

**SUBMISSION**  
**BY**  
**MEDIA ENTERTAINMENT AND ARTS ALLIANCE**  
**TO THE**  
**DEPARTMENT OF FOREIGN AFFAIRS AND TRADE**  
**AUSTRALIA-CHINA FREE TRADE AGREEMENT**  
**FEASIBILITY STUDY**

**JUNE 2004**

**The Media Entertainment and Arts Alliance**

The Media Entertainment and Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

## Executive Summary

The Media Entertainment and Arts Alliance welcomes the opportunity to provide input into the Feasibility Study examining the viability of negotiating a bilateral free trade agreement (FTA) between Australia and China following the signing of the Australia-China Trade and Economic Framework on 24 October 2003.

The Alliance considers that the nation's trade objectives are best achieved in the context of multilateral agreements such as the General Agreement on Trade in Services (GATS) and the General Agreement on Tariffs and Trade (GATT). As China has now joined the World Trade Organisation (WTO), the Alliance considers that Australia's trade objectives with China will be best served in the context of the WTO and could be achieved through the course of the current Doha Round which, since meetings in Brazil this month, finally shows signs of real progress being made, especially in areas such as agriculture.

However, in the event Australia does proceed to negotiate a bilateral free trade agreement with China, the Alliance favours a positive listing agreement – such as is the case with GATS and the recently signed agreement between Australia and Thailand.

Consistent with current Federal Government policy in respect of GATS, Australia's position in all positive listing free trade agreements must continue to be one where no commitments are made that might in any way impact on the Government's ability to give effect to its social and cultural objectives in respect of Australia's cultural industries now and into the future.

The Alliance is not supportive of negative listing agreements such as the Singapore Australia Free Trade Agreement (SAFTA) and the proposed Australia United States Free Trade Agreement. However, the Alliance considers that the Annex II reservations included in SAFTA in respect of Australia's cultural industries, provide appropriate protections for Australia's cultural industries to the extent possible in negative listing agreements, and consequently should serve as a model for all future bilateral negative listing agreements. The Alliance is opposed to the concessions made in the proposed AUSFTA wherein a broadly drafted comprehensive cultural exemption or reservation was not negotiated.

Consequently, in the event the Government considers it appropriate to enter into a bilateral free trade agreement with China, ideally a positive listing model will be utilised and no commitments made in respect of cultural industries or, in the event the negative listing model is pursued, the Alliance considers such an agreement must incorporate a clearly drafted broad based cultural exception or reservation that:

- is technology neutral;
- allows for the Government to introduce protective legislation in the future to accommodate technologies including delivery platforms under development or not yet invented;
- allows for the Government to make protective strategic interventions at any time and in any manner it believes appropriate to maintain, strengthen or enhance development, production and/or the delivery and distribution of any sector or aspect of the cultural industries;
- is self-judging and not subject to dispute;
- is not subject to standstill or roll-back provisions, and
- is able to override all provisions in the entirety of the agreement including any commitments that might be made in respect of e-commerce.

Additionally, the Alliance believes that an FTA with China must have a clearly drafted immigration exception or reservation that:

- incorporates current restrictions on temporary business entry in the entertainment and cultural sectors;
- allows for such changes as the Government may consider necessary in the future;
- is self-judging and not subject to dispute;
- is not subject to standstill or roll-back provisions,

and:

- incorporate protection, enhancement and enforcement of labour standards, and
- make unlawful the use of reductions in domestic health, safety and labour standards to attract overseas investment.

Finally, as pirating is an issue for all those who trade intellectual copyright, the Alliance strongly recommends that Australia pursue the development of enhanced copyright protection mechanisms in China.

The Alliance believes that in accordance with rising international concerns about the treatment of cultural industries in free trade agreements, it is now more than ever appropriate that Australia join the International Network on Cultural Policy (INCP) and lend this country's support to current UNESCO initiatives to develop an international instrument on cultural diversity that quarantines cultural industries from all trade agreements.

### **Government support to Australia's cultural industries**

“All human beings have a need and a capacity to create. From weaving to websites, they seek outlets for artistic self-expression and for contributing to the greater community. The encouragement of creativity from an early age is one of the best guarantees of growth in a healthy environment of self-esteem and mutual respect, critical ingredients for building a culture of peace.

“But creativity does not occur in a vacuum. It must be nurtured, allowed the freedom to exist and grow legally protected, and it must not be repressed or censored.”

*Creativity and the Arts, UNESCO<sup>1</sup>*

The right to determine cultural sovereignty is recognised as a fundamental right of nations. The ability to participate in the culture of their nation is a fundamental human right.

The cultural output of a nation is manifested in cultural goods and services.

Consequently, giving effect to these rights has increasingly come into conflict with the global impetus for trade liberalisation that commenced following World War II when the hopes of those at Bretton Woods that international trade would foster a world economy and thus mitigate against wars between nations resulted in the provisional implementation of the GATT in 1947.

To avoid such conflicts, UNESCO is currently developing an international instrument for cultural diversity that will hopefully allow for the separation of culture from trade agreements.

In the meantime, countries around the world have sought to foster and protect their own cultural industries.

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<sup>1</sup> *Creativity and the Arts, UNESCO*, available on-line at <http://www.unesco.org/culture/creativity>.

In the early 1960s, GATS negotiations included moves by the United States for liberalisation of television. The Menzies Government's instructions to the Australian delegation were that Australia "would prefer to retain complete freedom of action and not enter into any commitment on the matter, particularly at a time when the television industry in Australia is in its infancy and the lines of its development are uncertain".

That position continued to enjoy bipartisan support until January 2004.

"Australia has long recognised the essential role of creative artists and cultural organisations in reflecting the intrinsic values and characteristics of our society, and is committed to sustaining our cultural policy objectives within the context of multilateral trade agreements."<sup>2</sup>

Australian Intervention, CTS Special Session, July 2001, Geneva

Unfortunately, at the time of writing, Australia is set to give effect to a free trade agreement wherein that policy position has been compromised with significant concessions granted to the United States.

This situation is unfortunate and the Alliance earnestly hopes that it will not be repeated either in the GATS negotiations or in negotiations with China.

Australia currently supports its cultural sector through an effective web of mechanisms that combines regulation, subsidy and tax concessions which include:

- funding of national training institutions – the Australian Film Television and Radio School, the National Institute of Dramatic Art, the National Institute of Circus Arts;
- direct subsidy for the development and production of film and television productions through appropriation to the Australian Film Commission, Film Finance Corporation Australia, the Australian Children's Television Foundation and Film Australia;
- national free to air broadcasting through the ABC and SBS;
- licensing of community broadcasting;
- regulation of Australian content on commercial free to air television networks;
- expenditure quotas imposed on certain subscription television channels;
- indirect subsidy through tax concessions for the production of audiovisual programs through Divisions 10B and 10BA of the Income Tax Assessment Act and the recently introduced tax offset rebate for high budget film and television productions;
- direct subsidy for the performing arts and visual arts through appropriation to the Australia Council;
- direct subsidy administered by the Department of Communications Information Technology and the Arts for Artbank and programs for contemporary music touring, festivals and performing arts tours;
- regulation of the temporary entry of performers and crew under the Migration Regulations;
- international co-production treaties and memoranda of understanding covering film and television production;
- rules governing foreign ownership of media and cross media ownership, and
- support for the preservation of archives through the National Film and Sound Archive.

Many of these measures are mirrored by state governments and, in respect of the visual and performing arts, by local governments.

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<sup>2</sup> Australian Intervention on Negotiating Proposal on Audiovisual Services, CTS Special Session, July 2001, Geneva.

### History of the Chinese film industry<sup>3</sup>

The first film screened in China was shown in Shanghai in August 1896. The following year films produced by Edison were screened. In 1898, photographers sent to China by Edison shot footage for a documentary called *China Honour Guard*. In January 1902, films were introduced to Beijing with the screening of the extraordinarily titled *Black People Eat Water Melon* along with a number of other comic shorts.

Adapted from a Beijing opera by the Beijing Fengtai Photo Studio and Tan Xinpei, a renowned Peking Opera performer, the first Chinese film was *The Battle of Dingjishan* (also translated as *Conquering Jun Mountain* and *The Battle of Mount Dingjun*) produced by Ren Jingfeng in 1905.

In 1907 the Beijing Grand Theatre was refurbished to facilitate projection facilities and the first custom built cinema, financed by foreign investors, Ping'an Movie, opened.

However, the Chinese film industry is considered to have commenced in 1913 with Zheng Zhengqiu and Zhang Shichuan's film *The Difficult Couple*. A fledgling industry began to develop but the Chinese film experience continued to be dominated by imported films. During the 1920s, American technicians trained Chinese in Shanghai, and America's influence was felt for the following two decades.

Four years after the first "talkie", *The Jazz Singer*, was produced in the United States, the first Chinese "talkie" was produced in 1931, *The Songstress, Red Peony*, by Star Studio, the largest of the production studios in Shanghai.

The 1930s saw the maturing of the industry in China. In Shanghai, an early centre of production, approximately 60 films were produced annually. The invasion of Manchuria by the Japanese in 1931 prompted a new wave of films that dealt with resistance to invasion, imperialism and feudalism and a burgeoning sense of national identity.

The Chinese industry continued to grow and flourish during the 1940s and in the 17 years between the establishment of the People's Republic of China in 1949 and the Cultural Revolution (1966-1976), 603 feature films and 8,342 reels of documentaries and newsreeps were produced. The industry was state owned, with the state owning the studios and financing, producing, distributing and exhibiting production. Careers in the industry were full-time jobs for life. The state also determined what overseas films were allowed into the country.

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<sup>3</sup> This history of the Chinese industry has been based principally on *China Through A Lens*, China Internet Information Center, available online at [www.china.org.cn](http://www.china.org.cn), *Hollywood, Globalisation and Film Markets in Asia: Lessons for China?* Stanley Rosen, University of Southern California, available online at [www.asianfilms.org](http://www.asianfilms.org), "The Wolf at the Door": *Hollywood and the Film Market in China from 1994-2000*, Chapter prepared for Eric J. Heikkila and Rafael Pizarro, eds., *Southern California in the World and the World in Southern California* (Greenwood Publishing Group, forthcoming), Stanley Rosen, Department of Political Science, University of Southern California, available online at [www.asianfilms.org](http://www.asianfilms.org), *Market Forces: Chinese Cinema in 2002*, Maria Ruggieri available online at [www.asianfilms.org](http://www.asianfilms.org) courtesy of the Far East Film Festival, *Under the Shadow of Commercialization: The Changing Landscape of Chinese Cinema*, Dr. Shaoyi Sun, University of Southern California, available online at [www.asianfilms.org](http://www.asianfilms.org) and information provided by Film Australia from reports compiled after visits in 1994.

The industry was effectively destroyed during the Cultural Revolution with no films being produced between 1966 and 1972. Those that were produced between 1973 and 1976 reflected the views of the state. In short, the main role of the film industry was considered to be the building of a “socialist spiritual civilisation”.

In the years following the Cultural Revolution, cinema again emerged as a form of popular entertainment, albeit within the constraints imposed by censorship. In particular, animation flourished drawing on a variety of Chinese folk art genres including paper cuts, shadow plays and puppetry.

The early eighties saw the rise of what has been dubbed “the fifth generation of filmmakers” – filmmakers like Chen Kaige, Zhuangzhuang Tian, Jun-Zhao Zheng, Ziniu Wu, Ping He, Huang Jianxin and Zhang Yimou, many of whom were graduates of the Beijing Film Academy. Films like Chen Kaige’s *Yellow Earth* (1984) and Zhang Yimou’s *Red Sorghum* (1987) reached international audiences and gained critical acclaim around the world.

In January 1986, the film industry was transferred from the Ministry of Culture to the newly formed Ministry of Radio, Film and Television to bring it under “stricter control and management” and to “strengthen supervision over production”.

By some measures, the film industry continued to flourish in the 1990s with many films garnishing international awards including Chen Kaige’s *Farwell My Concubine* which shared the Palme D’Or at the Cannes Film Festival with Australian Jane Campion’s *Piano* in 1993, Shaohong Li’s *Blush* (1994), Ping He’s *Red Firecracker Green Firecracker* (1993) and Zhang Yimou’s *Raise the Red Lantern* (1991).

The nineties also saw the rise of the latest wave of Chinese cinema from the so-called sixth generation of filmmakers with the work of directors like Zhang Yuan, *East Palace West Palace* (1996), Wan Ziaoshuai, *Beijing Bicycle* (2000) and Jia Zhangke, *Unknown Pleasure* (2002).

In 1990, 134 Chinese films were released in China, a number that increased to 146 films in 1995, but declined to 91 in 2000.<sup>4</sup>

In 1994, the Film Bureau of the Ministry of Radio Film and Television advised China had 16 feature film studios, six short film studios, 3 animation studios, a number of post-production facilities and approximately 500 television stations comprising an industry employing 550,000 people. Between 1990 and 1994, approximately one fifth of the annual slate of feature films were co-productions made with a range of countries including Hong Kong, Taiwan, Japan, the United States, France and Italy<sup>5</sup>.

However, behind this output and the international success of many of the fifth and sixth generation filmmakers lay another story.

From the late 1970s when Deng Xiaoping launched the economic reforms and open door policy to modernise the nation, China has undergone massive change albeit with some occasional swings in the opposite direction. However, compared with the rather rapid economic takeoff in many sectors, reform in the film industry was sluggish. From 1979, as

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<sup>4</sup> Zhao Zizhong, *Fukan Zhongguo dianying chanye* [An Overview of the Chinese Film Industry], page 4, cited in *Hollywood, Globalisation and Film Markets in Asia: Lessons for China?*, Stanley Rosen, University of Southern California, available online at [www.asianfilms.org](http://www.asianfilms.org).

<sup>5</sup> It should be noted that China uses the term co-production differently to the way it is used in Australia. Typically, Chinese co-productions mean films produced with some level of foreign finance.

indicated above, Chinese film officials re-emphasised the importance of politics and the production of films that reflected the need to be consistent with the values of the socialist spiritualist society of China over commercial and artistic considerations. Many fifth generation films were financed by the state and produced at the state-owned studios, principally the Beijing, Shanghai, Xi'an and Guangxi studios. Ideologically constrained, these filmmakers were commercially unconstrained by the need to secure finance or recover production costs at the box office.

The relative disregard for art and commerce had disastrous consequences at the box office. In 1979, China produced only 50 films but Chinese theatres attracted 27.9 billion customers. By 2001, approximately 100 films attracted only 220 million cinema-goers. However, the decline in actual box office revenue was not as steep as the decline in audiences. Nonetheless, in 1992, box office receipts totalled RMB1.99 billion but by 1999, receipts had dropped to less than RMB900 million and to RMB840 by 2001. Many of the films seen by audiences overseas had yet to be seen on screens in China, unable to satisfy the requirements of the censors.

Following Deng Xiaoping's "Southern Tour" in early 1992 and the 1992 National People's Congress call for an acceleration of economic reform, the film industry found competition from new sources. Karaoke bars, discos, video parlours – and spiralling video piracy – provided intense competition. By 1994, "cabarets" had increased from one to several hundred, there were at least 200,000 karaoke bars and 60,000 "video viewing rooms". In addition to increased competition, the low quality of government approved films and poor distribution exacerbated the problem.

Desperate for a solution but unwilling and unable to relax ideological restrictions on content, limited reforms were introduced in 1992. The bans on Zhang Yimou's films *Judou* and *Raise the Red Lantern* were lifted. A large film festival was held in Changchun at which Zhang Yimou's latest film *The Story of Qiu Ju* was awarded best film and then previewed at the Great Hall of the People.

But it was insufficient. Pirated videos and laserdiscs flooded the market. With inflation running at 20 percent in major cities, state support was less forthcoming particularly from 1996 onwards. The old studio system gradually started to disintegrate and filmmakers started turning to other sources of finance. A number of independent production companies emerged, some privately owned, some jointly owned with partners in Hong Kong and Taiwan.

The government owned studios continue to produce "main melody films" (zhu xuanlu) – films that reflect the patriotic principles long espoused by the state – but in declining numbers with the Xi'an studio producing only five films in 1998.

In 1998, state control of film, television, radio and telecommunications was overhauled and the State Administration of Radio, Film and Television (SARFT) and Ministry of Information Industry established.

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| <p><b>State Administration of Radio, Film and Television (SARFT)<sup>6</sup></b></p> <p>SARFT is the body that oversees radio, film and television in China. It administers China Radio International, China National Radio, China Central Television, the China Film Administrative Bureau, the Academy of Broadcasting Science, the Broadcasting Information Network Center, the China Record Company, the China Broadcasting Arts Troup, China</p> |
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<sup>6</sup> Source: China Online – The Information Network for China, PRC Ministry/Commission Profile, SARFT, available online at [www.chinaonline.com/refer/ministry\\_profiles/SARFT1.asp](http://www.chinaonline.com/refer/ministry_profiles/SARFT1.asp).

Council for TV Art, the Design Institute of SARFT, the Radio and Television Publishing House, the Beijing Broadcasting Institute and the Beijing Film Academy.

SARFT reports directly to the State Council and is responsible for approving the content of films and radio and television programs. It stipulates the proportion of time allotted for foreign television programs so that, in accordance with the requirements of the Chinese Communist Party (CCP) Propaganda Department, “the Chinese people are not seeing programs that offend Chinese sensibilities or challenge the CCP’s worldview”.

It oversees the operation of China Central Television (CCTV), the national television network, approves the establishment of cable channels and controls access to satellite and cable networks and supervises their operation.

SARFT was established in March 1998 following a major restructure of the former Ministry of Radio, Film and Television (MRFT) under the direct control of the State Council. It lost the ministerial status that MRFT had enjoyed but retained regulatory control of broadcasting that the new super ministry that emerged from the restructure, the Ministry of Information Industry (MII) had hoped to control.

While the studio system continues today, some substantial changes have occurred. As films can be made independently but not released without state approval, the studios are able to secure an income stream by selling their banners to independent productions. The dramatic penetration of television sets in Chinese homes has driven a burgeoning demand for product and the studios have been able to augment the capacity of the networks to produce soap operas. They have also entered the market producing television commercials. And increasingly they are co-producing films with other investors.

By the end of the nineties, the industry had diversified. The auteurs of the fifth and sixth generation were increasingly able to finance their productions in the international marketplace. Main melody films continued to be produced with government finance. A new generation of filmmakers turned their attention to making low budget light comedies and romances targeted at the Chinese market and financed by Chinese private investors. And finally dramatic growth in demand for television series underpins the employment of an increasing number of filmmakers who would have otherwise sought to produce feature films.

Arguably, the most dramatic changes to the Chinese film industry have come in the wake of China’s accession to the World Trade Organisation (WTO) on 11 December 2001.

With its entrance to the WTO and opening its market further, China is now endeavouring to draw audiences back to cinemas to see Chinese films and do so in competition with Hollywood productions which currently account for 70% of cinema box office.

Just what will happen in the near future and in the longer term is less than clear. However, some trends are emerging.

On the one hand, China has been developing blockbusters to compete with Hollywood. Zhang Yimou’s *Hero* – with its dramatic visual effects and wire stunt work – reportedly took RMB242 million by February 2003 breaking all Chinese box office records for a domestic production. Not only was it a large (by Chinese standards) budget, but it spent considerably more in advertising and promotion. Whereas the average Chinese film has an advertising and promotion budget of RMB10,000, the budget for *Hero* was RMB15 million – albeit way short of the average American marketing budget of US\$31 million.



At the other end of the spectrum, *Cala, My Dog!*, accepted for screening at the Berlin International Film Festival and budgeted at approximately RMB700,000 – or three percent of the budget of *Hero* – represents a trend towards producing small scale art house films that can be marketed cheaply and find audiences at home and abroad by exploring universal themes through the stories of the lives of ordinary people.

Both *Hero* and *Cala, My Dog!* were financed by private investors.

It would also appear that some lessons about selling internationally have been learned. *Crouching Tiger, Hidden Dragon* attracted audiences around the world. However, its success did not result in much profit for its investors as Sony acquired the US rights outright, the presale being used to part finance the production budget. Conversely, the contract with Miramax for *Hero* stipulated that box office receipts in excess of US\$15 million in the United States be shared with the investors.

Sony has been the most active foreign player in the film industry in China to date, internationally distributing a number of films from China's sixth generation of filmmakers. In 2003 announced it planned to invest US\$100 million in China's film and music industries within three years and shoot five films a year in China. Sony chairman Nobuyuki Idei expects China to be Sony's second largest market after the United States by 2008.

In television, the government push for the production of telemovies, largely driven by China Central Television, appears to be paying dividends. 110 were produced in 2003 and, as the quality of telemovies has improved in the past couple of years, they are being rewarded with increased ratings.<sup>7</sup>

By contrast with the success of *Finding Nemo* and *Harry Potter*, Chinese children's films have consistently failed to find audiences, in no small measure due to the fact that programs and films for children have been driven by the desire of the state to ensure they convey messages that reflect the ethical and socialist concerns of the state, as is the case with main melody films produced for adults. Consequently, in June this year, SARFT announced that it would allocate funds to finance children's films and children's cartoons. Making the announcement, Zhang Pimin, Deputy Director of SARFT, noted, "China has a huge market for children's movies, since it has over 300 million children." SARFT has also ordered all provincial level television stations to launch a dedicated channel catering to children by the end of 2006 with one third required to launch their children's station by the end of this year. All will be required to produce and broadcast cartoons, movies, telemovies, educational, entertainment and feature programs. SARFT is also contemplating establishing a special children's cinema circuit.<sup>8</sup>

The other trend that will be significant to the development of the Chinese industry is a relaxation of the censorship regime.

Most of the sixth generation films dealing with the struggles of ordinary people that have screened at overseas film festivals, won awards and found art house movie audiences abroad have not been approved for screening in China.

Unlike film and television productions, Chinese authorities vet DVDs only after they are released. With stringent and prudish content guidelines and no ratings system, many Chinese

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<sup>7</sup> *TV Movies Start Leaving their Mark*, China Daily, 3 June 2004, available online at <http://service.china.org.cn>.

<sup>8</sup> *China to Spend More on Children's Movies, Cartoons*, Xinhua News Agency, 1 June 2004, and *Children's Movies Suffer Low Box Office Receipts*, Xinhua News Agency, 8 June 2004, available online at <http://service.china.org.cn>.

films avoid facing rejection by the censors and go straight to a DVD release. The problems with DVD release are several. Firstly, if the production is successful, profits are more than likely to be wiped out by pirated versions. And recently, Chinese filmmakers are finding that distributors like Beijing Spring and Autumn are prone to reversioning their work before release. In a recent case, the producers of *Maiden Work* were dismayed to discover the DVD release was repackaged, retitled, re-edited and with a synopsis on the cover suggesting a non-existent love triangle. Their art house film about lesbians was marketed, according to Li Dayu, one of the film's producers, like a triple-X movie.<sup>9</sup> In any western country, such unauthorised reversioning and misleading advertising would lead to immediate litigation.

Nonetheless, *Cala, My Dog!* was successful in gaining censorship approval. However, whether this achievement genuinely represents a breakthrough or not remains to be seen.

### **The audiovisual industry in contemporary China**

The audiovisual sector in China is currently undergoing dramatic and rapid change, change that is also hard to predict.

As indicated above, culturally, China was effectively a closed market from 1949. Further, its cultural industries until very recently were for five decades financed by, owned and controlled by the government. It was a vertically and horizontally integrated industry with the state controlling, production, distribution and exhibition. Although the government owned studio system is changing considerably, China nonetheless still has a number of very large state controlled studios – see for instance, Attachment 4, Hengdian TV and Movie City.

From 1992, China started to open its audiovisual market to product from overseas. Until that time, years of discussions “had always met with firm resistance to go beyond a willingness to accept a small number of Hollywood films each year for a flat fee of \$30,000 to \$50,000 per film”<sup>10</sup>. Figures vary, but it seems that about thirty films a year were typically allowed entry.<sup>11</sup> With the announcement that the government would release ten “excellent” foreign films annually that would be able to share revenue with the distributor, “[e]ven Xinhua, the official government news agency, gushed that ‘an end is in sight to the 40-year-old tradition of buying out-dated and low-grade but cheap foreign movies.’”<sup>12</sup> However, the relaxation on entry restrictions remains small. With accession to the WTO, China doubled the limit on large budget overseas films able to participate in distribution revenue allowed into the Chinese market from ten to 20 annually.<sup>13</sup> The threshold is a maximum and the effective quota need not necessarily be filled if China determines certain productions have “improper content”<sup>14</sup>. It was anticipated that this quota for imported films would continue to rise from 20 in the first year of accession to the WTO, to 40 a year after and to 50 within three years. However, the

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<sup>9</sup> Source: *Art Films Are Repackaged as Porn to Sell in China* by Jonathan Ansfield, Reuters, 9 June 2004, available online at <http://news.yahoo.com>.

<sup>10</sup> “*The Wolf at the Door*”: *Hollywood and the Film Market in China from 1994-2000*, Chapter prepared for Eric J. Heikkila and Rafael Pizarro, eds., *Southern California in the World and the World in Southern California* (Greenwood Publishing Group, forthcoming), Stanley Rosen, Department of Political Science, University of Southern California, available online at [www.asianfilms.org](http://www.asianfilms.org).

<sup>11</sup> Also see Attachment 5.

<sup>12</sup> “*The Wolf at the Door*”: *Hollywood and the Film Market in China from 1994-2000*, Chapter prepared for Eric J. Heikkila and Rafael Pizarro, eds., *Southern California in the World and the World in Southern California* (Greenwood Publishing Group, forthcoming), Stanley Rosen, Department of Political Science, University of Southern California, available online at [www.asianfilms.org](http://www.asianfilms.org).

<sup>13</sup> *Hollywood Eagerly Awaits China's WTO Entry*, 25 January 2000, available online at [www.chinaonline.com](http://www.chinaonline.com).

<sup>14</sup> *You ought to be in (Chinese) pictures: Film market to open after WTO entry*, 10 October 2000, available online at [www.chinaonline.com](http://www.chinaonline.com).

figure currently remains at 20 and the maximum of other titles allowed into China on a flat fee basis remains at 30.<sup>15</sup>

Throughout the nineties and to date, American films principally filled the quota of “excellent” allowable imported films, followed by films from Hong Kong.

Nonetheless, Hollywood’s access to the Chinese market was not always an easy ride.

In 1997, Chinese authorities objected to three American films – MGM’s *Red Corner*, Sony/Columbia/TriStar’s *Seven Years in Tibet* and Touchstone/Disney’s *Kundun* – because of alleged anti-China bias. Even though none were slated for release in China, such was the ire of the Chinese authorities that a ban on the importation of any films from these studios was implemented. The bans were eventually lifted but only after considerable expense on the part of the studios and high level delegations to China arguing for a review. In the case of MGM, it took three years before China would reconsider.

During 2003, of the 20 imported quota films screened in China, 18 were from Hollywood with one from Hong Kong and one from the Republic of Korea. Concern about the extent to which American films dominate the quota, has led to Chinese authorities seeking films from countries other than Asia and the United States.<sup>16</sup> Initiatives thus far have included a showcasing of French films in a presentation festival and this month of British films. Ten Australian films screened this year in Beijing in April and May as part of the inaugural Australian Film Festival and eight will screen in the Panorama section of the Shanghai Film Festival later this year.<sup>17</sup> However, as yet these initiatives have not resulted in commercial releases.

Even with the quota, certainty for those films approved remains tenuous. For instance, on 18 May this year, it was announced that “Imported films will be banned from Chinese mainland cinemas in July and October”<sup>18</sup>. The ban was imposed by SARFT “which recently limited imports of overseas productions to reduce onscreen sex and violence and benefit the healthy development of youngsters”<sup>19</sup> and wanted to keep July and October available exclusively for the screening of domestic productions. As a result, the release date for *Troy* was pushed back to 12 June, *Spiderman 2* postponed until August and a revised release date for *Harry Potter 3* has not yet been confirmed. Welcomed by Chinese filmmakers and distributors, the news was greeted with concern by Chinese exhibitors worried about a drop-off in box office and dismay in the United States as delayed release allows a major window of opportunity for pirated videos and DVDs to flood the market. Such decisions reflect an underlying tension between Chinese government owned exhibitors keen to maximise box office returns regardless of the source of the films screened and the imperatives driving SARFT which include the obligation to ensure that films approved for distribution are not “programs that offend Chinese sensibilities or challenge the CCP’s worldview”<sup>20</sup>.

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<sup>15</sup> Background information on the Chinese audiovisual market compiled by AFMA<sup>®</sup>, formerly known as the American Film Marketing Association, last updated February 2003.

<sup>16</sup> *Film Watchdog: No Ceiling on Movie Imports from US*, Xinhua News Agency, 27 May 2004, available online at <http://service.china.org.cn>.

<sup>17</sup> *An Asian-centred Australian cinema*, Mike Walsh, Real Time, available online at [www.realtimearts.net/rt61.walsh.html](http://www.realtimearts.net/rt61.walsh.html).

<sup>18</sup> *Harry Potter, Spiderman Banished for Holidays*, Shanghai Daily, 18 May 2004, available online at <http://service.china.org.au>.

<sup>19</sup> *Harry Potter, Spiderman Banished for Holidays*, Shanghai Daily, 18 May 2004, available online at <http://service.china.org.au>.

<sup>20</sup> Source: China Online – The Information Network for China, PRC Ministry/Commission Profile, SARFT, available online at [www.chinaonline.com/refer/ministry\\_profiles/SARFT1.asp](http://www.chinaonline.com/refer/ministry_profiles/SARFT1.asp).

Since opening its audiovisual market to overseas investors, China now allows foreign companies to invest up to 49% in revenue sharing films and allows investment in theatres, again with a cap of 49%. China expects that foreign investors will enter the film market primarily to export Chinese films, invest in film production on the Chinese mainland and invest in building cinema complexes. However, importation of foreign films is still controlled by China Film International (formerly the China Film Import and Export Corporation) and distribution remains Chinese controlled.

The first major steps on the path to reforming film distribution occurred in 2002 when SARFT announced that the China Film Group, the entity responsible for distribution of all films in the country, was establishing a second company and that both companies would then handle distribution of imported films. Additionally all municipalities and provinces (except western provinces) were expected to establish distribution and exhibition companies by 1 June 2002. Eight provinces and municipalities – Beijing, Shanghai, Jiangsu, Zhejiang, Guangdong, Sichuan, Hubei and Hunan – had to establish two new companies each. However, the Film Import and Export Corporation is to continue as the sole agency responsible for importing overseas films. The *Beijing Ribao (Beijing Daily)* reported on 24 April 2002: “With both film producers and distributors conceding some profits [the report did not say to where the profits would be conceded], the new mechanism changes the past centralized distribution mode into a cinema-based distribution mode that takes into account market demand.”<sup>21</sup> It was anticipated the new model would provide exhibitors with more flexibility and encourage and support domestic production.

This snapshot of the film industry implies that the Chinese do not have access to many foreign films whereas this is not in fact the case.

Piracy has been flourishing in China, and growing at an alarming rate since the early nineties. Originally, pirated films were predominantly illegally imported from Taiwan and Malaysia but increasingly pirated copies are being produced in mainland China.

The Motion Picture Production Association of America (MPAA) operates anti-piracy programs in 13 countries in the Asia Pacific region. The MPAA reports that in 2000, “approximately 17 million pirate optical discs (predominantly VCDs) were seized in this region alone”.<sup>22</sup> The figures cited by Valenti do not include pirated audio CDs and since 2000, trade in pirated DVDs has skyrocketed. (Also see Attachment 6.)

In evidence given before the United States Senate Committee on Foreign Relations on 9 June 2004, Jack Valenti, President and CEO of the MPAA, singled out China and Russia as the two countries where piracy is growing exponentially saying “piracy problems are only becoming more severe. In 2002, the piracy rate in China for American films, home video and television was about 91%. In 2003, the pirates captured at least 95% of that market. The current level of piracy is worse than it has been at any time since 1995, when the rate was 100% ... China is again becoming a source of pirate discs circulating in world markets – just as it was in 1995.”<sup>23</sup>

Piracy, Valenti pointed out, is not confined to the private sector. “Television piracy is also a major concern. The government runs 38 provincial broadcast television stations and 368 local stations, which commonly broadcast unauthorised content, often in reliance on counterfeit

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<sup>21</sup> Report by Beijing Rabao of 24 April 2002 cited in Film-distribution reform takes effect June 1, 30 April 2002, China Online, available at [www.chinaonline.com](http://www.chinaonline.com).

<sup>22</sup> Anti-Piracy, MPAA, available online at [www.mpaa.org](http://www.mpaa.org).

<sup>23</sup> Testimony of Jack Valenti, President and CEO, MPAA, before the United States Senate Committee on Foreign Relations: *International Intellectual Property Piracy: Stealing America's Secrets*, 9 June 2004, page 5, available online at [www.mpaa.org/jack/](http://www.mpaa.org/jack/).

'letters of authorization' or 'licenses' from companies in Hong Kong, Thailand or Taiwan, which purport to convey broadcast rights. In addition, the more than 1,500 registered cable operators in China routinely include pirated product in their program schedules."<sup>24</sup>

The impact of piracy is not confined to foreign productions and in April 2004, Vice Premier Wu Yi announced that China will lower the criminal threshold for piracy and increase the number of infringing acts subject to criminal penalties by the end of the year.

With piracy being driven by large private sector organisations as well as by individuals with camcorders in cinemas, and given China's track record in combating piracy to date, it remains to be seen whether these new measures will make serious inroads into the problem.

## Television in China

Mao Tse Tung decreed that a television industry would be established in the 1950s. By the late 1970s, television reached an audience of 80 million. By 2002, almost all Chinese are able to watch television variously through terrestrial, cable or satellite. In 2001, average television viewing time was 184 minutes per day.<sup>25</sup> In 2001, the top ten most advertised brands on Chinese television were Chinese with commercials for foreign products making up less than 10% of the total market.

Source: Overview: 2002 CSM TV Book  
CSM (CVSC/SOFRES Media) measures ratings in China

Foreign programming on terrestrial television is limited to 25% and to 15% during prime time viewing hours of 6pm to 10pm. During prime time, foreign programs cannot run longer than 40 minutes. On cable television, foreign programming is restricted to 40 percent of broadcast time. Subquotas for animation restricted imported animated productions to 40% of all animated programs broadcast and in respect of animated programs for children, foreign animated programs are restricted to 25% of all animated children's programs.<sup>26</sup>

## Performing arts industry in China

Like film and television, the performing arts sector since 1949 has predominantly been owned by the state with performers and technicians engaged as full-time employees.

The Ministry of Culture<sup>27</sup> oversees cultural activity in China. Information on the structure and role of the Ministry can be found at Attachment

In 2002, the Ministry of Culture announced a series of reforms including the removal of ownership restrictions, the introduction of agents, the introduction of the use of contracts and regulation of the private sector.<sup>28</sup> Reforms would apply to music, theatre, dance companies, physical theatre circuses, puppetry companies and fashion shows.

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<sup>24</sup> Testimony of Jack Valenti, President and CEO, MPAA, before the United States Senate Committee on Foreign Relations: *International Intellectual Property Piracy: Stealing America's Secrets*, 9 June 2004, page 6, available online at [www.mpa.org/jack/](http://www.mpa.org/jack/).

<sup>25</sup> Also see Attachments 1 and 2.

<sup>26</sup> Background information on the Chinese audiovisual market compiled by AFMA<sup>®</sup>, formerly known as the American Film Marketing Association, last updated February 2003.

<sup>27</sup> Also see Attachment 3.

<sup>28</sup> *Performance industry to undergo changes*, China Online, 15 August 2002, available at [www.chinalonline.com](http://www.chinalonline.com).

## Balance of trade in cultural goods and services between Australia and China

Australia's trade in cultural goods and services with China is small and Australia currently imports more than it exports.

This is not surprising given how closed a market China was for much of the last century and the size of the Chinese market in Australia. The 2001 Census established that there are 142,720 China-born persons resident in Australia, an increase of 43% from the 1991 Census,<sup>29</sup> making the Chinese-born the fourth largest category of overseas born permanent immigrants to settle in Australia between 2001 and 2002<sup>30</sup>. With the Cantonese and Mandarin speaking Chinese diaspora estimated to be as large as 500,000, there is likely to be a reasonable appetite for Chinese cultural goods in Australia.

### Balance of trade (in millions of dollars) 2000-2001

#### Cultural Goods

|                    | Heritage services | Books, magazines, etc | Audio and video media | Radios, TVs etc | Exposed film and artistic works | Musical instruments etc | Total  |
|--------------------|-------------------|-----------------------|-----------------------|-----------------|---------------------------------|-------------------------|--------|
| Exports to China   | 2.4               | 0.8                   | 0.3                   | 1.2             | 2.0                             | --                      | 6.7    |
| Imports from China | 3.5               | 33.7                  | 1.1                   | *306.8          | 4.9                             | 13.9                    | *363.9 |

\* excludes imports of certain size television receivers (these data are confidential)

Source: *Australia's Trade in Culture 2000-01*, prepared by the National Centre for Culture and Recreation Statistic, Australian Bureau of Statistics, for Cultural Ministers Council Statistics Working Group, March 2003, pp 9-10

Unfortunately, as Australia's trade in cultural services – which includes audiovisual services – is small, the data for trade in cultural services is not broken down by the Australian Bureau of Statistics country by country. Additionally it is combined with the figures for recreational services and health and medical services. Audiovisual services is disaggregated but again not broken down country by country<sup>31</sup> as is the case for trade in cultural goods. This is unfortunate for the purposes of this submission.

Imports of Chinese audiovisual works appear to be small. Nonetheless, the Office of Film and Literature Classification rated seven Chinese films not previously seen in Australia in the 13 months 1 April 2003 to 30 April 2004.

During the calendar year 2003, Chinese commercial live performance companies touring in Australia included the China National Peking Opera, the Shanghai City Dance Troupe toured its production *Wild Zebra*, pop singer Eason Chan toured and a handful of Chinese singers and entertainers performed at Sydney's Jade World Carnival at Darling Harbour. Additionally, other Chinese performers and live performance companies participated in some

<sup>29</sup> *The China-born Community*, Department of Immigration Multicultural and Indigenous Affairs Fact Sheet, available at [www.immi.gov.au/statistics/infosummary/textversion/china.htm](http://www.immi.gov.au/statistics/infosummary/textversion/china.htm).

<sup>30</sup> *Participatory Action Research and the Australian Chinese Community*, Candy Mok and Ian Hughes, May 2004, available online at <http://www2.fhs.usyd.edu.au/arow/arer/021.htm>.

<sup>31</sup> In *Australia's Trade in Culture 2000-01*, prepared by the National Centre for Culture and Recreation Statistic, Australian Bureau of Statistics, for Cultural Ministers Council Statistics Working Group, March 2003, trade in audiovisual and related services is broken down into trade with the United States, the United Kingdom, New Zealand and "other countries".

of Australia's major performing arts festivals. In recent years Australian audiences have enjoyed the performances of a number of Chinese physical circus companies. This year the Shaolin Monks returned to Australia once again to perform during the opening weeks of the newly revitalised Luna Park in Sydney and, at the time of writing, the new Shanghai Circus is entertaining audiences at the Lyric Theatre in Sydney.

Conversely, Australia's performing arts companies have rarely been seen in China. For instance, whilst Circus Oz and the Flying Fruit Fly Circus have both on occasion brought Chinese artists to Australia to train with their performers, neither circus has ever performed in China. Similarly, Opera Australia has not been seen in China. While Australia's theatre companies have yet to be seen on Chinese stages, plans are underway for Andrew Lloyd Webber's Really Useful Group to take an Australian cast to Beijing for a production of *The Phantom of the Opera*. On the other hand the story in dance is different. The Sydney Dance Company was the first western modern dance company to perform in China. In 1985 Sydney Dance Company toured performing in four cities, and did so again in 1998. In 2002 they were invited to perform at the Shanghai International Festival of the Performing Arts. The Australian Ballet has toured in China four times – in 1993, 1996, 1999 and 2001. A fifth tour slated for 2003 was cancelled because of the SARS outbreak.

Some Australian film and television productions have been sold to China but the Alliance has to date been unable to secure any meaningful data. If able to do so, that information will be forwarded to DFAT.

Australian production companies have made some forays into China. In 1994, Film Australia, as a government owned company, was invited to join a delegation to China. That visit enabled Film Australia personnel to develop links with Shanghai Television. The following year those contacts resulted in the documentary *No Sex, No Violence, No News*, a program that explored, for Australian audiences and from an Australian perspective, Chinese television. China, unlike Australia, did not have a history of documentary production. It had viewed documentary producers from the West with considerable suspicion and historically it has been difficult for western documentary filmmakers to gain access to China. An even earlier documentary success was *The Great Wall of Iron*. Directed by Scott Hicks (director of Academy Award winning *Shine*), the four part series shot in 1988, a few months before Tiananmen Square exploded, became the Discovery Channel's highest rating program. It explored the secret world of the Chinese Army and Hicks travelled with the Army accompanied by two camera crews.

Since the production of *No Sex, No Violence, No News*, other Australian production companies have been able to forge relationships with China, including some animated productions produced by Southern Star in China. Film Australia went on to produce the children's television series *Spellbinder*, filmed in part in China and Poland.

A number of Australian companies producing animation children's programs, including the Australian Children's Television Foundation, have outsourced some animation work to China – principally in-betweening work which, in cell animation, is labour intensive and consequently cheaper to undertake in China. However, with most animation now being produced digitally this work is increasingly being kept onshore.

Australian cinematographer, Christopher Doyle, has worked extensively in China in recent years. His credits include Zhang Yimou's *Hero* (2002), Zhang Yuan's *Green Tea* (2003) and Chen Kaige's *Temptress Moon* (1996).

However, the strongest relationship between the Australian and Chinese audiovisual industries now occurs in the postproduction sector. The first Chinese director to look to

Australia was He Ping who came to do post-production for *Sun Valley* in 1995. He returned in 2003 to do the post-production for *Warriors of Heaven and Earth*.

In addition to working with an Australian cinematographer on *Hero*, Zhang Yimou “chose Animal Logic over his existing American post-production partners”<sup>32</sup>, Soundfirm for the post-production sound and Cinevex Atlab for the grading. Zhang Yimou’s earlier films *The Road Home* (1999) and *Happy Time* (2001) were also post-produced in Australia as is his most recent film *House of Flying Daggers* (2004).

Other feature films to complete production in Australia have included Xiaowen Zhou’s *The Emperor’s Shadow* (1996) and Jiang Wen’s *Devils on the Doorstep* (2000).

### **A free trade agreement with China**

The Alliance’s views on free trade are as outlined in the Executive Summary above. In short, whilst the Alliance supports free trade, it believes that, for a country the size of Australia, its objectives are best achieved in the multilateral context under the auspice of the WTO. Further, the Alliance believes that all countries have the sovereign right to determine their own cultural policy objectives and give effect to those policy objectives unconstrained by the provisions of free trade agreements.

However, as the work currently being undertaken by DFAT is to establish the viability or otherwise of a bilateral free trade agreement with China, this submission will assume that a decision to proceed to negotiating such an agreement will be made.

Up until January of this year, the Government’s position in respect of free trade agreements and cultural industries was to make no commitments in the case of positive listing agreements, for instance GATS, and to negotiate comprehensive cultural carveouts in the case of negative listing agreements, for instance SAFTA.

For the first time since World War II, the current Government compromised that policy position by making substantial concessions to the United States, concessions sought by the United States, in the proposed AUSFTA.

Whilst the Alliance is still hopeful that the compromises made in the AUSFTA can be addressed, it is important that Australia resume its long-held policy of making no commitments that might impact on the cultural industries. To that end, any free trade agreement that might be negotiated with China should be a positive listing agreement with no commitments being made in respect of Australia’s cultural industries.

### **A Film Co-production Agreement between Australia and China**

Separately to the consideration of a bilateral free trade agreement with China, there has been discussion recently in the Department of Foreign Affairs and Trade about the possibility of negotiating an official Co-Production Treaty between China and Australia along the lines of the treaties covering film and television production that exist with Canada, the United Kingdom, Italy and Germany.

The principles that underpin Australia’s official co-production program are reciprocity of opportunity, national treatment and balance of benefits over time along with comparable industries in respect of availability of government subsidy, regulations and working conditions.

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<sup>32</sup> *Australia’s Contributions to the Chinese Film Industry*, ANZ Bank – Australian Film Festival, available online at [www.austemb.org.cn/austfilmfest/Cooperation.asp](http://www.austemb.org.cn/austfilmfest/Cooperation.asp)



It is less than clear whether these principles could be achieved at this point in time with China. China has a film co-production corporation, the China Film Co-production Corporation. A copy of its Articles of Incorporation is attached. As far as the Alliance has been able to ascertain, the CFCC considers that a co-production is any production that might be produced in, or predominantly in, China that includes the participation of a non-national entity. That participation might simply be by way of investment, the provision of a distribution guarantee for overseas markets or the like. It does not necessarily follow that overseas companies are able to access benefits normally restricted to national productions as is the case with Australia's co-production program. (See Attachments 7 and 8.)

Canada currently has a co-production agreement with China but Telefilm have advised that Canadian producers' experience was such that no co-productions with China have been contemplated for the past three years.

### **Conclusion**

The Alliance considers that Australia's trade objectives are best served at the multilateral level through the various agreements negotiated in the WTO.

However, if Australia does decide to enter a free trade agreement with China, the Alliance considers it imperative that no commitments be made in respect of Australia's cultural industries.

China has undergone dramatic change since 1979. It has maintained political stability for two decades during which time its economy has expanded nine-fold. According to the Merrill Lynch/Capgemini World Health Report, the number of wealthy individuals in China grew by 12% in the past year.<sup>33</sup> Writing in the *International Herald Tribune*, Wei-Wei Zhang describes China as "now the largest laboratory of economic, social and political change in human history. A new consensus seems to be emerging within the Chinese leadership, headed by President Hu Jingtao and Prime Minister Wen Jiabao, that there should be a more substantial political reform to limit the power of bureaucrats, promote the rule of law and make the state more transparent and accountable to the people, eventually with more intra-party democracy and increased legal protection of individual rights vis-à-vis the state."<sup>34</sup>

Despite the very considerable changes of recent years, China remains a highly regulated cultural market. Although the state has eased its control on the production and distribution of audiovisual material, it still enforces a strong censorship regime and high level of control of the industry in pursuit of its own cultural policy objectives. As detailed above, new regulations are introduced on a regular basis, for instance, the new regulations covering children's television announced this month.

China is facing many of the same challenges Australia faces with the international domination of Hollywood in the audiovisual sector. Despite having a domestic market of one billion, and severely limiting the number of overseas films allowed in the market legally each year, Hollywood nonetheless now captures 70% of China's box office. The Hollywood phenomenon is a global one and China, like Australia, is seeking to implement policies that enable an indigenous cultural industry to flourish. As has been demonstrated above, China intervenes in its cultural sector in far more broad ranging ways than is the case in Australia. Uncertainty about how the market will change, in the short and long term, censorship and

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<sup>33</sup> Reported in *Wealth leaps in China and India*, Jane Croft, *Financial Times*, 16 June 2004, available online at <http://news.ft.com>.

<sup>34</sup> *China will change in its own way*, Wei-Wei Zhang, *International Herald Tribune*, 21 May 2004, available online at [www.iht.com](http://www.iht.com).

rampant piracy all pose considerable challenges for the Chinese industry and for a country such as Australia that might seek greater access to their market.

The live performing arts are also being restructured and as the changes implemented in this sector are very recent, it is too early to see the results. However, it is likely that change will follow the pattern set by many of China's other largely successful economic reforms which have been identified by "a gradual, experimental and accumulative approach, moving from soft reforms to hard reforms, and assimilating whatever is good in Chinese and foreign ideas and experiences",<sup>35</sup> reflecting the view that Deng Xiaoping's strategy of gradual reform has been a success whereas Mikhail Gorbachev's radical change was a failure.

The Alliance considers that Australia's best approach to gaining greater access to China's cultural market may well be to hasten slowly in the same way that China itself is managing reform and act both with determination and discretion recognising that change in China will be gradual, pragmatic and accumulative.

Certainly, at this time of change, Australia should make no commitments in respect of our cultural sector that would restrict the ability of the Australian government to give effect to Australia's social and cultural policy objectives in any manner it sees fit now and into the future, in the same way that China will undoubtedly wish to continue to determine its own cultural policy free of commitments made in trade agreements.

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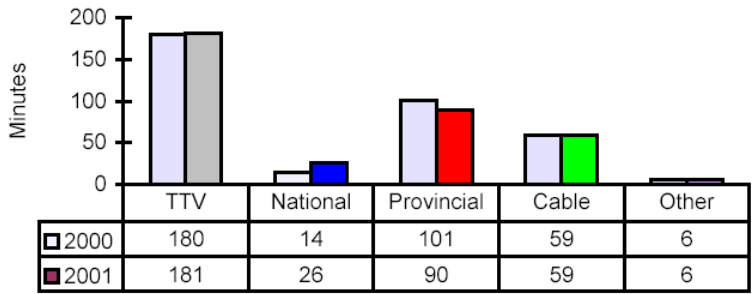
<sup>35</sup> *China will change in its own way*, Wei-Wei Zhang, *International Herald Tribune*, 21 May 2004, available online at [www.ihf.com](http://www.ihf.com).

Attachment 1

**SHANGHAI**

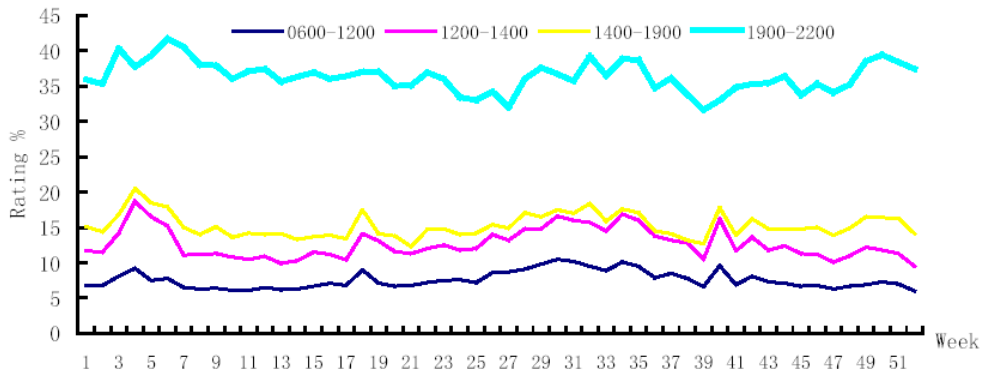
**The TV scene**

- **Daily viewing amount (4+ - min)**



People in Shanghai watched TV for an average of 3 hours per day (181min) during 2001, almost the same as 2000 (180min). Provincial channels were still the most watched but reduced from 101 minutes to 90 minutes. Cable channels viewing time remains steady over these two years. National channels nearly doubled from 14 to 26 mn / day but remain the least watched channel group.

- **Viewing by timeslots (4+ - TTV - Tvr %)**

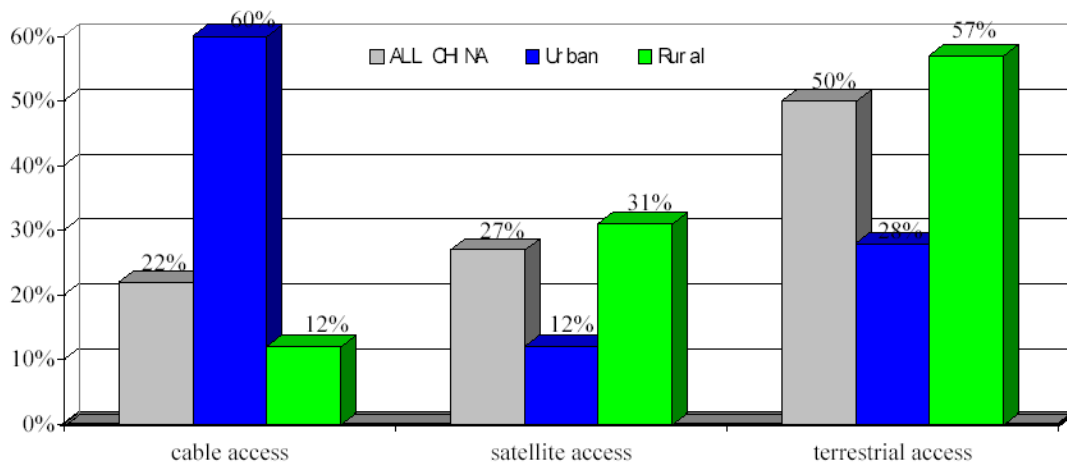


Prime time (19:00-22:00) consistently attracted 35 to 40% of Shanghai’s viewing population. The highest viewing was recorded in early February when two popular dramas, “Hong Se Kang Nai Xi” (The Red Carnation)” and “Qi Wu Shi (The Night)” were broadcast on Shanghai TV Cable Movie. All the timeslots are very sensitive to Chinese festivals and holiday periods.

Source: *Television in China 2001*, available online at [www.csm.com.cn](http://www.csm.com.cn).

**Attachment 2**

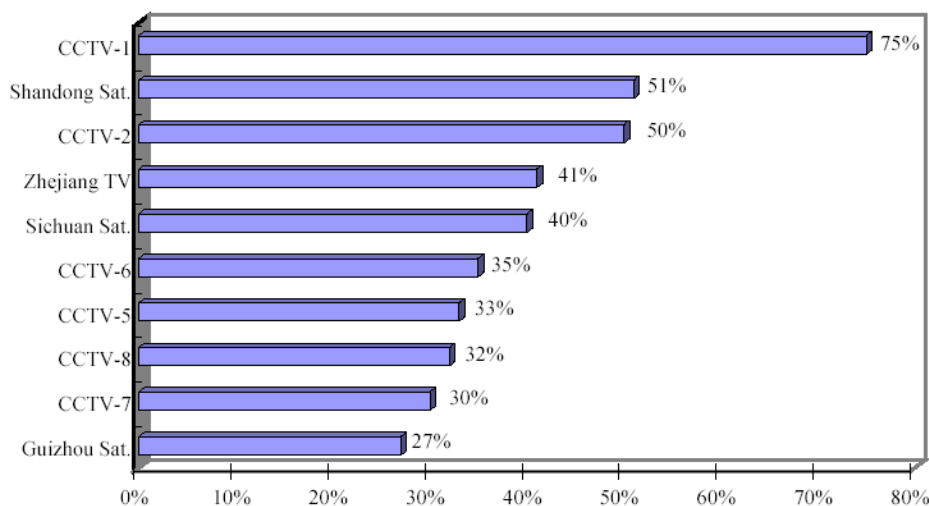
*Chart 7 - Signal received:*



Cable penetration is mainly restricted to urban areas, especially in the larger cities. For example, cable penetration in Beijing, Shanghai and Guangzhou is respectively 82%, 86%, 95% with a national urban average of 60%.

Satellite penetration in rural areas is higher, which may be due to the inaccessibility of cable TV. Therefore, satellite TV is a cheaper alternative to ensure 100% television coverage across the country.

*Chart 8 - Top 10 channels in China by coverage:*



CCTV 1 has the highest coverage, covering 75% of the national households, far exceeding the next channel, Shandong Satellite (51%).

**Source:** *Television in China 2001*, available online at [www.csm.com.cn](http://www.csm.com.cn).

## Attachment 3

### Ministry of Culture of the People's Republic of China

Mr. Sun Jiazheng: Minister of Culture

The highest cultural administrative organ in China is the Ministry of Culture, which is a functioning ministry under the State Council and is in charge of cultural and artistic undertakings throughout the country.(Fig.3-1)

Major duties of the Ministry of Culture are: research and stipulate principles , policies and regulations for cultural work; make development strategy and plan of cultural undertakings; instruct the cultural system reform; administrate literature and artistic undertakings, instruct artistic creation and production, support representative, pilot or experimental work , and accelerate artistic development of various kinds; administrate nationwide cultural activities; stipulate plan and policy for cultural industries and guide and coordinate their development; plan and instruct key projects of cultural facilities; administrate cultural market and make development plan; research the development tendency of cultural responsible for inspection of the market; administrate social cultural under takings, make plans and organize to carry the out, and guide the construction and development of various social cultural undertakings; administrate libraries by instructing the building, development and use of book and document resources and accelerating the standardization and modernization of libraries; administrate cultural work for overseas, make policies and regulations on cultural exchanges with the Hong Kong Special Administrative Region (HKSAR), Macao and Taiwan, sign cultural cooperation agreements and annual plans with foreign countries on behalf of the state, and instruct the work of cultural department under Chinese embassies and in the HKSAR and Macao; administrate the State Relics Protection Bureau according to regulations of the State Council; and do other work handed over by the State Council.

The Ministry of Culture is divided into the following 10 functioning departments according to the above-mentioned duties.

#### 1. General Office

This office is established to help ministry leaders summarize, coordinate, supervise and inspect relevant work; stipulate internal rules and regulations and make annual work plan; coordinate institutional affairs; and do institutional administrative work.

#### 2. Department of Policies and Regulations

The task of this department is to research and make cultural development strategies, long-term development plan and annual implementation plan; research and make policies for cultural and artistic work ; stipulate and organize to carry out cultural legislative plan and draft comprehensive cultural laws and regulations; draft significant documents and reports for the ministry; and deliver news to the press.

#### 3. Department of Planning and Finance

This department makes cultural economic policies; supervises the financial work of cultural enterprises and institutions directly under the Ministry of Culture; administrates funds for cultural, educational, scientific research and foreign affairs undertakings; stipulates standards for cultural facilities and plans and guides the construction; and instructs the basic construction and real estate management of the institutions and organizations directly under the ministry.

#### 4. Department of Personnel

The task for this department is to research, make and carry out cultural and artistic personnel development plan; accelerate the personnel system reform in cultural institutions; be in charge of the 119 personnel work in the ministry and institutions directly under the ministry; end personnel to the cultural department of Chinese embassies abroad; and examine the credentials of state-level cultural organizations.

#### 5. Arts Department

The task for this department is to be in charge of literature and artistic undertakings, and make and carry out development plans; guide artistic creations and production and coordinate the structure and distribution of cultural undertakings; research and instruct the reform in the field; coordinate major artistic activities including national competitions, exhibitions and non-profitable performances; and instruct the work of institutions directly under the ministry.

#### 6. Department of Education and Sciences

The task of this department is to research, make and carry out development plan for artistic education in colleges and schools under the ministry, cultural, scientific and technological development plan and annual executive plan; coordinate the research key state cultural and artistic projects and spread of achievements; provide cultural, scientific and technologic at services; and instruct the artistic education system reform and work in colleges and schools under the ministry.

#### 7. Department of Cultural Market Administration

The task of this department is to research and make administrative policies and regulations for cultural market, cultural products in circulation and cultural entertainment activities, and be in charge of supervising the implementation; administrate performance market and cultural entertainment market; administrate the wholesale and retail sales, renting and show of audio and video products; administrate the import of audio and video products; research the development tendency of cultural market; and instruct the inspection of cultural market and film release and show.

#### 8. Department of Cultural Industry

The task of this department is to research and make development plan as well as policies and regulations for the cultural industry; support and accelerate the development and building of cultural industry; and coordinate problems propping up during the operation of cultural industry.

#### 9. Department of Social Culture and Library Administration

The task for this department is to administrate social cultural undertakings , and research, make and carry out development plans for social cultural undertakings including mass cultural, minority nationality culture, culture for kids and libraries; instruct popularization of culture and art; guide the construction, development and use of book and document resources; improve cooperation among libraries and accelerate their standardization and modernization; instruct protection of ancient books and documents; and coordinate major national social cultural activities.

#### 10. Bureau for External Cultural Relations

(Department of Hong Kong, Macao and Taiwan Cultural Affairs)

This department is in charge of foreign affairs in cultural work and cultural exchanges with the HKSAR, Macao and Taiwan; making policies and regulations for this work; signing cultural cooperation agreement between China and foreign countries and carrying out annual executive plan and plans for cultural exchange programs; conducting liaison work with Cultural department under Chinese embassies abroad; instructing the work of cultural institutions in the HKSAR and Macao; and publicity work to foreign countries

#### 11. State Bureau of Cultural Relics

The State Bureau of Cultural Relics (SBCR) is an administrative organ under the

Ministry of Culture in charge of relics and museum work in China. (Fig.3-2) Its major tasks are to: research and make principles, policies, regulations and plans for relics and museum development, and stipulate and carry out related systems; instruct and coordinate in work of relics management, protection, save, excavation, research, publicity and going abroad; examine and report key state relics protection departments ; be in charge of examining and reporting historical cultural cities and work cultural legacy projects; examine or approve the excavation, protection and maintenance of key state relics; instruct the construction of big museums and cooperation and exchanges among museums; research and handle significant problems in relics protection ; research and stipulate management methods of relics circulation; approve the establishment and cancel of institutions engaging in export appraisal of relics; make budget for relics protection funds and examine, allocate and supervise the funds; train relics and museum personnel; organize and instruct research of relics protection and museums ; administrate and instruct foreign affairs work and carry out cooperation and exchanges; and do other work handed over by the State Council and the Ministry of Culture.

According to the above-mentioned duties, SBCR has set up three functioning departments under it:

(1) General Office (Department of Personnel) Its task is to coordinate and supervise the work of the bureau; help leaders of bureau to handle daily work, be in charge of secretary, petition letters and institutional affairs and financial work; draft principles, policies and regulations for relics and museum development; make long-term development plan for relics and museum development; do theoretic research and publicity work; be in charge of the personnel and financial work in the bureau and institutions directly under the bureau; administrate and instruct relics and museum cooperation and exchanges with foreign countries; make budget for relics and museum development, make plan for special funds for key state relics protection and supervise to carry them out; and be in charge of the daily work of the Party committee of the bureau. (2) Relics Protection Department .The tasks for this department are to: research and instruct relics protection and rescue work; stipulate standards for quality of relevant projects ; examine and report key state relics protection units and examine and report historical cultural cities and world cultural legacy projects ;examine or approve the excavation, protection and maintenance project of key state relics; organize and instruct the proof, design, construction, quality supervision and acceptance of key state relics protection projects; approve credentials for maintenance of relics buildings, design and excavation; stipulate management methods of relics circulation; organize and conduct relics appraisal; save and recover precious relics from society ; approving relics to go abroad; coordinate relations with international relics protection organizations; and handle significant problems in relics protection; (3) Department of Museums .The tasks for this department are to: make museum development plan; examine the construction plan of state-level museums, instruct work of big museums, and be in charge of recording, allocation and exchanges of top-level relics storages; instruct the work of museums directly under the bureau; get in touch with the Chinese Museum Society and related international organizations to conduct work and academic exchanges; train specialized relics and museum personnel; instruct scientific research in relics protection and museum; supervise and inspect security work for relics and in museums; and be in charge of setup relics and museum information network and instruct the operation.

Source: Chinese Embassy, Israel, available online at <http://www.chinaembassy.org.il/eng/>.

#### Attachment 4

##### **Hengdian TV & Movie City, Zhejiang Province**

Considered by many as the most magnificent TV & movie shooting base in China, Hengdian TV & Movie City is located in Hengdian, Zhejiang Province, a half day distance from Shanghai. It served as the main shooting base for such films as Chen Kaige's [The Emperor and the Assassin](#) and Zhang Yimou's [Hero](#).

Grand in scale, Hengdian TV & Movie City consists of the following featured bases: Qin Palace Shooting Base,

Jiangnan Lake and River Region Shooting Base, Hengdian Old Street Shooting Base, Ming & Qing Street Shooting Base, Great Wisdom Temple, Gunfight Shooting Base, Ancient Battlefield Shooting Base, The Ming & Qing Dynasty Imperial Garden Shooting Base, Modern Photography Studio, Qing Ming Shanghetu Shooting Base, Hong Kong Street Shooting Base, Old Residential Area, Guangzhou Street Shooting Base, etc.

Hengdian TV & Movie City is also a tourist destination. The two-day travel package is available in Shanghai's major tourist agencies.

Source: <http://www.asianfilms.org/china/hengdian.html>.





**Attachment 5**

**A Statistical Survey of Domestic vs. Imported Feature Films in China  
(1993-1998)**

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| <b>Year</b> | <b>Domestic Films Made</b> | <b>Copies Released</b>     | <b>Films Imported</b> | <b>Copies Released</b> |
|-------------|----------------------------|----------------------------|-----------------------|------------------------|
| 1993        | 108                        | 12,365                     | 51                    | 4,459 in total         |
| 1994        | 148                        |                            | 25                    |                        |
| 1995        | 146                        | 5,891 (35mm), 4,293 (16mm) | 37                    |                        |
| 1996        | 110                        |                            |                       |                        |
| 1997        | 80                         |                            |                       |                        |
| <u>1998</u> | <u>82</u>                  |                            |                       |                        |

Source: [www.asianfilms.org](http://www.asianfilms.org).

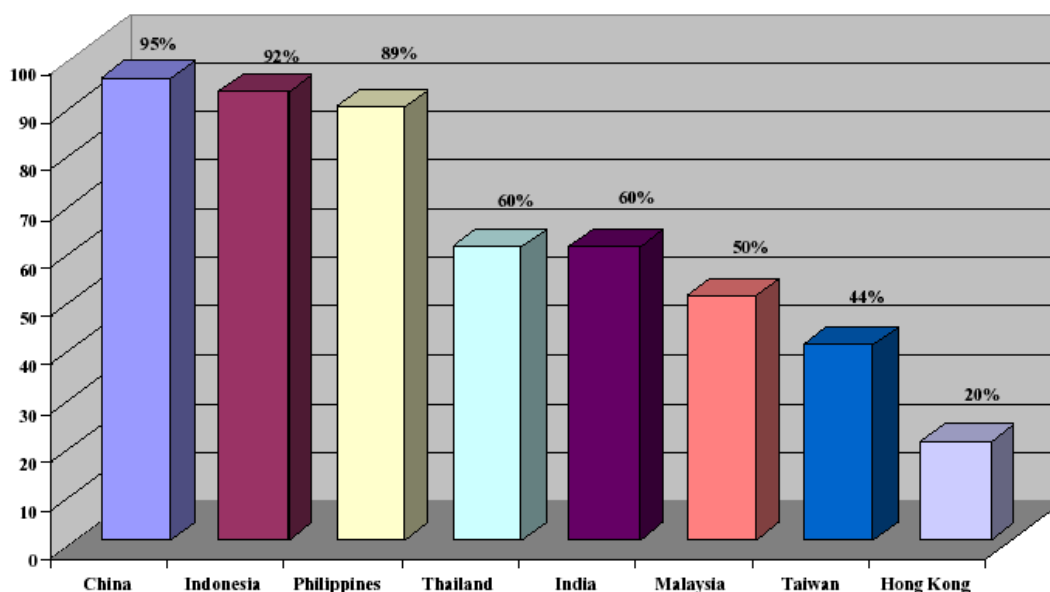
## Attachment 6

**PEOPLE'S REPUBLIC OF CHINA  
ESTIMATED TRADE LOSSES DUE TO PIRACY  
(in millions of U.S. dollars)  
and LEVELS OF PIRACY: 1999 - 2003<sup>1</sup>**

| INDUSTRY                                    | 2003      |       | 2002          |       | 2001              |       | 2000          |       | 1999          |       |
|---|-----------|-------|---------------|-------|-------------------|-------|---------------|-------|---------------|-------|
|   | Loss      | Level | Loss          | Level | Loss              | Level | Loss          | Level | Loss          | Level |
| Motion Pictures                             | 178.0     | 95%   | 168.0         | 91%   | 160.0             | 88%   | 120.0         | 90%   | 120.0         | 90%   |
| Records & Music <sup>2</sup>                | 286.0     | 90%   | 48.0          | 90%   | 47.0 <sup>2</sup> | 90%   | 70.0          | 93%   | 70.0          | 90%   |
| Business Software Applications <sup>3</sup> | NA        | NA    | 1637.3        | 92%   | 1140.2            | 92%   | 765.1         | 94%   | 437.2         | 91%   |
| Entertainment Software <sup>4</sup>         | 568.2     | 96%   | NA            | 96%   | 455.0             | 92%   | NA            | 99%   | 1382.5        | 95%   |
| Books                                       | 40.0      | NA    | 40.0          | NA    | 130.0             | NA    | 130.0         | NA    | 128.0         | NA    |
| <b>TOTALS</b>                               | <b>NA</b> |       | <b>1893.3</b> |       | <b>1932.5</b>     |       | <b>1085.1</b> |       | <b>2137.7</b> |       |

Source: International Intellectual Property Alliance, 2004 Special 301 Report on Global Copyright Protection and Enforcement, available online at [www.iipa.com/special301\\_TOCs/2004\\_SPEC301\\_TOC.html](http://www.iipa.com/special301_TOCs/2004_SPEC301_TOC.html).

## Asia Pacific Region: Piracy Rates and Losses



Source: Testimony of Jack Valenti, President and CEO, MPAA, before the United States Senate Committee on Foreign Relations: International Intellectual Property Piracy: Stealing America's Secrets", 9 June 2004, available online at [www.mpaa.org/jack/](http://www.mpaa.org/jack/).

## Attachment 7

### ARTICLES OF INCORPORATION OF CHINA FILM CO-PRODUCTION CORPORATION (CFCC) CHAPTER ONE GENERAL STATUS

**Article 1.** In accordance with the *State-Owned Industrial Enterprise Law of the People's Republic of China*, the *Administrative Regulations Regarding Enterprise Legal Person's Registration of the People's Republic of China* and some other laws and regulations concerned, the present Articles of Incorporation are formulated.

**Article 2.** The name of the Corporation shall be China Film Co-Production Corporation, abbreviated as CFCC.

**Article 3.** The Corporation is attached to the Ministry of Radio, Film and Television of the People's Republic of China, and is a specialized institution that oversees films jointly produced by Chinese and foreign production companies.

**Article 4.** The Corporation shall follow government decrees and policies, and adhere to principles of equality, mutual benefit and friendly cooperation, and cooperate with film production companies and independent producers in making various kinds of films in China for the purpose of promoting international cultural exchange and deepening friendship and understanding among the people of the world.

**Article 5.** The Corporation is a state-owned enterprise, doing business on its own, assuming sole responsibility for its profits and losses and independent in business accounting. The Corporation is duly registered in the State Administration for Industry and Commerce, has enterprise legal person's qualifications, shoulders the civil responsibility with the property presented by the state in management and administration, and is thus regulated and protected by the laws of China.

**Article 6.** The Corporation's address is 5 Xinyuan Nanlu, Chaoyang District, Beijing, and its postcode, 100027.

### CHAPTER TWO REGISTERED FUNDS

**Article 7.** All the Corporation's property is state property.

**Article 8.** The Corporation's registered funds is RMB 10,000,000 yuan.

**Article 9.** After its registration is cancelled, all the Corporation's property shall be recalled by the Film Bureau of the Ministry of Radio, Film and Television on the state's behalf.

### CHAPTER THREE SCOPE OF BUSINESS

**Article 10.** Film production companies and independent producers from abroad who intend to make (by means of film stock, video cassettes, etc.) feature films, documentaries, dramas, series, commercials, etc., may negotiate with the Corporation and sign agreements or

contracts. The Corporation has the right to produce various kinds of films and has joined the Chinese Film Producers' Association.

**Article 11.** All film projects that respect the constitution and laws of the People's Republic of China, adhere to the history and reality of China, promote friendship and understanding among the peoples of the world, and consist of wholesome theme and content can be accepted.

**Article 12.** The Corporation shall arrange consultations for film production companies and independent producers who wish to film in China and facilitate the issuance of visas for personnel and customs clearance for film equipment, machines, vehicles, film stock, tapes, and other materials used for filming.

**Article 13.** The Corporation shall provide or assist in acquiring translators, interpreters, artists and other liaison and technical personnel as well as material required for filming, according to the relevant agreements or contracts.

#### **CHAPTER FOUR PROCEDURES AND METHODS OF CO-PRODUCTION**

**Article 14.** Foreign film producers who apply to film in China should submit to the Corporation a written proposal and resumes of producers and their companies, along with scripts, outlines and plans of their projects.

**Article 15.** Upon acceptance of a proposal, the Corporation will enter into negotiations with the applicant in Beijing or in some other appointed place. Agreements or contracts of co-productions can be signed after the parties involved reach agreement on content of films, method of co-production, time, locations, personnel, etc.

**Article 16.** Any of the following methods can be taken when co-producing films in China:

- 1) With foreign investment, the Corporation (alone or with other film companies in China) provides services;
- 2) Both parties jointly invest in and produce films;
- 3) Foreign party invests in and entrusts Chinese party with responsibility for film shooting.

#### **CHAPTER FIVE ORGANIZATIONS**

**Article 17.** The Corporation's organization, excluding manager and deputy managers, is as follows:

Department of America and Oceania: Responsible for co-productions in America and Oceania regions;

Japanese Department: Responsible for co-productions in Japan and some other Asia regions, except Hong Kong, Macao, Taiwan and Southeast Asia;

Hong Kong and Macao Department: Responsible for co-productions in Hong Kong, Macao, Taiwan, and Southeast Asia;

Department of Europe and Africa: Responsible for co-productions in Europe and Africa regions;

Planning Department: Responsible for the development and approval of script, arrangement of consultations and research on project;

Production and Distribution Department: Responsible for the management of production, allocation of equipment and publicity and distribution of films;

TV Series Production Department: Responsible for co-producing TV series and various kinds

of TV programs;

Advertisement Production Department: Responsible for co-producing commercials.

Planning and Finance Department: Responsible for the Corporation's annual revenue and expenditure planning on productions and each department's annual budget and cost accounting on films;

Administrative Office: Responsible for office, security and of personnel work and administrative management.

## **CHAPTER SIX REPRESENTATIVE OF LEGAL PERSON**

**Article 18.** The Corporation is of the general manager type system. The general manager is representative of a legal person, appointed and removed by the Ministry of Radio, Film, and Television.

**Article 19.** The general manager shall hold full power to guide and coordinate the Corporation's activities in management: responsible for the enterprise in every respect; and bears civil responsibilities on behalf of the Corporation.

**Article 20.** The general manager must fulfill all kinds of obligations an enterprise should be held responsible according to the laws concerned.

## **CHAPTER SEVEN ADMINISTRATION AND MANAGEMENT**

**Article 21.** According to government regulations and principles of equality and mutual benefits, as well as the circumstances of different projects, the Corporation shall reasonably establish its fees charged to co-produce films.

**Article 22.** The Corporation shall carry out a state-owned enterprise labor and personnel system laid down by the state department concerned.

**Article 23.** The Corporation shall carry out the state-owned cultural and educational enterprises' accounting system and financial system formulated by the Ministry of Finance. The Corporation shall use international currency for settling accounts in its business of import and export; its receipt and payment of monies shall be done through Bank of China.

**Article 24.** The Corporation's distribution of profits in management shall be in accordance with the document concerned issued by the Ministry of Finance; the Corporation shall keep profits after it pays tax and collects different special funds according to an established percentage.

**Article 25.** The Corporation shall pay taxes to the state according to the law concerned.

**Article 26.** The Corporation's accounts shall be cleared according to the Enterprise Bankruptcy Law of the People's Republic of China and the laws and regulations concerned when its registration is cancelled and business license revoked.

## **CHAPTER EIGHT ADDENDUM**

**Article 27.** At present all the articles of this Incorporation also apply to film co-productions from Hong Kong, Macao, and Taiwan.

**Article 28.** The present Articles of Incorporation shall come into force upon the approval of the Ministry of Radio, Film, and Television and of the State Administration for Industry and Commerce. The same applies to amendments and termination.

**Article 29.** Matters unfinished in the articles of Incorporation shall be carried out according to the state laws and regulations concerned.

Source: [www.asianfilms.org/china](http://www.asianfilms.org/china)

## Attachment 8

### Chinese Co-Production & Aiding Production in the First Half of 1998

| Film Title                             | Co-Production Studios  | Co-Production/Aiding |
|--|--|----------------------|
| Dance With Love                        | Shanghai Film Studio & Good Harvest Film Studio of Hong Kong   | Co-Production        |
| Pursue the Gangster                    | Beijing Film Studio & Connan Film Company  | Co-Production        |
| Chiming Bell on Top of Mountain        | Xi'an Film Studio & Taiwan Ye Hongwei Film/TV Company  | Co-Production        |
| Witness of Heaven's Country of Taiping | Guangxi Film Studio & Tanlong (International) Co. Ltd.   | Co-Production        |
| Rough Sea and Angry Dragon             | Zu Hiang Film Company, New Dabao H.K. & Nan Yang Film Co.  | Co-Production        |
| Golden Dream                           | Zu Hiang Film Company, New Dabao H.K. & Nan Yang Film Co.  | Co-Production        |
| Japanese Soldiers Are Coming           | China Co-Production Corporation & H.K. Huan Yi Film Company  | Co-Production        |
| Empress Wu Zetian                      | China Co-Production Corporation & No. 99 Film Workshop, Hong Kong  | Aiding               |
| Real and Unreal Doctor                 | Xiaoxiang Film Studio & Eastern Film Co. Ltd., Hong Kong   | Co-Production        |
| The Legend of Golden Eagle             | Guangxi Film Studio & Hua Tai Film/TV Communication Co., Ltd., Taiwan  | Aiding               |
| Far Away to Ganan                      | China Co-Production Corporation, International Financial Investment Co., U.S.A., and San Monica Film Co., U.S.A. | Co-Production        |
| Manuala                                | Shanghai Film Studio & Flying Box Co., Japan   | Aiding               |
| A Trip onto the Moon                   | Shanghai Animation Studio & Donijuk Film Studio  | Co-Production        |
| Ogustan's Kong Fu                      | China Co-Production Corporation & France   | Aiding               |

Source: [www.asianfilms.org](http://www.asianfilms.org).