



China eases cross-border film and media regulations

On 18 May, 2016, China's media regulator, the State Administration of Press, Publication, Radio, Film and Television ("**SAPPRFT**"), issued a decision (the *Decision on the Amendment of Certain Rules* ("**Decision**")) amending five of its rules. This was part of a broader government-wide effort to reform and simplify China's complex and sprawling system of administrative approvals across all fields. As one of the most heavily regulated and restricted sectors to foreign investment, any changes in this area, however small, are likely to be closely followed by media industry players looking for an opportunity to enter the market.

Three amendments included in the Decision in particular will have an impact on those involved in cross-border film and media activities. We discuss these amendments below.

Movie negatives

Negatives and workprints for Sino-foreign co-produced films shot in China can now be processed or post-produced overseas without any special SAPPRFT approvals. Furthermore, producers of Sino-foreign co-produced films will no longer need to report in their applications to SAPPRFT for initial project approval where the processing and post-production of their film negatives or workprints will take place. Previously, approval and reporting were required, and applicants had to demonstrate a special technical need as the basis for seeking approval for overseas processing or post-production.

On a related note, it also used to be the case, conversely, that companies in China could not perform processing or post-production of negatives or workprints of films shot overseas without SAPPRFT approval. However, this approval item was recently cancelled as well, in SAPPRFT's April 2016 *Decision on the Repeal of Certain Rules and Normative Documents*, which abolished the 2004 *Approvals for Films to Come in or Go Out of the Country for Processing or Post-Production Administrative Procedures*. This is, of course, only part of the story and Chinese companies will still not be able to participate in any processing of films shot overseas that have content that offends SAPPRFT's censorship principles.

Both of the above-mentioned changes are in conflict with the *Film Administrative Regulations* ("**Film Regulations**"), which still contain approval requirements for these actions and penalties for non-compliance. However, it appears that the SAPPRFT policy has been to relax how these rules are applied in practice for quite some time now, especially as movie production has moved away from traditional film and into digital footage, digital storage and digital post-production, with the ability to transfer files across borders in cyberspace with or without approval, making the rules difficult to enforce in practice. Through the Decision, SAPPRFT essentially codified this policy shift and has brought into line the departmental rules that were issued by SAPPRFT. However, SAPPRFT is powerless to cause the Film Regulations to be consistent, as these are higher-level administrative regulations issued by a legislative body higher up the chain, namely the State

Council. The result is a slightly awkward position of having conflicting legislation on the books, and technically the Film Regulations should prevail according to well-established rules of statutory interpretation. However, given that SAPPRFT is the body actually charged with implementing the Film Regulations, we expect SAPPRFT will not have gone out on a limb and 'overruled' the State Council's regulations without getting some kind of assurances from the State Counsel that it was authorised to do so. As a result, we expect that under its current policy, SAPPRFT will follow the Decision and not enforce any provisions to the contrary. Nevertheless, out of prudence, companies with relevant projects may still want to liaise with the relevant SAPPRFT body to confirm the requirements that may be applicable to their own specific situations.

Film exhibitions

Film exhibition events in China co-hosted with foreign countries are encouraged, and the door is open to a potentially wide range of work units in China to host them, subject to SAPPRFT approval.

"Film exhibition events" is the new term for what the relevant rules used to call "localized film festivals with foreign elements." Both these terms, new and old, stand in contrast to "international film festivals (exhibitions)." In fact, none of the foregoing terms are explicitly defined in the law, but it is implicit in the rules that full-on international film festivals (exhibitions) are events imbued with great weight and significance (and risk from the censor's perspective), so they may only be hosted by government bodies in China.

Film exhibition events, implicitly, appear to be on a smaller scale and hence likely to have less impact, and are divided between those which involve a single country, and those involving multiple countries. Those involving one country can be approved by provincial level SAPPRFT, with a copy of the approval sent to central SAPPRFT. If multiple countries are involved, however, then approval must be obtained from central SAPPRFT. There is one variant on this: if the host is a "central unit in Beijing" (a term not defined within the statute but where defined in other statutes includes, for example, organs of the central government and/or centrally governed state-owned enterprises), or a directly subordinate agency thereof, then approval must come from central SAPPRFT, regardless of the number of countries involved.

Prior to the Decision, all "localized film festivals with foreign elements" had to be government organized (albeit, it could be local government) and centrally approved.

Participation by foreigners in domestic TV series

Censorship of Chinese domestic TV series that involve foreigners in their creation has been decentralized and delegated to provincial-level SAPPRFT, putting such series on an equal footing with Chinese domestic TV series without foreign involvement. Previously, such foreign participation triggered approval by central-level SAPPRFT.

Exceptions to this provincial-level delegation apply. Censorship will still be at the central level for a Chinese domestic TV series if:

- it is produced by production entities who, according to regulations, record file directly with Central SAPPRFT (the production entities of departments directly under the Central Committee of the Communist Party of China or of centrally governed state-owned enterprises)
- a provincial-level authority submits it to the central-level authority for censorship, or
- the series raises social controversy or the series ought be censored at the central level in the public interest.

A "domestic TV series" is one produced by Chinese domestic production entities. The term stands in contrast to a "jointly produced TV series," i.e., one produced jointly by a Chinese domestic production entity and one or more foreign production entities, and "imported TV series," i.e., foreign TV series that are produced overseas and brought into China for domestic broadcasting. Jointly produced TV series and imported TV series are subject to censorship by central-level SAPPRFT.

Conclusion

Each of the above-mentioned amendments in the Decision represents a small, but positive shift for the industry and for those foreign players interested in participating in it. Of course, more substantive relaxations and a greater shift away from prior approvals and restrictions or an after-the-fact responsibility system would be welcomed by foreign investors and industry participants alike.

SAPPRFT's overall trend, though, appears to be for more restrictive regulation, not less, as demonstrated by, for example, its sweeping new rules on online publishing (see our recent alert [here](#)) published in February; reports that SAPPRFT in May had "talks" with video websites persuade them to transfer a part of their equity to state-owned enterprises as part of a "special management share system" and sign letters of intent to that effect before 10 June; and the issuance of SAPPRFT's new online game publishing rules (the *Notice on the Administration of Mobile Games Publishing Services*) of 24 May requiring SAPPRFT pre-approval of every single online game (and pre-installed game) in China beginning 1 July, with games launched prior to that needing to obtain approval before 1 October.

Such backdrop of increased scrutiny of online activity and content leaves little room for optimism that any of the spaces regulated by SAPPRFT, including film, TV and film exhibitions, will see a greater move towards regulatory relaxation, at least not in the near term.