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SECOND AFACT SUBMISSION TO THE COMMONWEALTH GOVERNMENT ON THE PROPOSED CHINA / AUSTRALIA FREE TRADE AGREEMENT

OCTOBER 20, 2005

China FTA Task Force
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1. Prior to your meetings with Chinese officials next week in Beijing, we would like to bring to your attention again the submission that we made on 1 July this year. The facts in this report remain current and the full report is again attached for your consideration prior to your discussions.
 2. There have been developments that may be raised by Chinese officials during any discussion on the film industry in China and the various bars that are put on foreign engagement including the failure to deal with piracy in any convincing way. The Ministry of Culture and the State Administration of Radio, Film and Television have entered into a "Memorandum of Understanding" with the Motion Picture Association on 13 July to protect the films of its members during theatrical release in China. There are indications that this agreement has brought some fruit and in the last few weeks as the numbers of pirate discs of the movies under protection have decreased in shops surveyed in Beijing, Shanghai, Guangzhou and Shenzhen.
 3. Clearly this is a positive development and hopefully may make some slight difference to the box office of MPA member company films while they are in release and when they are eventually released in home video format. It will have no effect on the protection of other international films and the Australian Government may wish to have regard to this concerning Australian films released in China. But the agreement must be kept in context. China still has done nothing of any substance to put infringers in jail – the only tried and proven method of grappling with piracy. The lowering of the criminal threshold last year has had no detectable result either in criminal cases brought or in the rampant levels of film piracy in China. Foreign films are still restricted to 20 revenue sharing films a year and foreign film producers can only market their films to one government controlled monopoly (the China Film

Group). This lack of competition ensures that the revenue of the foreign producer is close to 25% of what might be expected in other countries.

4. This is cynical business practice by China that ensures its public can illegally satiate their desire to watch foreign movies using pirate product that is readily available at absurdly discounted rates and with zero benefit to the foreign film producer. This creates the illusion of economic advancement by exercising a policy calculated to rip off copyright owners.
5. Without an open film market and criminal sanctions against pirates China will never get the measure of the corrupt industry it continues to tolerate. There is little or no substance in seizure figures when the cost of the seized product is an insignificant fraction of the money that is being made in this black market industry. There is no relevance in administrative action numbers when product in the vast majority of cases is simply seized and no fine is ever imposed. Even in the unlikely case that a fine is imposed, the amount is so low as to be irrelevant.
6. China has developed a legal system that can, when it needs, be extremely effective in stopping crime, and other activities not tolerated by the government. The mere fact that the counterfeit industry continues to thrive in China right under the noses of officials is sufficient proof of the attitude that the government takes to the problem.
7. We strongly advocate that the Australian Government take notice of these practices that cripple the market for international films in China and, significantly, retard the development of their own strong and independent film industry. China now produces 62% of the counterfeit products brought into the US. This is not happening by mistake nor is it happening without the full knowledge of the Chinese government. They will continue to flagrantly ignore their duty to act as a responsible country under the WTO until such time as countries such as Australia bring them to task.
8. On behalf of the film industry in Australia we very much appreciate the Australian Government taking up these issues in the context of the China Australia Free Trade agreement.

Adrienne Pecotic
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