

House Committee on Ways and Means

Statement of Dan Glickman, Chairman and Chief Executive Officer, Motion Picture Association of America

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of the House Committee on Ways and Means

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MR. CHAIRMAN: “China is too frustrating to deal with, too lucrative to ignore.” That quotation, attributed to a film industry executive, appeared in a story *Variety* carried this past Monday describing the problems the US motion picture industry faces in the China market. It captures the situation perfectly, almost. For the reasons I will cite, the numbers show that China has been far from lucrative, though still a market with enormous potential.

China is the most difficult market in the world for the US motion picture industry. It is impossible to travel to one of China’s major cities and not encounter street hawkers pushing pirated versions of the latest US movies. More than 9 of every 10 DVDs in the China market is fake. A comprehensive analysis of the piracy problem estimated that our members lost \$244 million to piracy in China in 2005 alone.

While you can see virtually any US film you want in China, in pirated form, the legitimate market is one of the world’s most restricted. The pirates have a thriving market, but our companies - who invest millions and employ hundreds of thousands American workers – are throttled. The Chinese government decides which US films Chinese audiences will see, when they will see them, and dictates the terms of getting those films into China.

These problems reinforce each other; they make China nearly “too frustrating to deal with.” At the same time, as one of the fastest growing markets in the world populated with audiences who genuinely like and flock to US films, China is indeed “too [potentially] lucrative to ignore.”

Let me frame the three key points in the US-China trade agenda from our perspective:

One, the US motion picture cannot continue to absorb losses of the magnitude it suffers in China. The Chinese government has committed to fight piracy and strengthen its protection of intellectual property, for the motion picture industry as well as other US copyright industries. It has met neither its unilaterally announced objectives nor its international obligations.

Two, the US motion picture industry will not be successful fighting piracy in China until it has fair access to a fair China market. We are not seeking preferential treatment, we are seeking fair treatment. Movie pirates invest nothing in creating the content they peddle, yet they enjoy virtually unfettered access to Chinese audiences.

The Chinese government needs to clean then level the playing field, remove the artificial, protectionist barriers that restrict legitimate companies from supplying Chinese audiences the filmed entertainment they clearly desire.

Three, success in achieving these goals will depend, in part, on the continued support of our agenda

from the Congress and the Administration.

Movie Piracy in China

Regrettably, to coin a phrase, if you did not see a counterfeit DVD, you were not in China. Too many, especially some around the world who should be allies in the fight against piracy in China, view this as an American problem, or a Hollywood problem. While we certainly bear the disproportionate brunt of the burden of this problem, movie piracy in China affects film makers all around the world.

Our research indicates that almost half the pirated product is actually Chinese. We also find stolen copies of Japanese, Korean, French, and Indian movies in China. The world's film industry, including the Chinese industry, lost \$2.7 billion in 2005, according to the research we commissioned.

I recall a conversation with a young Chinese film producer who recently visited my office. When asked to define his number one problem, he did not mention financing, distribution, or any of the other obstacles film producers must overcome: He said piracy is his biggest problem -- the theft of his movies, in China.

Movie piracy is a problem afflicting film makers no matter where they live and make movies, in more than one way. Not only are the pirates sapping legitimate movie makers in the China market, they are encroaching on legitimate markets all around the world. Our analysis of pirated DVDs seized from around the world traced their production back to over 50 plants in China.

Piracy in China it is also a problem with global reach. A pirated disc made in China can, in a day or two, be on the streets of Los Angeles. Someone can illegally camcord a movie in Montreal, send the file by way of the internet to someone in Guangzhou who then dubs and subtitles the dialogue, and then illegal presses thousands of DVDs.

In June of last year, the first research conducted in China examining the effect of piracy on the country's motion picture industry from the perspective of industry participants revealed that Chinese film producers, exhibitors, and distributors are suffering badly from widespread film piracy, and that few are optimistic that the situation will improve any time soon.

Asked about the future of movie piracy in China over the short term, 61 percent of industry respondents surveyed in this study said they believe movie piracy will continue to increase, while 39 percent said they believe piracy levels will hold steady. No one interviewed believes that the market for pirated films will shrink.

The researchers concluded that meeting consumer demand – through increased variety and availability of legitimate movie titles as well as improved legitimate distribution networks – is to some extent a precursor of the eradication of piracy.

Over the last several months, senior Chinese officials have stepped up their rhetoric about intellectual property rights enforcement. We have seen several pronouncements of enforcement campaigns, the most recent being the so-called 100 Day Campaign launched last summer, extending through the fall of 2006.

We undertook our own survey of the effects of the campaign on the availability of pirated product. In general, we found that in some cities, in some shops, at some times, the availability declined; however, pirated discs were still available at virtually the same level. In some instances, we were asked to come

back later in the day, or were squirreled to back rooms.

Let me give you an example: During my first trip to China in this role, I visited a shop near the hotel. To my astonishment, I found a copy of one my son's movies. I met with the mayor of Beijing later that day. The next day, the shop was raided and closed. During my next trip to China, I visited the same shop. It was full of more pirated discs. We alerted the authorities; it was raided, again, and closed. Last December, our staff met with Ministry of Culture officials, who touted the closure of the shop and its conversion to a clothing store. They visited the store, and from the outside, it did appear to be a clothing store. However, inside, in a backroom, virtually pirate versions of every current US movie remained available.

Therein lies a key problem we face: The will and commitment of the Chinese authorities to enforce their laws. We have problems with the adequacy of many of the provisions of their laws. But as strong as the laws might be, if the authorities do not enforce them, we will be no better off than where we are right now.

Fair Access to a Fair Market

Unfortunately, there are several territories around the world where the rate of piracy of US motion picture rivals the rates we endure in China. However, China stands unequalled in the barriers it places on the US industry's ability to enter the market. Let me cite six of the most visible, and frustrating, barriers we face.

First, China only permits 20 foreign films into its market each year on a revenue sharing basis. Typically, US audiences may have the opportunity to see as many as 20 new films over a week or two; China only allows 20 foreign films into its cinemas a year.

Second, those films must be imported and distributed through a government-controlled entity. We have an extremely limited role in the normal commercial activities of distributing and promoting our own films.

Third, China's state-controlled film importer and distributor dictates the terms by which we share box office revenues with Chinese theaters; these terms are the most unbalanced in the world and return to the US industry rates far below normal commercial terms.

Fourth, we must contend with a censorship process that at times, we believe, can be arbitrary and motivated more by political or protectionist concerns than by making judgments about the suitability of the film.

Fifth, when we do get our films in the market, around and over these obstacles, we frequently find ourselves subjected to blackout periods, as we term them. They are periods when the Chinese authorities reserve local cinemas for Chinese films, only. To make our exclusion from cinemas even worse, blackout periods usually occur during periods, when audiences are most likely to be on holiday from work or school, such as the upcoming new year holiday.

Sixth, we also face restrictions on our ability to invest and control film production, distribution, and exhibitions businesses in China. Like other businesses, we are subject to arbitrary decisions affecting our businesses, a lack of transparency about the way those policies are set, and policies that favor local companies at our expense.

Consequently, in China last year US films earned \$109 million in box office. In comparison, over the last weekend, the domestic box office was \$108 million. Notwithstanding these figures, the 2006 Chinese box office was 30% more than 2005. A recent industry analysis projected that box office revenue will double within the next 4 years.

Over the last few years, the US motion picture industry has stepped up its investment in the Chinese industry. We have invested in cinemas as well as film and television production facilities. We are interested in continuing that investment; however, as we have told the Chinese authorities, we must be assured of the ability to return a sufficiently attractive return on that investment to justify it.

Some of our members have also adjusted their marketing practices to compete with the pirates. But no matter how aggressively we price our products, we cannot compete with pirates who have no investment in the content of the product and we cannot compete against the pirates who have the market to themselves, not hindered by the government regulations and restrictions we encounter.

The MPAA China Agenda

MPAA invests millions every year in fighting piracy, in China, and around the world. We go after the pirates, we work with governments to enact and then enforce adequate laws. We work to educate the public about the consequences of piracy, and the legal alternatives, and we are constantly seeking new ways to address the problem through technology, education, and changing business practices.

We are also on the ground in China. Our representatives survey the market for information about the incidence of piracy and pass on this information to the Chinese authorities. In many cases, this information helps Chinese authorities formulate cases for raids on sellers and distributors, and often, those authorities invite our representatives to accompany them on such raids.

We operate and participate in training sessions for Chinese authorities and jurists on IPR laws and enforcement, in the US and in China.

We have executed a memorandum of understanding with the Chinese Ministry of Culture, National Copyright Administration, and State Administration of Radio, Film, and Television to improve protection of home entertainment products. We just recently executed, with other US copyright trade associations, another agreement with the National Copyright Administration of China to enhance our collective efforts to combat internet piracy.

The support we have received from the Congress is tremendous. The work the Administration has done and is doing is invaluable.

I want to note the work, in particular, of Secretary Gutierrez and Ambassador Schwab. The Secretary has been one of our most powerful and articulate advocates; his team, here and in Beijing, are top-rate. Ambassador Schwab approaches our China agenda with a clear and forceful strategy for success, and she has deployed some of the best and most effective officials in the executive branch to our cause. We are deeply appreciative of these efforts.

In the 5 years since China joined the World Trade Organization, since taking on the obligations and responsibilities that organization demands of its members, we have, regrettably, seen little meaningful progress from China towards protecting US motion pictures as the WTO requires. The market continues to be tightly controlled, in violation in some aspects of the letter of the WTO and certainly in spirit.

We will continue our work inside China, with the officials there, with the industry, and our members will likely do so, too. However, our patience and our pocketbooks are not limitless.

We have walked a long way down the China road, looking and hoping for improvement. We may be nearing the end of that course and deciding on whether to take another, another which calls China into account for its WTO obligations and responsibilities, and, we believe, its failure to abide by them.

Olympic Leverage

Before coming to my current position, I spent a fair amount of time in China and working on matters affecting China while I was in Congress and as Secretary of Agriculture. In particular, with respect to the latter, I was deeply involved with President Clinton in fighting, successfully, for PNTR for China.

When I traveled first to China under the MPAA mantle, I was greeted as a friend of China for that work. I was able to secure meetings at the most senior levels and enjoyed candid and productive conversations with those officials. Since then, I have worked hard to maintain good relations with the Chinese government and industry.

In addressing our problems with the Chinese officials, I told them that I am struck by the fact that when, and if, they want to protect intellectual property, they can be remarkably successful. While fake DVDs litter Beijing, fake Olympic-logo materials are impossible to find. The government has made it abundantly clear that it will not tolerate Olympic rip-offs, and it has enforced that edict, effectively. In sum, when the Chinese authorities want to protect intellectual property, they can.

As the world's eyes begin to turn to Beijing in the run-up to the 2008 Olympics, I have asked the authorities if they want the world to see a China of which they can be proud, or do they want the world to see a China of fake DVDs -- a China which pays no heed to intellectual property, a China which countenances theft, theft of ideas, creativity, and of the livelihoods of the working men and women who make those movies.

My views on how we can use the pressure of the Olympics to further our agenda are explained more fully in the attachment to this statement. In your discussions with Chinese officials, I urge you to make the same points. I believe we must step up enforcement, open the market, possibly take legal action at the WTO, and we must also shine the powerful light of world public opinion on the Chinese.

Mr. Chairman, I appreciate the fact that you have decided to call attention to our China problems as one of the first matters on your agenda this Congress. I look forward to your questions and to working with you and your colleagues in advancing our agenda in China.

Thank you.

Is China ready for its close-up?

As the world focuses on the Beijing Olympics, will the government drop the curtain on entertainment pirates?

By Dan Glickman

From: The Los Angeles Times

December 18, 2006

AS BEIJING begins preparing for the 2008 Olympic Games, we will see more and more of the Olympic logo, one of the most widely recognized pieces of intellectual property — and one of the best protected.

To be sure, fake depictions of the five rings and the logos of individual Games have plagued the International Olympic Committee and host country Olympic committees. But the integrity of the logo will be tested like never before when the torch enters Beijing.

China is arguably the world's largest marketplace for pirated goods — from copied luxury items and medicines to bootleg versions of the latest films. Will knockoffs of Beijing's running-man logo for the 2008 Games become as commonplace?

A recent news story cited a Chinese manufacturer who observed that his government was implementing strict control over the production and distribution of Olympics materials "to protect the value of the logo" — and it's working. Will China translate its apparent will to protect the integrity of its Olympic logo to movies, music, publications, television, entertainment and business software, pharmaceuticals and other industries that are built and dependent on effective protection of their intellectual property?

In a little less than two years from now, hundreds of thousands of people will travel to China for the Games that billions of people will watch on television. I know the kind of China I want them to see: a responsible great power, a leading player in the world's affairs abiding by the rules of the community of nations. I also want to see China as welcoming of movies and other entertainment from around the world as the government will be of fans and athletes from around the world.

Indeed, China has actively sought such recognition, most pronounced in its successful bid to join the World Trade Organization. Along with recognition, that membership carries responsibility, a duty that China has failed to meet in opening its market to legitimate entertainment industries and protecting intellectual property and the value of creativity. This deficiency is not just an intolerable burden to the U.S. motion picture industry; it afflicts filmmakers worldwide, including those in China. An independent Chinese film producer recently told me that his single biggest problem is the piracy of his work by his fellow countrymen.

During my last trip to China, I heard from Chinese officials — all too frequently — that the rest of the world must be patient, that we must give China more time to develop a sophisticated, comprehensive and effective system of protections for intellectual property rights. The authorities said that modern China has a mere 20 years experience — a small fraction of that of the United States.

I reject this explanation. My first trip to China was more than 20 years ago. The transformation of the nation and its economy since then has been astonishing, made possible by a commitment to purpose and a purposeful will — both of which have been lacking in its approach to intellectual property rights. Although China has opened itself to the world in many remarkable ways, the U.S. motion picture industry still faces a bewildering array of restrictions, hobbling its fair access to China's market. At the same time that China effectively permits pirates unfettered access to Chinese movie consumers — 93% of the film market is pirated goods, according to Motion Picture Assn. of America research — it severely restricts the ability of legitimate moviemakers who have invested enormous capital in producing the filmed entertainment that the pirates steal. This gives the pirates a monopoly.

I challenge Beijing to use the 2008 Games to showcase a new commitment to movie rights. Beijing has enlisted the help of some of the greatest American film directors to create projects to showcase China and the Olympics. Yet these same directors have repeatedly had their films rejected for exhibition in China. But make no mistake, their films are widely known and viewed in China, thanks to the sales of millions of pirated DVDs.

In 2008, the world could see China as a nation of fake goods, a nation running roughshod over respect for intellectual property. Or it could be seen as a respected member of the international community that welcomes a diversity of entertainment products while protecting and valuing the integrity of intellectual property.

China is a great power. Will it act like one?

[1] The Motion Picture Association of America (MPAA) represents the major US producers and distributors of motion picture and television programs; its members are NBC Universal City Studios, Paramount Pictures Corporation, Sony Pictures Entertainment, The Walt Disney Company, Twentieth Century Fox Film Corporation, and Warner Bros. Entertainment