

Intellectual Property & Film in China

Every effort has been made to ensure that the information provided here is accurate, however we accept no responsibility for errors, omissions or misleading statements in this factsheet. This information is written in general terms and should be used as a guide only. It should not be used as a substitute for professional advice.

Increasing UK-China film cooperation is offering British films access to revenue streams in the Chinese market through a variety of business models. The Chinese intellectual property (IP) system has developed rapidly over the past 30 years. But a number of differences remain between international norms and the structures of the Chinese film industry and IP system. It is important for British companies to be aware of these differences and to prepare accordingly.

A “restricted” sector

Industries in which China will accept foreign investment or business operations are limited. Foreign involvement in Chinese industries is categorised as “encouraged”, “permitted”, “restricted” or “prohibited”. Foreign involvement in the film and television business is currently categorised as “restricted”. This has important implications for British film and television business models in China.

In keeping with the “restricted” categorisation of the film sector, foreign companies are not permitted to engage independently in production in China. Sino-foreign television production joint ventures have been prohibited since 2009.

Sino-foreign motion picture production joint ventures remain theoretically possible, but only a small number have ever been approved. Joint ventures engaged in related activities such as technology development or aspects of post-production are relatively more common.

Sino-foreign film collaborations & co-productions

In general, three types of Sino-foreign collaboration are permitted in the Chinese film industry:

- 1) “Joint” productions, in which both the Chinese and foreign partners invest capital, labour and other resources and in which they “share the interests and bear the risks jointly”.
- 2) “Coordinated” or “assisted” productions, whereby the foreign party contributes capital and carries out filming in China, while the Chinese party is paid to provide equipment, labour, etc.
- 3) “Productions by appointment,” whereby the foreign party appoints the Chinese party to carry out production in China on its behalf.

A [UK-China Co-Production Treaty](#) was signed in April 2014. The treaty sets out the requirements for co-productions to be officially recognised as domestic films in both countries. A treaty offers an official framework to support UK-China co-productions. Official joint productions are not subject to import quotas that apply to foreign films.

This regulatory framework strongly influences the business models followed by British films in China. This in turn has important implications for exposure to IP risks in China, and for strategies to mitigate these risks.

Intellectual Property & Film in China: Top Tips

- **The Chinese IP and legal systems are increasingly effective** – but you can't protect rights you don't formally own in China. Carefully consider the appropriate business model for China film market entry and take steps to protect relevant IP at an early stage.
- **Protect ideas during the initial negotiation stage**, for example through the use of Non-Disclosure Agreements (NDAs) and doing due diligence on potential partners and collaborators. The China-Britain Business Council (CBBC) offer a [company check service](#) and can signpost to service providers that can carry out more detailed due diligence.
- **Get contracts right**. Take specialist legal advice on the wording of agreements in Chinese and don't expect common English-language terminology to translate directly. Take legal advice before signing any Memorandum of Understanding (MOU) or other high-level agreement.
- **Focus on relationships**. Protection of IP and respect for contractual agreements can be fluid in China as circumstances change. Build interpersonal trust with partners and communicate clear expectations and priorities for protection of intangible assets.

Copyright in China

The first modern Copyright Law was introduced in China in 1991 and separate Internet regulations in 2006. More generally, IP remains a relatively new concept in China, resulting in attitudes to protection of intangible ideas that are different to attitudes commonly held in developed markets. For example, the stigma applied to copying or plagiarism does not apply to the same extent in China as in Western countries.

The lack of an established legal framework and a poor understanding of IP can present particular challenges for British creative industries in China. However, despite these challenges, it is possible to protect IP using the Chinese legal system if appropriate steps are taken early enough.

China has adopted an increasingly modern intellectual property legal framework following accession to the World Trade Organization (WTO) in 2001 and the signing of a number of other international IP treaties. Ongoing revisions to the Chinese Copyright Law are adding another layer of sophistication and aim to bring the Chinese copyright system closer to international norms.

Under the current Copyright Law, films are protected in China as cinematic works, generally enjoying protection like other authorial works (e.g. literary and musical works). Films attract a full set of exclusive rights including reproduction, distribution, public performance, rental, broadcasting and Internet dissemination. The

term of copyright protection for film in China is 50 years.

Specific steps to mitigate IP risk in China include:

- **Register related IP early**. Screenplays and other works can be registered with copyright authorities at central or municipal government level. Most China IP lawyers can assist with this process. Note that this is a separate process to registering a plot summary with the Chinese Film Bureau in order to obtain permission to shoot a film in China under co-production or other arrangements. Copyright registration is not strictly necessary but can help prove prior ownership in subsequent disputes. Trade marks should be registered for titles, characters and other significant content. Remember that IP rights are typically territorial – registrations in the UK, Europe or Hong Kong will not usually provide protection in mainland China.
- **Guard against misappropriation of creative ideas when exploring market entry**. Due diligence should be performed on potential partners in advance of sharing information. Consider using Non-Disclosure Agreements (NDAs) and take advice from an experienced China lawyer. At the very least, this can provide some leverage in the event of a dispute. Consider leveraging industry association or government bilateral frameworks to share ideas to reduce risk of misappropriation.

Contracts

Copyright ownership in joint film production agreements are not as clear in China as in other jurisdictions and should be negotiated on a project-by-project basis. The general rule-of-thumb is that Chinese law requires that agreements give "reasonable" access to rights and revenues to the parties involved.

Chinese contracts are usually simpler and shorter than contracts in developed countries. Specialised vocabulary taken for granted in international film contracts is still emerging in Chinese, so commonly used expressions or concepts may be misunderstood or simply inapplicable. In China, a contract is less likely to be regarded as a complete statement of a commercial relationship and more likely to be perceived as a starting point for the further negotiations when circumstances change. This makes building interpersonal trust with Chinese partners vitally important.

Particular points to consider when preparing contracts and other formal agreements in China include:

- **Take legal advice when approached to sign a Memorandum of Understanding (MOU)** or other such high-level agreement by a Chinese partner, especially during short-term visits. These documents can be important roadmaps for future cooperation – and in comes cases can have a degree of legal standing in China.
- **Do due diligence on Chinese partners** before signing anything. Ensure that your Chinese partner actually exists and has the permits or licenses required to do what they have promised to do. Make sure the Chinese party is controlled by the person or people

you are dealing with. Even reputable state-owned entities will do business using a variety of affiliates that must still be properly identified and described in an enforceable contract. Your China lawyer can help with the due diligence process and initial checks can also be performed directly reviewing official [documents and resources](#).

- **Make sure contracts and other legal documents are in both Chinese and English.** Chinese law and jurisdiction are often more appropriate than foreign law and jurisdiction, especially since Chinese courts do not generally enforce foreign judgments. In the event of a dispute, Chinese courts may well be preferable to an international arbitration commission.

The Internet and digital ancillaries

Although box office revenues remain dominant in the Chinese film industry, online revenues are growing quickly. Many major online portals are developing legitimate business models, typically based on advertising revenue. Television series from the UK, US and South Korea are increasingly screened through online portals in China. Large sites have notice-and-takedown mechanisms to report and remove infringing content.

However, infringement risks still remain through both large portals and smaller sites. Law enforcement special campaigns can help prevent sites from distributing infringing content. Content producers should familiarise themselves with online IP enforcement channels ahead of release and focus efforts on maximising income at key parts of the revenue cycle (and especially during the initial box office release period). Pirates in China can move quickly and have illegal copies online within days of release of new films.



HARRIS | MOURE

This factsheet was written and researched by [Mathew Alderson](#) in the Beijing office of Harris Moure, in collaboration with the British Embassy Beijing. Mathew has written extensively on the Chinese film industry. See [here](#) for more.

To arrange a discussion of particular IP cases in China contact Commercialmail.beijing@fcdo.gov.uk. More information on IP in China – including other business factsheets – can be found on our [China IP Webpage](#).