

# Censoring the Silk Screen: China's Precarious Balance Between State Regulation and a Global Film Market

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Time travel, ghosts, and smart-aleck superheroes may sow the seeds of rebellion—or so the Chinese Communist Party fears. Motion pictures from *Ghostbusters* to *Deadpool* to *Back to the Future* have been banned in the People's Republic for violating China's opaque permitting process. Still, the promise of profit keeps Hollywood producers attempting to crack the censor's code for a taste of box office lucre.

As China increasingly influences Hollywood's studio system, it is necessary to understand the largest As

marketplace until the 1970s. Suffering from decades of failed economic policy and severe social engineering, in the 1980s the door was cautiously opened to the import of foreign films, and later, to internationally held joint ventures and co-productions. With China's move to normalize trade relations, their system developed into a Post-Socialist structure, incorporating aspects of the free market economy into the ideological apparatus of the Communist government. Global capital began to flow into the PRC resulting in a financial windfall for the prevailing powers. Rather than bend towards capitalism, the CCP maintained central authority with protectionist policies that maximized domestic profits and forced foreign players to abide by a complex system of regulations.

As the Bamboo Curtain parted, America's entertainment-media conglomerates were eager to exploit the region but had to negotiate access across trade barriers. The PRC imposed various measures of market control, manipulation, and censorship to protect their domestic industry. A quota limited the amount of foreign product available in China. A state-sanctioned monopoly on imports eliminated competition and offered artificially low license fees. An ever-evolving bureaucratic structure had ultimate authority over content. It was challenging for foreign entities to maintain consistency with the alphabet soup of regulatory agencies that evolved from MRFT to SARFT to SAPPRFT. Furthermore, as certain films were turned away, the reasons for rejection remained obscure. There was little guidance on prohibited content and state agencies were notoriously vague with feedback, offering only circulars and advisory statements from party assemblies as touchstones. Foreign filmmakers were forced to navigate a process riddled with arbitrary and capricious decision-making—as well as outright corruption—to gain approval.

The story of Hollywood's quest for access to China's movie screens is one of false starts. After a decade of confidence-building, the Tiananmen Incident zeroed the clock. After another decade of development, the United States' accidental bombing of a Chinese embassy in Belgrade again chilled relations. But over time, the China film market expanded and American filmmakers found fissures in the system to gain a toehold in the complex environment.

Together, Hollywood's creative power and the PRC's multitude of movie audiences have elevated corporate players on both sides. But regulation and censorship still block the gateway to China for foreign filmmakers. Access to the potentially profitable markets requires knowledge of the PRC's intentionally complex, often-unpredictable, and ever-shifting structure.

MOTION PICTURES IN THE





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at odds with the party's heroic visions of the working class. Huang Jianxin's *Hei Pao Shijian* (*The Black Canon Incident*) (1985) satirized Chinese bureaucracy: a cryptic message about a missing chess piece sets off conspiratorial intrigue. The most extreme cultural critique came from Tian Zhuangzhuang. In *The Blue Kite* (1993), Zhuangzhuang's film followed a family torn apart by the political upheavals of the Hundred Flowers Campaign, the Great Leap Forward, and the Cultural Revolution. *Blue Kite* was

Coinciding with increased regulation on domestic film content, China began to seek investment from international financiers. One of the earliest joint ventures partnered China's struggling state facilities with Hong Kong's mature motion picture industry.<sup>20</sup> Set in the distant past, *Shaolin Si* (*The Shaolin Temple* 1982) was a martial arts action picture shot on location in Henan Province, China, at the historical birthplace of kung fu. The film followed a rebellious novice monk. After a warlord murders his father, the surviving son seeks refuge at a Buddhist monastery. While excelling at wushu, an ea5ce 140(Si)] TJr.4n Si

hurdles, Chinese regulators imposed creative challenges. One scene scheduled to be shot on the Hong Kong waterfront was vetoed because of the implication that Westerners “had accomplished great things.”<sup>25</sup> Action-packed sequences of Chinese characters looting and burning an opium warehouse were cut for offending cultural sensibilities despite the historical record. Production on the picture’s slightly risqué bedroom scenes had to be relocated to Macao because officials objected to the idea of a Chinese girl romantically entangled with an opium trader.<sup>26</sup> De Laurentiis publically declared that the changes amounted to censorship. Difficulties on production were met with apathy at the box office. *Tai-Pan* earned just over \$4 million.<sup>27</sup>

By the late 1980s, the PRC’s changing policy on motion picture content began to take shape as international co-producers moved further into the largely untested environment. The Chinese film industry was restructured with the Circular of 1989, which provided a degree of guidance by proscribing certain topics. Historical dramas were favored because references to the contemporary regime could be avoided or at least concealed. Chen Kaige’s *Yellow Earth* demonstrated that some defiance would be tolerated, but Tian Zhuangzhuang’s *Blue Kite*

central government, still under the leadership of Deng Xiaoping, responded by declaring martial law.<sup>30</sup> Tension escalated until early June when the decision was made to mobilize the People's Army.<sup>31</sup> The result was a still-undisclosed amount of arrests, injuries, and casualties.<sup>32</sup> The promise of opening China-US relations evaporated instantly. In the wake of the PRC's actions against the pro-democratic movement, import of western films was drastically reduced from 1990-1992.<sup>33</sup>

During this period of self-imposed exclusion, MRFT advocated a homegrown genre: the "main melody" or "central message" film. Teng Jinxian, director of the Film Bureau, had proposed main melody films (zhu xuan lü) in 1987 as a means to counter growing political turmoil and reinforce positive images of the CCP and its leaders. The bureau encouraged Chinese filmmakers to develop content embodying patriotic and socialist ideals while repudiating individualism, hedonism, and capitalistic greed.<sup>34</sup> Exemplars of this genre included historical and hagiographic pictures such as *Sun Zhongshan* (Sun Yaosen, 1987), *Kaiguo Daidan* (The Founding of a Nation/The Birth of a New China, 1989), *Da Jue Zhan* (Decisive Battles, 1990), and *Mao Zedong and his Son* (1991).<sup>35</sup> By the early 1990s, these propagandistic pictures accounted for 25% of domestic production.<sup>36</sup> Message films may have served as significant state ideological apparatuses indoctrinating audiences to CCP policy and party line but they did not deliver audiences to theaters. In a 1990 interview with *The New York Times* Teng Jinxian confided that the Chinese film industry was facing a financial crisis: "Young people [are] largely bored by the new type of politically correct movies that were being ordered up by his ministry . . . I cannot give you a figure," he said of the losses being suffered, "but it is colossal."<sup>37</sup> With a release schedule packed with party approved message films that drove audiences away from theaters, the Chinese film industry would fail.

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N.Y. TIMES (June 21, 2016), <http://www.nytimes.com/2016/06/22/world/asia/china-tiananmen-rowena-he.html>.

30. See *supra* note 29.

31. *Id.*

32. *Id.*

33. SU, *supra* note 14, at 1.

34. See RUI ZHANG, *supra* note 17, at 40; SU, *supra* note 14, at 20.

35. See Nicholas D. Kristof, *China's Films: More Propaganda, Less Art*, N.Y. TIMES, Aug. 1, 1991, at C15; Orville Schell, *Once Again, Long Live Chairman Mao*, ATLANTIC (Dec. 1992), <http://www.theatlantic.com/magazine/archive/1992/12/once-again-long-live-chairman-mao/306586>.

36. YING ZHU, *CHINESE CINEMA DURING THE ERA OF REFORM: THE INGENUITY OF THE SYSTEM* 81 (2003).

37. James Sterngold, *Toeing Party Line, Chinese Films Falter*, N.Y. TIMES, Aug. 25, 1990, at L11.



In 1993, Wu Mengchen

Hitchcockian theme: an innocent man framed by circumstances beyond his control. Suspected of murdering his wife, the film finds Harrison Ford on the run fleeing a granite-faced US Marshall played by Tommy Lee Jones. The picture was successful in its domestic release, grossing over \$176 million in its first two weeks against a \$44 million production budget.<sup>50</sup> In China, Warner Bros. took a significantly smaller cut of the box office, but the potentially massive audience promised dividends. In Shanghai alone, official state sources projected audiences over 700,000 people.<sup>51</sup> Even with drastically reduced ticket prices, *The Fugitive* grossed \$3.8 million in China<sup>52</sup> and was regarded by both the U.S. and China as an “event of historic significance.”<sup>53</sup>

#### TINSEL TOWN IN RED

*The Fugitive* was Hollywood’s first profitable venture into the Chinese

As China Film, still the solely authorized entity to import foreign films, filled its coffers with royalties from revenue-sharing imported pictures, the state reinvested profits in infrastructure. In January 1996, Henden World Studios broke ground in the countryside five hours from Beijing. Henden Studios would become China's first major production facility, the vision of Xu Wenrong a farmer-turned electronics manufacturer. Moving into his role as media mogul, Xu partnered with director Xie Jin on a main melody film entitled *Yapian Zhazhen* (The Opium War) (1997). Xie had locked backing from the government, but had no location to shoot the picture. Xu offered his support, channeling state funds into what would become the largest film studio in China. Henden expanded to

in June 1996 as “Regulations on Administration of Films,” the guidelines were refe.34 Tuj.41TJETelines



creative latitude offered producer in the free market system, foreign filmmakers working on a joint production were still subject to certain requirements, such as the Chinese actors comprising at least one third of main cast members in addition to the rigors of state censorship. Joint productions were regarded as domestic films so these pictures would avoid the import quota.<sup>70</sup> In October 2004, Warner Bros. became the first major studio to partner with PRC a production entity, joining with China Film Group and Hengdian Group to form Warner China Film HG Corp. The joint venture,

demonstrates one example of a significant challenge facing co-productions







With *Kundun* and *Seven Years in Tibet*, PRC authorities demonstrated sensitivity to Hollywood's representations of Tibet. MGM's *Red Corner* (1997), on the other hand, presented a far more explicit indictment of the Chinese system.

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million.<sup>105</sup> The film more [REDACTED] the second most successful imported picture, *True Lies* (1994), also directed by Cameron. *Titanic* was not only a masterpiece of Hollywood star power, VFX rendering, and heart-rending sentimental cinema, it also came with an important endorsement: President Jiang Zemin publically praised the picture and urged China's politburo to see the blockbuster, which, in good Socialist tradition, portrayed the rich as villains and the poor as heroes.<sup>106</sup> "This movie shows fully how people deal with the relationship between love, poverty and wealth, in the middle of a difficult situation," said Jiang.<sup>107</sup>

While official endorsement helped elevate *Titanic*, Jiang's notice was not always welcome. One of China's great Fifth Generation filmmakers, Chen Kaige reached the height of artistic refinement with *Farewell, My Concubine* (1993). *Concubine* is a historical epic seen through the eyes of Beijing opera performers. On first pass, the film breezed through censorship clearance in only two days.<sup>108</sup> But it was too successful for its own good, winning the Palm d'Or at Cannes; nominated for cinematography and Foreign Language Picture at the Academy Awards; and winning Best Foreign Language Picture at the British Academy of Film and Television Arts (BAFTA), the Golden Globes, and the New York Film Critics Circle.<sup>109</sup> Such accolades brought *Concubine* to the attention of Jiang. The PRC President arranged for a private screening and watched the picture with the Communist Party Central Committee's Propaganda Chief. Immediately following the screening, Kaige's film was denounced for its harsh depiction of the Cultural Revolution, its portrayal of homosexual love, and its climactic suicide, based on the plot of a famous Beijing opera.<sup>110</sup> "Before Cannes, none of the leaders knew anything about this film," the director commented,

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105. *Titanic*, BOX OFFICE MOJO, [http://www.BoxOffice Mojo.com/film/6967/titanic.html](http://www.boxoffice Mojo.com/film/6967/titanic.html) (last visited Sept. 30, 2016)..





Article 24 addressed SARFT's revised motion picture administrative system, which required examination of all media intended to be distributed, projected, imported, or exported. The following provision, Article 25 specified ten types of prohibited content: (1) That which defies the basic principles determined by the Constitution; (2) That which endangers the unity of the nation, sovereignty or territorial integrity; (3) That which divulges secrets of the State, endangers national security or damages the honor or benefits of the State; (4) That which incites the national hatred or discrimination, undermines the solidarity of the nations, or infringes upon national customs and habits; (5) That which propagates evil cults or superstition; (6) That which disturbs the public order or destroys the public stability; (7) That which propagates obscenity, gambling, violence or instigates crimes; (8) That which insults or slanders others, or infringes upon the lawful rights and interests of others; (9) That which endangers public ethics or the fine folk cultural traditions; (10) Other contents prohibited by laws, regulations or provisions of the State. This listing provided slightly more clarity than the comparable Article 24 of Document 200 issued in 1996; however, the tenth proscription once again was a catchall and open door for unfettered censorship.<sup>121</sup>

Document 37(but)-4(e)9(d)22(,)C BT1 0 0 1 158.21 41(e)] TJETB35.e9censorship.

joint ventures.<sup>126</sup> But in another spate of regulations announced in 2003, and referred to as Documents 18, 19, 20, and 21, SARFT permitted increased ownership of exhibition outlets in selected regions.<sup>127</sup> In Beijing, Shanghai, Guangzhou, Xi'an, Chengdu, Wuhan, and Nanjing, foreign shareholders were allowed to own up to 75% of theaters.<sup>128</sup> By 2005, the Hollywood majors, including Disney, Sony, Warner Bros., and the Weinstein Co., were establishing bases of operation in China.<sup>129</sup> Opening a Beijing office for *The Hollywood Reporter* bureau chief Jonathan Landreth commented, "Why am I here? Because everyone else in Hollywood is."<sup>130</sup> The future looked bright for filmmakers seeking opportunities in the PRC.

SARFT's generous provisions turned out to be short lived. Document 21, which granted increased ownership of exhibition outlets, was nullified and revoked a year later by a circular entitled "Several Opinions on Foreign Investment in the Culture Industry."<sup>131</sup> The revised regulation reinstated the mandate for Chinese mainland investors to hold at least 51% interest "or play a leading role in their joint ventures with foreign investors."<sup>132</sup> Time Warner, which had begun investing in mainland cinemas pulled an about-face. Warner Bros. International Cinemas (WBIC) announced its withdrawal, transferring equity to its partner the Shanghai Film Group.<sup>133</sup> After an optimistic run from 2000-2006, Warner Bros. was out of the theatrical business in China, demonstrating a foreign entity's vulnerability to abrupt and unforeseen policy changes in the PRC.

Warner Bros. wasn't the only studio facing difficulties with China's film administration. Along with regulations aimed at diminishing foreign market share came a renewed scrutiny of film content. *The Da Vinci Code* (2006) opened with promise in China, earning over \$13 million in its first three weeks.<sup>134</sup> In June of that year, China Film acting under orders from SARFT demanded the removal of Sony's (t)-4(e)9(d429.29 )-8(ony)] TJETBT3ony

Catholic Groups.<sup>136</sup> Weng Li, deputy manager of film exhibition and distribution, offered a more practical reason: “The withdrawal is to make way for homemade movies released in the upcoming month . . . We made a purely commercial decision. No single film could monopolize the market for one or two months, not even in the United States. We’re making room for the next month when 10-plus homemade films will show across the country.”<sup>137</sup> This was the beginning a new strategy: the official implementation of blackout periods to evict foreign films from China screens in order to manipulate the market and increase the revenue of domestically produced films.

As foreign films saw more screen time, they also experienced greater censorship. Universal stood by as SARFT cut twenty minutes from *Miami Vice* (2006), including a sex scene between Colin Farrell and Chinese star Gong Li.<sup>138</sup> *Brokeback Mountain* (2005), produced by Focus Features, a subsidiary of Universal, was banned for scenes of homosexual relations between two cowboys played by Heath Ledger and Jake Gyllenhaal.<sup>139</sup> Scenes in Paramount’s *Mission: Impossible 3* (2006) were trimmed, including one sequence where Tom Cruise killed a Chinese security guard<sup>140</sup> and another in which unkempt laundry lines were seen along the streets of Shanghai.<sup>141</sup> Disney’s *Pirates of the Caribbean: At World’s End* (2007) found disfavor due to a ruling that Chow Yun-fat’s character, pirate captain Sao Feng, was an insulting, racial caricature that “vilifie[d] and humiliate[d] the Chinese.”<sup>142</sup> Sao Feng was ordered cut from the film.<sup>143</sup> Martin Scorsese was back in the hot seat with *The Departed* (2006), released by Warner Bros. The Academy Award winning picture—itsself based on a Hong Kong thriller entitled *Infernal Affairs* (2002)—was barred from playing the PRC.<sup>144</sup> After viewing the film and issuing a ban, a China Film rep commented, “[T]hey thought it wasn’t suited for the mainland Chinese market. . . . They didn’t

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136. Joseph Kahn, *China Bans Code After Warning from Catholics*, *NY. TIMES* (June 9, 2006), <http://www.nytimes.com/2006/06/09/world/asia/09cnd>

give concrete reasons.”<sup>145</sup> One cause may have been a plot point in *Departed* where Boston crime lords attempt to sell high tech weapons to Chinese villains.<sup>146</sup> Whether it was unsightly dirty laundry in Shanghai or the suggestion of Chinese international aggression, images that upset SARFT were quickly wiped from the screen with little process, discussion, or opportunity for appeal.

Responding to these events the United States brought a complaint against China before the WTO in April 2007.<sup>147</sup> Speaking for Hollywood filmmakers, U.S. representatives complained, first, of barriers and restrictions on import of films and other audiovisual and entertainment products, and second, of the growing problem of piracy stemming from the deficiencies in China's protection and enforcement of intellectual property rights.<sup>148</sup> China's response was defiant. In a PRC Commerce Ministry statement, spokesman Wang Xinpei commented,

China expressed great regret an





for China to comply with the orders: March 2011.<sup>173</sup> Recalcitrant, China failed to modify its practices, instead maintaining state-authorized limitations on foreign access to its film market.

The distribution history of James Cameron's epic sci-fi blockbuster *Avatar* provides a case study. *Avatar* takes place in the distant future on a faraway planet where Earth's industrialists mine the precious mineral unobtainium. Unfortunately, the deposit of ore lies beneath the world tree of an alien species—extracting the valuable material endangers the peace loving Na'vi. Cameron's previous film *Titanic* was a sensation in China, with the CCP divining a Marxist message on the contentious relationship between labor and capital.<sup>174</sup> But the pro-environmental message of *Avatar* was impossible to avoid. The avarice of Earth's corporate colonizers could easily be associated with China's ecological disregard from the building of Three Gorges Dam, which flooded archaeological sites and villages along the Yangtze River, to rampant deforestation, costal land reclamation, and toxic air pollution. *Avatar* opened in China on January 4, 2010, less than five months after China challenged the adverse WTO ruling.<sup>175</sup>

The film proved wildly popular pulling in \$76 million in ticket sales.<sup>176</sup> *Avatar* was China's biggest box office champ ever.<sup>177</sup> Two weeks later the picture was summarily yanked off many of the PRC's screens.<sup>178</sup> The official reason was to make way for a domestically produced 3D biography of *Confucius*<sup>179</sup> *Kong Zi* (*Confucius* 2010) was a main melody film directed by Hu Mei and featured Chow Yun-fat as the distinguished philosopher.<sup>180</sup> SARFT was manipulating the market, steering audiences to the domestically produced patriotic picture by eliminating its competition.<sup>181</sup> But film audiences were not interested. The *Shanghai Daily* ran a headline:

foreign films. In 2012 the PRC closed its screens to foreign films from June to August.<sup>183</sup> According to SARFT this summer period was allocated for “domestic film protection” to allow local pictures the opportunity to play without competition from major Hollywood blockbusters.<sup>184</sup> The strategy was successful in shifting the market share of domestically produced films vis-à-vis foreign films. For instance, in the month of June, China-produced

of time travel citing disrespect of history.<sup>192</sup> The ban more broadly applied to films that contained elements of superstition, fantasy, and reincarnation—characters that could travel back in time and rewrite history had to be eradicated.<sup>193</sup> But certain historical truths could be altered if it pleased the CCP.<sup>194</sup> *Mao's Last Dance*(2009) chronicled the uplifting story of a boy born in a rural village who rises to acclaim at the prestigious State Dance Academy. This Beijing-style *Billy Elliot* was banned in the PRC.<sup>195</sup> “The Chinese government doesn’t





construction would continue to skyrocket, hitting 18,000 in 2013, 22,000 in 2014<sup>221</sup>

CCP and Chinese people.<sup>232</sup> When Nury Vittachi, a Sri Lankan author of detective-fiction, was contacted about writing a screenplay, he discovered parameters that limited his palette in China: “crime stories are crime free, ghost tales have no ghosts and crooked politicians can’t be crooked.”<sup>233</sup> Vittachi also exposed a variety of non-SAPPRFT approvals that may be triggered:

If the hero is a monk or the setting is a temple or a church, the script will also require a permit from the State Administration for Religious Affairs. If it’s a spy movie, national security agents will have to vet it. For cop shows, you need approval from the police’s so-called art department.<sup>234</sup>

Censorship enforcement could be unpredictable. Columbia/Sony was required to make cuts to *Men in Black 3* (2012), a sci-fi comedy about secret agents charged with apprehending unruly extraterrestrials living on Earth.<sup>235</sup>





men.<sup>261</sup> This time the official comment banned all depictions of gay people as part of a cultural crackdown on “vulgar, immoral, and unhealthy content.”<sup>262</sup>

Knowing the subjects that prompt censors to take notice is one element of getting a film passed by SAPPRFT, another method is anticipating ways to cajole administrators. Several studios have made proactive and strategic changes, altering the version to be screened in China and showcasing Chinese expertise. In *Iron Man 3* (2013), Disney/Marvel extended a scene showing Chinese doctors helping the hero in need.<sup>263</sup> The calculation was spot-on; *Iron Man 3* smashed box office records, earning a record \$21.1 million on its opening day.<sup>264</sup> In Fox’s







financing deal with Sony Pictures in September 2016.<sup>290</sup> With influence in production, distribution, and exhibition sectors, China-based companies have embedded themselves in Hollywood's film factory.

As Chinese influence increases and the PRC market grows ever more central to revenue streams, it is likely that big budget Hollywood movies will bend toward SAPPRT's needs. Censorship will move to the pre-production phase: big budget films that offend Chinese sensibilities can simply no longer be green lit by risk adverse studios tied to Chinese investors. To succeed in Hollywood a film must be suitable in Shanghai and bankable in Beijing. The film industry has achieved a global reach, but the marketplace is far different than what Hollywood's movie pd dir7.q.38 545. Tm2[00B6}3.d492mod

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Appendix  
U.S.-PRC Box Office Comparison 2005-2016<sup>291</sup>

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291. Patrick Brzeski and Pamela McClintock, *How Hollywood Can Break Through China's Box Office* HOLLYWOOD REP. (Mar. 9, 2012), <http://www.hollywoodreporter.com/news/china-trade-deal-hollywood-box-office-revenue-297719>; Chinese Box Office Grow 43% to Hit \$908m in 2009 CHINA DAILY

Year	United States	China
2005	\$8,900,000,000	\$256,000,000
2006	\$9,100,000,000	\$335,000,000
2007	\$9,700,000,000	\$336,000,000
2008	\$9,700,000,000	\$630,000,000
2009	\$10,600,000,000	\$908,000,000
2010	\$10,500,000,000	\$1,470,000,000
2011		