5] 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).

China revised its Negative List in September 2024, the country lifted certain restrictions, but foreign investment in the production and distribution of audiovisual products and "online publication services" remained prohibited.

In addition to existing investment 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 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. 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.

### C. Refrain From Extending China's Burdensome Content Review Regime to 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 apply its content review regime to books intended for other markets. Books merely being printed in China but otherwise intended for distribution in other markets appear subject to China's burdensome content review regime. Even 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, 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. These requirements should be removed.

Finally, in December 2023, China's National Press and Publication Administration (NPPA), the primary regulator for 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 game publishing and operating entities, management, and supervision of online games. It reflects the Chinese government's heightened and detailed oversight of online games, emphasizing content compliance, protection of minors, and promotion of cultural values. Key provisions include: (1) extended license review period; (2) game license management; (3) 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, by contrast, may unfairly impact IP rights holders because they target the business models that video game companies have specifically developed to combat the piracy of downloaded games, such as free-to-play and in-game purchase models. It is imperative that this proposal not place an undue burden on the video game industry, including by disrupting efforts to prevent piracy and creating vacuums that can be filled with demand for pirated games.

### D. Repeal Discriminatory and 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 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. 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.

**E. 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.

## II. Gaps and Deficiencies in China's Legal Regime, Including Both Copyright Law and Enforcement Measures

### A. Fully Implement Amendments to the Copyright Law

Prior IIPA filings have documented in detail developments in the Chinese legal system for the protection of copyright, including copyright and criminal law reform efforts.[6] These reform processes, including the ongoing implementation of the Phase One Agreement, provide important opportunities to update the legal regime in China for more effective copyright protection and enforcement. 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 pleased 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 the sale of products to the licensing of uses. 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. However, it is crucial to address outstanding ambiguities. For example, China still formally has reservations on Article 15 of the World IP Organization (WIPO) Performances and Phonograms Treaty (WPPT) and should proactively commence proceedings to withdraw this reservation. Similarly, the newly amended Copyright Law has brought to the forefront the need for amendments to be made to the associated *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*, to ensure the effective implementation

[6] See previous years' reports on China at: https://www.iipa.org/reports/reports-by-country/.

of the law.

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. On damages, there can often be difficulty obtaining evidence to quantify the financial gain made by an infringer for administrative or criminal actions. 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 a 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 drive 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 adequate and effective protection of TPMs or the exclusive rights of copyright owners. China should also ensure that circumvention devices or components, as well as more generally PDs, ISDs, and even USB flash drives containing pirated content, 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, PDs, and ISDs, and the trafficking thereof.

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.

### B. Address Shortcomings in the Copyright Law and the Criminal Law

Despite these improvements, the Copyright Law as amended did not address several deficiencies in China's legal framework, including matching the international standard of at least 70 years of protection for sound recordings and works, including audiovisual; introducing mechanisms that ensure Internet service providers (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; improving available online liability rules and notice-and-takedown provisions; and aligning the scope of the making available to the public right with international standards by removing the "server test," which requires that the act of making available occurs via copies stored in China.

First, 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.

The Copyright Law should be further updated to provide protection against unauthorized retransmissions of copyrighted content over the Internet (including live-streaming), and consistent with the requirements of the *2019 Guidelines on Strengthening the Protection of Intellectual Property Rights* (the *Guidelines*), clarify the legal basis for mechanisms that ensure ISPs can impose effective relief to address 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. This is especially important in cases where the sites are operated outside of China or where the identities or locations of the website owners are unknown. Previously, a provision to provide such mechanisms had been removed from an earlier version of the Copyright Law Amendment (in 2012). 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.

The Copyright Law should also be amended to 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 must fulfill certain conditions, including adoption and implementation of a repeat infringer policy, which would build upon the *Provisions by the Supreme People's Court on Several Issues Concerning the Application of Law in Hearing Civil Dispute Cases Involving Infringement of the Right of Communication through Information Network*. Further, it should be clarified 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. 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.

Finally, Chinese law still falls short of international norms and standards regarding the term of protection for sound recordings and other works, including audiovisual. A minimum term of at least 70 years from publication for the protection of sound recordings and works, including audiovisual, has become the international standard, yet China's Copyright Act still provides for only 50 years of protection.

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.[7] 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 still 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 reports. 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."[8] The Government of China should also 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 that are exported for the primary purpose of infringing or facilitating infringement.

### C. Fully implement the Intellectual Property Rights Enforcement Commitments

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[7] 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.

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

**of the U.S.-China Phase One Agreement**

IIPA welcomed the conclusion of the Phase One Agreement, signed by U.S. President Trump and Chinese Vice Premier Lui on January 15, 2020. In the agreement, China made several enforceable commitments that address certain concerns identified in these comments, particularly regarding 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 IP 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 SPC and the NCAC to implement aspects of the Agreement that hopefully will 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.

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 counternotices, 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 the 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.

**D. Ensure Legislative Proposals Related to Artificial Intelligence Meet the Standards Set Forth by the G7 Hiroshima AI Process**

On several occasions throughout 2024, the Government of China discussed regulating artificial intelligence (AI), though no substantive legislative changes or proposals were introduced. On copyrights in particular, reports indicate that NCAC is in the process of drafting a decree that may introduce a text and data mining (TDM) exception. 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 copyrightprotected 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."[9]

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

In November 2023, the SPC released new *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*.

## III. Address Existing and Evolving Online Piracy

China's market for legitimate, licensed content continues to be devastated by piracy, which is only exacerbated by market access restrictions discussed above that 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 2023, China ranked seventh 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 fifth in the world for unauthorized file-sharing of console-based video games and seventh for PC-based video games. Moreover, the music industry reports that 75% of surveyed users in China admitted to using unlicensed or illegal sources to listen to music.[10] A more holistic enforcement response is needed to effectively combat the entire online piracy ecosystem, which poses the greatest threat to

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[9] 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.

[10] International Federation of the Phonographic Industry (IFPI), *Engaging with Music 2023*, p. 13, available at IFPI-Engaging-With-Music-2023_full-report.pdf.

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 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, through the use of 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.

Music piracy remains widespread despite the positive market movement, hampering the development of the legitimate market to its full commercial potential. In the International Federation of the Phonographic Industry's (IFPI) 2023 Music Consumer Study, 70.6% of Internet users in China admitted downloading pirated music in the previous month, with stream ripping from unlicensed use uploaded content (UUC) video sites such as *Miaopai* being the major issue. The wide availability of pirated music on cyberlockers such as domestic cloud storage providers like *Baidu Pan* and through BitTorrent activity via clients such as *Xunlei* were also issues. 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 IFPI SID (source identification) codes. The production of counterfeit vinyl is now also an issue in China. By way of 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 offences relating to the production of 1.2 million vinyl products, infringing the rights in 1,000 sound recordings (local and international repertoire).

Due to the Chinese government's enhanced enforcement actions to combat piracy, including against pirated video games, recent years have seen a shift in piracy tactics. Instead of traditional methods that involve technical cracking of game software for complete duplication and distribution, game piracy in China is increasingly characterized by reskinning the original games with non-substantial revisions. This includes, but is not limited to, making minor modifications to the source code of original games before releasing them or 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, piracy in the form of game modification poses a growing threat. Legislation and judicial practices in China currently cannot respond to this evolution in commercial-scale piracy, and the copyright protections and remedies needed to stem this form of illicit game modification are unavailable. In practice, under the copyright law, rights holders must either divide the online 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 games as a type of work under copyright law leads to uncertainty for game companies seeking to protect their rights.

Finally, pirate streaming sites (such as *btbtt12.com* and *99meiju.cn)*, cyberlockers, Internet protocol TV (IPTV) services (such as *Wang Fei Mao* and *MagisTV*, now rebranded as *Flujo TV*), and Piracy-as-a-Service (PaaS) providers directed to global audiences that are operated from within China were a growing problem in 2024. For example, companies that run apps like *LokLok* which target Southeast Asian markets, companies that manufacture, promote, distribute, and export PDs such as *MagisTV* (rebranded as Flujo TV) which target Latin American markets, and sites like *GIMY* (currently at *GIMY.ai*) which target Taiwan, are just some of the growing number of piracy operations that focus their illicit behavior outside of China. Given these significant piracy challenges in China, IIPA and its members strongly encourage China to take the priority actions identified below.

### A. 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.[11] CNIPA's plan specifies 114 measures related to IP in six categories (with deadlines). The Plan contains items relevant to the copyright industries, and IIPA is monitoring these developments closely. Industry has identified some 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 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 recently started exporting software that circumvents TPMs used by legitimate digital music services such as Spotify.

Additionally, two other measures will help advance the protection and enforcement of

[11] 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, available at…...

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 the piracy app ecosystem and also against the massive proliferation of the manufacture, promotion, and distribution of PDs, ISDs, and TPM circumvention devices that are ravaging copyright holders' legal businesses. China remains the hub for the manufacture, promotion, and distribution of PDs, ISDs, and TPM circumvention devices, including ones that are mass exported from China, which fuel much of the world's piracy problems. 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,[12] 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.

### B. Improve the Effectiveness of Administrative Enforcement

Administrative enforcement measures in China 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. Additionally, domestic e-commerce platforms have onerous formal requirements for complaints from rights holders or agents, including complex evidentiary requirements. Depending on the scale of infringement, local cultural enforcement authorities may pursue a warning and removal of infringing content, administrative penalties, and closure of the online shop, or may refer the case to the public security authorities for criminal investigation. Further, the emergence of new technologies for enabling mass infringement, especially in the online and mobile environments, requires a vigorous enforcement response that China's administrative enforcement entities are unprepared to meet. These challenges are compounded by domestic e-commerce platforms having onerous formal requirements for complaints from rights holders or agents, including complex evidentiary requirements. Even if the platforms do 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. China should instead 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.

While the Sword Net campaigns and other administrative actions have produced some good results over the years, there is a need for greater regularity and transparency, including providing rights holders with timely and detailed information regarding the process and the results of administrative actions, and more consistent treatment of actioned cases, as results have varied among provinces. Additionally, these administrative enforcement actions should encompass all

[12] See Report on Results of Survey Questionnaire on Domestic Treatment of Illicit Streaming Devices by APEC Economies, March 2021, at https://www.apec.org/publications/2021/03/apec-report-on-domestic-treatment-of-isds.

piracy sites and services operated within or from China, regardless of whether they are accessible or geo-blocked within China. Unfortunately, NCAC does not appear to take referrals against piracy services that are not accessible within China, even when they are hosted or their operators are located within China. This allows China-based operations to evade enforcement action by simply geo-blocking their services from access within China or serving a different set of content to users accessing these services from within China.

Administrative enforcement and coordination between administrative enforcement authorities should also 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 Ministry of Industry and Information Technology (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 and imposing administrative penalties in situations where administrative authorities are unable or unwilling to engage with the operators of infringing services. In addition, administrative authorities should ensure the prompt, efficient, and transparent transfer of administrative complaints to the criminal authorities for investigation and prosecution.

The NCAC should establish a mechanism with the MIIT and ISPs to shut down infringing sites operating without a business license, and the government should, consistent with the *Guidelines*, take immediate steps to guide and regulate management of all types of websites to "remove infringing content, block or disconnect pirated website links, [and] stop the dissemination of infringing information." 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 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.

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

### C. Improve the Effectiveness of Civil and Criminal Enforcement

The past few years have seen several positive civil and criminal piracy enforcement cases that could signal Chinese courts, and the judiciary may be slowly improving the way these cases are handled and ultimately decided. While these actions have been helpful, they are not enough to deter the widespread and commercial-scale piracy taking place in China, particularly when compounded by China's many informal and formal barriers that restrict the distribution of legitimate foreign content in China. Chinese courts must issue deterrent-level civil and criminal penalties against operators of piracy websites that make infringing content available, reduce documentation requirements to establish copyright ownership and infringement, and ensure timely enforcement of monetary damages. Unfortunately, civil and criminal enforcement against copyright infringement involves significant challenges for IP rights holders, including, among other things, costly and burdensome civil litigation requirements contrasted with low damages awards.

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. 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 act 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 receipt of notices, in some cases, this deletion happens days after the infringing content is posted, when the damage has already occurred. Further, 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, Douyin,* and *Kuaishou*).

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 it also unnecessarily increases rights holders' litigation costs, increases the workload of the courts, and wastes judicial resources. This burdensomely narrow form of civil action in copyright cases is a major shortcoming because penalties for single-title infringement are often much lower than if an infringer is charged with multiple counts of infringement in a single court case, when often thousands of titles are pirated by the same operator. These lower penalties would likely not be considered deterrent penalties, *considering the overall scope of piracy by the infringer*.

Judgments from courts in different regions can reach contrasting conclusions despite cases involving similar facts, which impacts judicial certainty and credibility, and disadvantages rights holders seeking to enforce their rights. Recently, the SPC issued guidance to improve this situation, including the *Guidance Opinions of the Supreme People's Court on Increasing the Identity of Laws' Application and Strengthening the Search for Similar Cases (for Trial Implementation)*. In this regard, it is hoped that the SPC will have the opportunity to issue more judgments with positive outcomes for rights holders as guidance cases for the lower courts. Local People's Courts at all levels also need to be urged by the SPC to search for similar cases to those that come before the lower courts and ensure the same application of the laws to achieve greater consistency in the application of the law across the country and the court system. The consistency of judgments is a major area where there is a need for improvement in judicial practice.

Because the operation of piracy services is often 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, which require such personal information. 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 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 to a law enforcement action, but which remains available.

## IV. 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. It is critical to send a strong message that these policies are unacceptable—particularly when China is the second largest film market in the world—and should be reversed. As discussed below, China should instead focus its attention on the complete implementation of the 2012 U.S.-China Film Agreement 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.

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.[13] 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

[13] 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 distributers 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.

productions (which were 792 in 2023),[14] as well as around 77,000 theatrical screens in 2023.[15] 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 (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 Chinese Film Administration (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 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.

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"

[14] 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/.
[15] According to Beacon Data, the actual running screens in 2023 is 77,323.

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; 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.

## V. Conclusion

IIPA appreciates this opportunity to provide 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 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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