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STATEMENT PREPARED FOR DELIVERY BY  
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MOTION PICTURE ASSOCIATION OF AMERICA<sup>1</sup>

TO A PUBLIC HEARING OF THE  
CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA:

“WILL CHINA PROTECT INTELLECTUAL PROPERTY?  
NEW DEVELOPMENTS IN COUNTERFEITING, PIRACY, AND FORCED TECHNOLOGY  
TRANSFER”

2:15 PM EDT, WEDNESDAY, 22 SEPTEMBER 2010  
628 DIRKSEN SENATE OFFICE BUILDING  
WASHINGTON D C

Mr. Chairman, Members of the Commission:

Better access to the Chinese market lies at the heart of the American film community's strategy to protect the American jobs at risk from the attacks of Chinese film and television pirates. We cannot compete with free; Chinese film pirates are not only thieves, they are our competitors – competitors who we have subsidized.

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<sup>1</sup>The Motion Picture Association of America (MPAA) represents the six major US motion picture studios: Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; The Walt Disney Studios; Twentieth Century Fox Film Corporation; Universal City Studios LLLP; and Warner Bros. Entertainment Inc.

American men and women create and produce the entertainment Chinese pirates peddle; US finances underwrite the profits Chinese pirates stash into their bank accounts. Attacking this problem, leveling this playing field, and protecting the American jobs at risk are multifaceted – better Chinese laws and more commitment to enforce those laws – but unless the market barriers are removed, those efforts will fall short.

China's filmed entertainment market is a paradox: Crippled by one of the highest piracy rates in the world -- we estimated the piracy rate at over 90% in a recent study -- the market for films for theatrical release is growing faster than most other markets. 2009 box office revenues for US companies doubled from 2008, but still only reached levels approximate to the US box office for less than one month.

This growth is not coming at the expense of the Chinese industry – American films are not threatening to crowd out the local industry -- the Chinese film industry is growing rapidly as well. The number of domestic films produced in China has tripled since 2003, and box office from domestic films grew almost 50% from 2008.

### **MARKET BARRIERS = MORE PIRACY**

China's film market is also one of the most restricted in the world. MPAA's work to open the market is critical to growing jobs in the US industry, as well as being a key element of its content protection work in China: There is no shortage of US films in China; they are readily available in pirated form. The barriers China enforces only keep out the legitimate products and companies; the purveyors of pirated films have no regard for the rules enforced against US companies.

China maintains a quota on the number of foreign films it allows into its market each year: 20. In addition, it imposes several restrictions on US businesses in the home entertainment and television business that do not exist elsewhere. Keep in mind as you review the list of barriers that these barriers affect only legitimate businesses, the businesses that play by the rules. Just as the pirates ignore intellectual property rights, they are neither bound by nor feel any obligation to abide by the restrictions affect our members:

- Foreign Investment Restrictions – China limits foreign ownership in cinemas and in video distribution companies to 49%. In the television sector, companies wholly or jointly owned by foreign entities are prohibited from investing in the broadcast industry.
- Television Quotas – China restricts foreign television drama and film programming to no more than 25% of total airtime, and other foreign programming to no more than 15% of total air time. Foreign programming is banned during prime time and may not constitute more than 30% of pay television channels. Foreign animation is

- restricted to no more than 40% of total airtime and importers of foreign animation must produce a like amount of domestic animation.
- Screen Quota – The government sets strict guidelines for foreign films. The total time for foreign films cannot exceed one-third of the total screen time.
  - Import Duties – Import duties on theatrical and home video products are sometimes assessed on the potential royalty generation of an imported film, a method of assessment which is excessive and inconsistent with international practice of assessing such duties on the value of the underlying imported physical media. Excessive import duties place a severe drag on investments and impede distribution of legitimate filmed entertainment product thus increasing demand for pirate product.
  - Retransmission of Foreign Satellite Signals – Local cable networks may not carry foreign satellite channels without government approval or landing permits, which currently are limited to Guangdong and a handful of foreign channels. Moreover, foreign satellite channels beaming into China are required to uplink from a government owned encrypted satellite platform. The annual fee for each channel remains excessively high at \$100,000.
  - Restrictions on Retailers – Foreign retailers are precluded from selling home video products without entering into a qualifying joint venture with a Chinese firm. The number of legitimate distribution points remains far less than the number of pirate distribution points.
  - Blackout Periods During Peak Seasons – The government has historically decreed “black-out periods” during which no new foreign films may be released, to prevent competition with Chinese films released during the same period. Such blackouts typically occur during national holidays or coincide with political events.

None of these barriers, however, cap the Chinese audience’s appetite for the filmed entertainment the American film community produces. You can get virtually any US film you want in China. You may not find it in the cinema, the local television channel, nor video store, but you can find it – in pirated form, either as a counterfeit DVD or at a Chinese website that has obtained the product illegally.

The export and transshipment of pirate optical discs from and through China continues to grow, especially pirate DVDs of US films. Transshipments flow out of China to destinations worldwide, including the US, through express mail and courier companies. The recent emergence of high-quality, counterfeit Blu-ray DVDs supplied in large volumes to businesses and consumers

throughout the world over Chinese retail and auction websites is among the latest examples of China's export piracy problem.

Unfortunately, too many look at the harm of buying an illegal DVD for \$2.00 in the Silk Market as victimless, perhaps even as a souvenir of a trip to Beijing. Besides morally wrong, there are at least two other things wrong about that. First, it is not a \$2.00 theft. Most likely, the movie on that disc was camcordered in a theater. Illegal camcorders account for roughly ninety percent of all the illegal movies in the world, and China is becoming a haven for camcorders. In the first half of this year, our research indicates that 24 camcorders occurred in China. A typical MPAA member company movie may cost as much as \$100 million to make. So, the person who camcordered the movie, who stole it off the screen, committed a \$100 million theft.

Second, film piracy is not a victimless crime. According to a report the RAND Corporation produced in 2009, organized criminal syndicates around the world are frequently engaged in film piracy. It generates enormous profits at, unfortunately, little risk of apprehension. For example, the study identified Chinese gangs with operations as far away as the UK engaged in the trafficking illegal DVDs. It is possible the \$2.00 you spend for that souvenir may not be going to an organized crime, but there is a very high likelihood it is.

### **WHAT TO DO?**

The American film community, alone, and in cooperation with other industries and with the US government has engaged for years in a dialogue with the Chinese about amending and strengthening China's intellectual property laws.

As the market increasingly turn to the online environment, we need to make sure it is a safe market and market in which the investment of the US film community can be protected. That is the case all around the world, and including in China.

Our priority with respect to China's intellectual property laws today is urging China to address its internet piracy problem. We believe China must provide adequate protection in the digital environment by criminalizing end-user piracy, adding reference to the exclusive rights provided in the law, criminalizing violations of the anti-circumvention provisions for technological protection measures (TPMs) and rights management information, criminalizing Internet offenses that are without profit motive but that have affect rights holders on a commercial scale, and eliminating distinctions between crimes of entities and individuals.

To foster legitimate electronic commerce, it is imperative that China establish adequate liability for ISPs for piracy related offenses and satisfactory measures for notice-and-takedown of websites offering pirate materials. Such

provision will foster a responsible partnership between the content industries and the delivery networks.

The core of the problem, however, is whether the government has the will to protect the creative works American men and film produce. In your invitation to testify, you asked that I comment the various campaigns the authorities have undertaken over the years to enforce copyright violations. Some have been more successful than others. Many have simply been show campaigns, with little discernable results. Few, if any, however, have been enduring.

Let me illustrate: Across the street from the Silk Markets was a store simply named "DVD CDs." We prevailed upon the authorities to raid it not once, but three times in the course of years. I met with a senior Chinese official after the third of those and he bragged that the store had become a sporting goods and luggage retailer. After the meeting, we drove there and sure enough, through the windows I could see golf clubs and suitcases. When we entered, we were quickly ushered through a curtained passageway and into a back room with virtually any pirated DVD I could want.

Commitment. The government has a legislative framework that, while it needs some improvement, is fairly good. In addition, it has shown it can clean up the streets and stop infringement – it was impossible, for example, to find any counterfeit Olympics' goods two years ago. And, we have increasingly seen in recent months the government crack down on online content it finds objectionable – mostly pornography and political content.

But, that some commitment, that same will, has too often fallen short with respect to US filmed entertainment, to the detriment of your constituents working to produce it.

We believe we have to continue to press the Chinese for more and more effective copyright enforcement. The work you and your colleagues perform in continuing to raise this problem is invaluable. The work the Administration has performed, and continues to undertake, is as well.

That said, I do think it is time we give serious consideration to the effectiveness of some of the bilateral engagements on intellectual property rights. We do need to make a serious appraisal of the accomplishments of the Joint Committee on Commerce and Trade and its intellectual property rights working group. I cannot say today what the course is to improve it, but I can say we would be remiss if we were simply to continue business as usual.

I do know we have to improve access to the Chinese entertainment market. I will conclude where I began: The men and women in the American film community produce the most anticipated, most watched, most memorable movies in the world. In artistic and business terms, they can, and do, compete with anyone. However, they cannot stay on the job if they have to continue to compete with pirates stealing their works. We cannot compete with free.

We need to work to remove the barriers to the Chinese market – not overnight nor all at once, but to set a process by which the playing field levels. We believe that the next six months represents a unique window in that process. Last December, the World Trade Organization (WTO) ruled in favor of the complaint the US government brought against some of these key market barriers. And I want to thank, again, and commend the incredible effort the men and women of the Office of the US Trade Representative did in successfully pursuing this case.

The Chinese government has committed itself to complying with this decision by next March. We applaud them for the commitment; we await the details. We believe it is critical -- to grow US jobs and to protect the movies in China – that these barriers come down in a way that sets in place a dynamism in the Chinese market that enables the US film community to grow, and that sustains the growth in the Chinese industry.

You and your colleagues meet with Chinese officials frequently. On this issue and on behalf of the Americans at work in the US film industry, if I could ask you one thing, it would be: Tell the Chinese officials how closely you are following their work to comply with the WTO ruling. Tell them how high a priority fulsome, good faith compliance is to improving the bilateral relationship. Tell them how important it is to China's place in the world, to it earning the respect of the international community, that it complies with its international obligations.

And one more thing, tell them to see a US movie, a legitimate one.

Thank you.