

**Memorandum of Understanding between the People's Republic of China and
the United States of America Regarding Films for Theatrical Release**

Whereas the United States of America ("United States") requested consultations with the People's Republic of China ("China") in the World Trade Organization ("WTO") on April 10, 2007 regarding measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products (DS363);

Whereas the WTO's Dispute Settlement Body ("DSB") adopted its recommendations and rulings in DS363 on January 19, 2010; and

Whereas China and the United States signed "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding" on April 8, 2011 ("Sequencing Agreement") (WT/DS363/18 and WT/DS363/18/Corr.1);

China and the United States have agreed to the following provisions, including the provisions in the Annex hereto, which are part of this Memorandum of Understanding:

Revenue-Sharing Films

1. China confirms that enhanced format films are not subject to the 20-film commitment set forth in the Additional Commitments under Sector 2.D. of its GATS Schedule ("Revenue-Sharing Film Commitment"). China further agrees that it will allow the importation of at least 14 enhanced format revenue-sharing films per calendar year beginning in 2012.
2. In any contract for the distribution of a revenue-sharing film between a U.S. enterprise and a Chinese state enterprise, the U.S. enterprise will be allocated 25 percent of gross box office receipts, and the Chinese state enterprise shall be responsible for the payment of all taxes, duties and expenses. The term "gross box office receipts" means all monies or other things of value received by the theaters exhibiting the film in exchange for admission.

Films Other Than Revenue-Sharing Films

3. In any contract for the distribution of a film other than a revenue-sharing film between a U.S. enterprise and a Chinese state enterprise, the contract will be based on commercial terms, consistent with the terms prevailing in countries whose markets are comparable to China's market based on annual box office revenue, number of screens, annual admissions and admissions per screen.

CX Distribution

4. China confirms that any Chinese enterprise is eligible to apply for and be granted a license to distribute imported films and that nothing in China's laws, regulations or government rules prevents any eligible Chinese enterprise from applying for and receiving a license to distribute, and operating as a distributor of, these films.

5. China will promote reform in the distribution of imported films and will actively encourage more Chinese enterprises, including private enterprises, to obtain licenses and to participate in the distribution of these films.

6. China will approve any application for a license received from a Chinese enterprise if the Chinese enterprise fulfills valid requirements established by China. For the purpose of a license to distribute imported films, valid requirements are limited to requirements that are applied in a non-discretionary and non-discriminatory manner.

7. China confirms that there are no barriers to U.S. enterprises contracting directly with any licensed Chinese enterprise for the distribution of imported films, subject to the understanding that China currently requires certain Chinese state enterprises to distribute imported revenue-sharing films subject to the Revenue-Sharing Film Commitment.

8. China will ensure that no Chinese government entity or Chinese state enterprise, including the film importer, directly or indirectly influences the negotiation, terms, amount of compensation or execution of any distribution contract involving a licensed Chinese private enterprise.

Other Provisions

9. For any imported film, in accordance with relevant provisions of the Administrative Approval Law, China will ensure that the content review process is administered in a transparent manner, is completed in less than 30 days, and will not undermine the provisions of this Memorandum of Understanding. If a film is rejected for importation as a result of the content review process, China will ensure that the responsible regulatory agency promptly provides notice and the reasons for the rejection to the U.S. enterprise or any Chinese enterprise representing it.

10. China will ensure that Chinese policies and practices relating to film exhibition will not undermine the provisions of this Memorandum of Understanding.

11. China and the United States will periodically consult about the implementation of the commitments set forth in this Memorandum of Understanding.

12. In calendar year 2017, China and the United States will engage in consultations. Through this consultation process, China and the United States will provide for further meaningful compensation to the United States in terms of the number of enhanced format films to be imported each year and the share of gross box office receipts received by U.S. enterprises. China and the United States also will discuss the matter of China implementing the DSB's recommendations and rulings with regard to films in DS363.

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13. The following definitions apply to this Memorandum of Understanding:

- a. "Chinese state enterprise" means any Chinese state-owned or state-controlled enterprise.

- b. "Chinese enterprise" includes any Chinese state-owned or state-controlled enterprise or private Chinese-invested enterprise.
- c. "U.S. enterprise" means any U.S. enterprise, as well as any affiliate of a U.S. enterprise, regardless of its ownership or location; it also includes any enterprise authorized by a U.S. enterprise to contract with a Chinese enterprise for the importation and distribution of the U.S. enterprise's films.
- d. "Films" means films for theatrical release (also known as motion pictures) in China.
- e. "Revenue-sharing films" means films licensed for distribution on the basis of a sharing of the box office revenue in China as described in paragraph 2.
- f. An "enhanced format" film includes any film that is to be exhibited in China in a large screen format such as IMAX, in 3D format and/or in any other enhanced format, whether or not currently in existence, and encompasses the film's other formatted versions, if any, that are to be exhibited in China during the same release period.
- g. The "WTO Agreement" means the *Marrakesh Agreement Establishing the World Trade Organization*, done on April 15, 1994.

14. This Memorandum of Understanding is without prejudice to the rights and obligations of China and the United States under the WTO Agreement, the DSB recommendations and rulings in DS363, and the Sequencing Agreement.

15. Notwithstanding paragraph 14, the United States confirms that, with regard to issues related to films in DS363, it will neither request initiation of procedures pursuant to Article 21.5 of the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") nor request suspension of concessions or other obligations pursuant to DSU Article 22.6 prior to January 1, 2018, as long as the United States considers that China is in compliance with all of its obligations under this Memorandum of Understanding.

16. In the event that China and the United States agree that China has implemented the DSB's recommendations and rulings with regard to films in DS363, this Memorandum of Understanding shall terminate on the date of that agreement.

17. Nothing in this Memorandum of Understanding shall require changes to be made to a contract for the distribution of a particular imported film if the film has been accepted for release in China and the contract was signed prior to 18 February 2012.

Done in Geneva, Switzerland, 25 April 2012, in two original versions in Chinese and English, respectively, each text being equally authentic.

CA For the Government
of the People's Republic of China:

Yi Xiaozhun

For the Government
of the United States of America:

Michael P. ...

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**Annex to
Memorandum of Understanding between the People's Republic of China and
the United States of America Regarding Films for Theatrical Release**

In any contract relating to the distribution of imported films involving a Chinese state enterprise, the following terms shall apply:

- a. The U.S. enterprise shall be advised and consulted with respect to any marketing and advertising plans by the Chinese distributor in connection with the distribution of the film. The U.S. enterprise shall have the right to conduct at its discretion supplemental marketing and advertising activities.
- b. Any contract entered into by the Chinese distributor with a sub-distributor in China must be negotiated in good faith, with the participation of the U.S. enterprise, and must be pre-approved in writing by the U.S. enterprise.
- c. The Chinese distributor is obligated to require any sub-distributor to comply with all of the terms of the contract between the U.S. enterprise and the Chinese distributor.
- d. Content review approval shall be the sole obligation of the Chinese distributor and shall be completed in a timely manner.
- e. The Chinese distributor shall be obligated to demonstrate to the U.S. enterprise, in an official writing, any content review rejection by the responsible Chinese regulatory authority.
- f. If the contract between the U.S. enterprise and the Chinese distributor has been entered into prior to content review, in the event of content review rejection, the contract shall provide first for the opportunity for substitution or re-editing of the film, subject to good faith negotiation and agreement between the U.S. enterprise and the Chinese distributor, and shall not make content review rejection an automatic material breach of the contract that provides justification for any termination or cancellation of the contract or refund of any payment paid under the contract.
- g. The U.S. enterprise shall have the right to receive and to audit information (including box office receipts, where relevant) regarding the implementation of the Chinese distributor's obligations under the contract between the U.S. enterprise and the Chinese distributor as well as the obligations of any sub-distributor under a contract between the distributor and the sub-distributor.
- h. The U.S. enterprise and the Chinese distributor shall agree to designate in writing the country whose laws shall govern the interpretation of the contract between the U.S. enterprise and the Chinese distributor as well as the jurisdiction and forum in which any dispute related to the contract shall be resolved, including but not limited to arbitration and arbitration rules in any jurisdiction and forum to which they agree.

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