17 Impact of the Film Industry Promotion Law on the significant growth of the Chinese film industry

Yanqiu Guan

Legislative background of the Film Industry Promotion Law

The implementation of the Film Industry Promotion Law is an important achievement for Chinese cultural legislation, which had suffered a long and tortuous process. For decades, there have been calls for film legislation, which was also mostly expected by Chinese filmmakers. In January 1981, *Popular Movies* (a Chinese magazine) published an article calling for film legislation. This article inspired widespread discussion among people in different cultural fields, and film legislation began to take shape. In the late 1980s, there were many differences and disagreements over the film industry. The film industry of China has not yet been fully explored as a system adapted to the reality of social democratic politics. It was not the perfect time for film legislation. In the early 1990s, the State Council first formulated administrative regulations. In 1996, the Film Management Regulations were enacted. Subsequently, the development of the Chinese film industry was significant, accumulating matured experience and laying a solid foundation for further legislation. Since 2002, the year of the film industrialization reform, the structure of China's film industry has undergone major changes and the film industry has made great progress. After the film industrialization reform, the box office and number of films being produced in China have increased in terms of both quality and quantity. A film promotion system and a development protection policy have spontaneously been enforced through the strong application of the policy to the standard operation of the market. The knowledge gained from observing China's growing cultural industry enabled various policies for its future development, which were later codified by law. In 2004, the draft and formulation of the Film Promotion Law were initiated. Opinions were received from various sectors of society and the film industry. Seminars were held to speed up the legislative process. In 2009, the Film Promotion Law was renamed the Film Industry Promotion Law. During this period, China's socialist democratic politics continued to advance, and the cultural industry of China developed rapidly. Since the Communist Party's 18th National Congress, China has made vigorous efforts to develop the cultural industries

as one of its important strategic goals, and has achieved innovative advances. The Film Industry Promotion Law has been implemented at the most appropriate time and is of great significance for promoting the sustainable and healthy development of the Chinese film industry.

The Film Industry Promotion Law clarifies the attributes of “film as an industry” for the first time. A series of measures, such as introducing more preferential support policies and encouraging Chinese films to “go out into the world” have indicated the direction for the Chinese film industry and promoted the healthy and sustainable development of the film industry. In 2017, the total box office of the film industry was 55.911 billion yuan, a year-on-year increase of 13 percent. This shows that the Chinese film industry is striving for stability and is well positioned to achieve rapid and healthy development in future.

Several issues regarding the Film Industry Promotion Law

Decentralizing power, simplifying the approval process, and lowering the entry threshold of the film industry

One of the main highlights of the Film Industry Promotion Law is the decentralization of power, which simplifies the complex approval process for administrative agencies. The authorities’ powers have been decentralized because central power and the market restrict each other. The decentralized powers respect the rules of the market and encourage enthusiasm for creativity and market vitality. This is one of the landmark initiatives of China’s film reform. Attempts have been made to improve the institutional environment and strengthen the incentives and norms of the system, so that key elements in the film industry, such as human resources, capital funding and film technology can be optimized. There have also been moves to redefine the role of the government in the development of the film industry. Government functions have been transformed from direct management and administrative intervention into a free and open external institutional environment in order to fully stimulate filmmakers’ creativity. This policy has injected a large amount of social capital into the Chinese film industry. The film market became more open and inclusive with tremendous sources of funds and more films being made. In recent years, some new genres and new filmmaking directions among Chinese films have appeared, and certain types of bold innovations have been widely praised. The progress of the Chinese film industry has been exciting. It can be seen from the domestic box office that China has become one of the biggest film markets in the world. In recent years, the domestic box office has grown rapidly from 10.172 billion yuan in 2014 to 55.911 billion yuan in 2017. At present, China ranks as the second largest box office market in the world and has become the market with the greatest growth potential.

Protect intellectual property rights in movies***Film intellectual property rights protection and clarification of the rights and obligations of film production***

As the most important part of the cultural and creative industry, the film industry plays a defining role in the development of China's cultural industry. The protection of intellectual property rights relating to films is particularly important. For a long time, the profit resource of Chinese movies had been relatively unitary. The income from box office receipts and advertisements accounted for more than 80 percent of the total profits of each film. This was in sharp contrast to countries with matured intellectual property protection systems, such as the United States. Article 7 (Item 1) of the Film Industry Promotion Law stipulates that intellectual property rights related to movies are protected by law, which means no organization or individual may infringe such rights. This emphasizes the protection of intellectual property rights for movies, encouraging the development of film derivatives and international film trade. It reflects the country's determination to protect intellectual property relating to the film industry.

The government has strongly encouraged film production companies to develop film derivatives, but because of the long-term lack of copyright consciousness and experience in derivatives development, the domestic film derivatives market has not yet grown significantly. In 2017, the box office of *Wolf Warrior 2* was 5 billion yuan, which set a record for China's box office. However, 90 percent of this revenue was from box office earnings and the film's commercials – the market in “spin-off” items was negligible. After the release of *Wolf Warrior 2*, a large number of “copycat items,” such as bullet necklaces, lighters, and keychains, etc. emerged on Taobao and other e-commerce websites and even became best-sellers. However, because these goods were not authorized by the copyright owners, they were called “similar items” to avoid infringing the copyright law. One of the reasons for this phenomenon is that awareness of intellectual property protection in the film industry is weak. On the other hand, the relevant laws and policies are still to be completed, and the punishment measures are weak. Regulatory control of copyright still has much room for improvement. At present, the legal protection of intellectual property rights related to movies in China has not solved all the problems of the film industry, and there is still a long way to go.

Intellectual property protection in the American film industry

The United States has always attached great importance to the protection of intellectual property. The Constitution of the United States of America has a section that directly confers on the US Congress the right to protect authors and inventors, allowing them to enjoy exclusive rights to use their works

and inventions for a certain period of time, aiming to promote scientific and technological advancement. This is the foundation of copyright protection in the United States. In addition, the US legislature has introduced a number of laws to protect copyrights, such as the Digital Millennium Copyright Act in 1988, the Copyright Term Extension Act in 1998, the Home Entertainment and Copyright Act in 2005, the Copyright Law in 1976, and the amendments made in 1989 and 1990. These laws provide comprehensive legal protection for copyright in the United States.

The United States adopts the principle of indirect infringement in peer-to-peer (P2P) technology infringement cases. The network service providers are guilty of infringement if the following criteria are met: (1) if the provider manufactures or sells the infringing products; and (2) if the customers use the products. As for the P2P technology infringement, two typical cases in the United States are the *Napster* case and the *Gorkster* case. Although these two cases do not deal directly with film copyright protection, their final judgments are still relevant to the copyright protection of movies, because the two cases established legal precedents to protect copyright and combat its infringement. The laws of the United States are heavily dependent on precedents established by case law.

On February 4, 2016, representatives from 12 member states, including the United States, formally signed the Trans-Pacific Partnership Agreement (TPP) in Auckland, New Zealand. Although the United States announced its withdrawal from the TPP on January 20, 2017, it is believed that the United States will continue to adapt to the new situation and severely crack down on copyright infringement in the film industry to protect the copyright of films.

China could learn from US protection policies for film-related intellectual property rights, and implement the provisions for intellectual property protection given in the Film Industry Promotion Law. In recent years, there have been frequent cases of piracy infringement in the film industry. Many films have been pirated after their theatrical release and film production companies have suffered tremendous commercial losses. The Film Industry Promotion Law clearly states: "Intellectual property rights related to films are protected by law and no organization or individual may infringe." In addition, the department responsible for intellectual property rights enforcement at the county level or above shall take measures to protect the film industry. Intellectual property rights and infringement of intellectual property rights are applicable to movies, in accordance with the law. Article 31 directly states that no person shall, without the permission of the rights holder, record and videotape the film being shown, and it also gives the cinema the right to "exercise such law enforcement." These regulations respect and protect the labor of the majority of creators, standardize the film market and reflect China's efforts and determination to increase the protection of the intellectual property rights of movies.

The film censorship system

The film censorship system in China

The subject of film censorship relates to an organization or institution that is authorized by law or commissioned by industry associations to review films before their release, using specific standards to determine whether they can be released and at which rating. Film censorship is dealt with by organizations, such as government regulatory agencies, industry self-regulatory organizations, and production units. The Film Industry Promotion Law clarifies that the film censorship system will continue to apply to all Chinese films. This is determined by China's national laws and has become common sense to all people. However, it still faces many difficulties. On the one hand, theoretical research on the Chinese film industry is not extensive, and the theoretical research results are relatively inadequate. On the other hand, due to the lack of experience in the rule of law at the practice level, specific rules are lacking. If there is not a mature policy system and enforcement, we should first look at the developed countries and regions of the global film industry, and learn from and draw on their relatively matured theory and practical experience.

The American film rating system

A film rating system is different from a film censorship system. In a film rating system, each film is classified according to the content of the film. Films of different levels are open to audiences of suitable ages: children and teenagers are prevented from accessing inappropriate audio-visual images while adults can watch whatever films they choose.

A rating system does not limit the screening of movies. It only divides the film levels and distinguishes the audience. At present, most developed countries and regions adopt a film rating system, such as the United States and Canada. Hollywood is a pioneer in the global film industry, and its film rating system is also relatively mature. The film rating system was established through a series of judgments by the Federal Supreme Court. It is also a transitional model from the administrative subject review mode to the modern one. After World War I, Hollywood films began to reflect changes in certain ethical standards. Sex, violence, alcoholism, drug abuse, and other "new symbols of modern life" became popular film themes. This change caused public outrage, and conservative moral defenders launched strong protests and boycotts on films. In order to prevent the federal government from intervening in film censorship (filmmakers have always regarded government involvement as "the end of Hollywood"), Hollywood organizations established industry self-regulatory organizations. American film producers and the Publishers Association attempted to conduct a self-regulation review through the association, to avoid the risk of the government intervening in film censorship. The American Film Rating System is administered

by the Rating Committee, a committee organized by the American Film Association. It evaluates a film on behalf of parents, based on the language, violence, pornography, and drug use scenarios of a film. The judges of the American Film Rating System are a rating committee affiliated with the Classification and Rating Authority of the Motion Picture Association of America. The chairman of the rating committee is appointed by the chairman of the Film Association. The committee consists of 8–13 members, all of whom must be parents. As an independent branch of the Film Association, the organization's remuneration packages are provided by film producers or publishers who apply for a rating, and the Film Association must not interfere with their work. Members of the rating committee conduct a secret ballot when rating the film, and then discuss the level after the result of the vote. If producers want to expand the audience and strive for a bigger market, they can delete or modify some of the content of the film and send it to the rating committee for re-rating. If producers are dissatisfied with the rating decision made by the Rating Committee, they may also appeal to the Appeal Board. The Appeal Board consists of 14–18 members, all of whom are from the Film Association and the National Theatre Owners Association. Members of the Appeal Board will review the appeal and will hear the appellant's statement and the Rating Committee on the relevant disputes. The appellant and the Rating Committee can question each other and the Appeal Board will make the final decision.

The film rating levels in the United States have been revised several times and were finally determined as a five-level system. Standards for rating films in the United States mainly focus on whether the film contains violence, sex, and drug abuse. Then the rating system quantifies these scenes in films. For example, a film containing a sex-related dirty word should be rated as PG level. If there is more than one word like this, then it should be rated at least as R level. These measurable quantifiable standards make it easier for producers to evaluate their film works based on specific criteria. The American Film Rating System was the result of the balance of interests of all parties. It breaks the unified standard of the film censorship model. Giving a film a rating does not pose any limitation to its release while the rating at the same time can provide parents with information to protect their children.

There are many limitations in China's current film censorship system. Among them, the relation between production units and administrative organizations needs to be more balanced. There is a huge contradiction between the increasingly diversified demands of the public and the actual films produced. To pursue the prosperity of the film industry, filmmakers are calling for the protection of creative freedom and say the audiences want more film variety, which urgently demands the reform of the film censorship system as soon as possible. The Film Industry Promotion Law did not make any substantial change to the current film censorship system. The film industry is closely related to the political, economic and cultural factors of individual countries. The film industries of developed countries have established good

systems for rating films, and China also needs to adopt an improved censorship system suitable to its own national conditions.

How to improve China's current film censorship system

First, China needs to enhance the independence of film censorship. Under the dual leadership of the Communist Party and various government bodies, Chinese film censorship organizations lack independence and the legitimacy to make real decisions. The review committees are not well selected in terms of profession and age background. To reform film censorship, the following actions could be taken: first, reduce the proportion of administrative officials and their roles. The dominant positions on the review committee should be assigned to senior filmmakers. Second, increase the democratization of the review institutions and involve the public in the review process. Hong Kong's model is worth following: setting up a film advisory group to engage with the public so that members of different social classes, occupations, and ages can participate in film censorship. Third, increase the proportion of young and middle-aged members of the committee. Film is an art form that is changing all the time. Young and middle-aged members can better understand the current film culture and make more appropriate review decisions. Finally, arrange reasonable conditions for the members and refer to the practice of the US Review Board whose reviewers must include parents as film reviewing's aim is to protect children. Parents have the biggest concern for their children's best interests, and consequently a parental review board can make the film review more rational.

Second, there is the need to enhance the clarity of the review criteria. Although the Film Industry Promotion Law governs the Chinese film censorship system, in practice, the film censorship standards are too vague and immature in operation. Thus, the administrative organizations have a great deal of discretion. The review criteria must be clarified and clearly stated as policies. On the one hand, the review criteria should be clear and specific, and the words should be certain and accurate. For example, what is "national interest" and what is "obscene content" in the current policy? The criteria should enable judgments to be made regarding whether or not the content of a film harms the national interest. The criteria should also determine whether an audience would understand the film and whether it might influence their behavior. On the other hand, film censorship standards should be quantified, as their language can easily cause ambiguity. After quantifying the standard, the ambiguity and the operability of the standard can be eliminated as much as possible. When setting the film standard, the US rating standard should be the reference, such as the number of times scenes of taking drugs or smoking appear in a movie.

The international distribution of Chinese films

It is important to increase both Chinese films' international distribution and expand the international market share of domestic films to transform the

Chinese film industry in terms of both cultural and commercial strength. The Film Industry Promotion Law encourages and supports domestic films competing with foreign films, by increasing Chinese films' distribution abroad and balancing or reversing the trade deficit of this sector. The Chinese national cinema is the carrier for projecting authentic national images of China through film distribution abroad, allowing other countries and regions to gain more experience of China. However, at present, China is still at a relatively early stage of its films' international distribution. Some films have achieved a new box office record in China but they failed to perform in international markets due to various factors (cultural factors and filmic ideology etc.). For example, *Wolf Warrior 2* (the box office champion in China in 2017) had a weak box office performance in North America. It took only US\$190,000 at the box office over three days, which was far less than that of its domestic box office. Some countries, such as the United States and South Korea, long ago started the policy of distributing their films abroad, and have now formed a relatively mature film distribution abroad system.

Hollywood's global film distribution strategy

American movies are very influential and competitive. The six major Hollywood studios in the United States are the main studios for American movies' global distribution. Hollywood films' distribution abroad covers the global film market with emphasis on China, Japan, South Korea, the UK and France. Hollywood distributes many films to international markets, especially blockbusters of different genres, such as science fiction, action, suspense, and romance, etc. Hollywood blockbusters have become a cultural symbol, exporting American heroism and ideology to the global film market, while earning outstanding global box office receipts. There are two main reasons why Hollywood films have achieved such a high global box office. First, as primary superpower in the world, the US has consolidated its status as a leading force in the global cultural industry. Many audiences are willing to learn about American culture, lifestyle, and values through movies. Second, American films are most advanced in terms of production technology. For example, the use of digital technology, 3D special effects, and especially the rise of VR technology in recent years, have provided sensory changes and astounding visual impacts for audiences, bringing a new viewing experience. This is also an important reason why audiences are willing to pay for American movies.

The strategy of South Korean cinema culture

During the long period from the 1960s to the 1990s, South Korean cinema had its period of crisis and challenge. Hollywood's global dominance of the film market, together with the popularity of Japanese cinema, Hong Kong cinema, and Taiwanese cinema, put tremendous pressure on the South Korean film industry. In order to solve the crisis, South Korea formally proposed a strategy which was to define the cultural industry as a pillar

industry for national development in the twenty-first century. The film and television industry has been a key link in the overall strategy of South Korea's development of the cultural industries. South Korea has adopted a series of effective policies to combat competition from Hollywood movies, and to increase the international distribution of South Korean domestic films. In September 1996, the first Busan International Film Festival was held, with screenings of more than 160 movies from 31 countries. The festival was a great success and became a major film event to celebrate Asian films and now is one of Asia's most influential international film festivals. This has greatly promoted the international influence of South Korean cinema and eventually led to the expansion of South Korean films' international distribution. In addition, South Korea also supported the development of its domestic film industry by setting up a Film Promotion Committee, with a quota system and a newly created film distribution system. Since the 1990s, the number of South Korean films distributed abroad has gradually increased. Since 2000, South Korean cinema has penetrated various international markets with a significant number of films distributed in nearly 30 countries in Asia, Europe and North America.

Countermeasures for the international distribution of Chinese films

First, more supporting policies for the international distribution of Chinese films are needed. There are some policies in the Film Industry Promotion Law to encourage and increase the international distribution of Chinese films. In addition, it is necessary to further improve relevant laws and regulations, and make the policies better implemented through various means, such as financial support, policy support and simplifying the administrative procedures.

Second, the government's promotion of Chinese films needs to be strengthened. There are many management departments for films, hence Chinese films' international distribution involves a wide range of sectors and procedures. These departments should comprehensively coordinate the interests of all parties by exchanging information and strengthening the guidance and supervision of international film distribution. They should also communicate more with international film festivals, film exhibitions, and film organizations by holding regular meetings to guide Chinese film production companies and ensure the smooth and steady development of the international distribution of Chinese films.

Third, the international competitiveness of Chinese films needs to be improved. Chinese films should focus on advanced film technology to produce high quality films to tell Chinese stories. Thus, they will appeal more to both Chinese and foreign audiences. Also, Chinese national cinema should enhance cultural self-confidence and project a positive Chinese cultural identity. Large numbers of Chinese people live abroad who strongly self-identify with Chinese culture, and they form another potential market for Chinese films' international distribution.

Conclusion

The innovations of the cultural industry should be in step with the trends of our time. From black and white pictures to “talkies” to today’s highly manipulated digital cinema, film has been through a long journey of development. In the era of digital innovation, film still maintains its original entertainment function. As a cultural industry that China strongly supports, film has become a symbol of national development and serves various sectors, such as education, technological development, and the transformation of the political situation.

The Film Industry Promotion Law not only attaches importance to the system construction and improvement of the film industry, but also emphasizes the normative nature of the film market development order, by actively disseminating socialist core values and insisting on cultural security as its mission. The governmental bodies should service and introduce more institutional guarantees for the development of the film industry. The implementation of the Film Industry Promotion Law gives a clear legal remit. Meanwhile, Chinese films still need to conform to the rationalization of related media laws at different national levels. The administrative regulations or departmental regulations related to the film industry should be revised, so that these regulations are in accordance with the Film Industry Promotion Law. Therefore, it is necessary to carry out a corresponding revision and improvement of related media laws to make sure they function in a unifying system at different national levels. In addition, when legislation is approved, very often the law enforcement power is insufficient, which poses an urgent problem for the transformation of the Chinese film policy situation, as the law should be strictly observed and implemented.

Since the 19th National Congress, Chinese socialism has entered a new stage. With the new situation and policies, the development of Chinese films has also entered a new era. Supported by the multi-functional policy of the Film Industry Promotion Law, Chinese films will continue to improve in terms of quality and quantity, strengthen their core competitiveness, and disseminate China’s culture, China’s voice, and China’s image to the international community. All of this will further enhance China’s excellent reputation abroad.