

FILM IN CRISIS: WHY PUSHING BACK AGAINST CENSORSHIP IN FILM SHOULD BE A CENTRAL COMPONENT OF INTERNATIONAL TRADE POLICY WITH CHINA AND SAUDI ARABIA

Alana E. Ballantyne

The film industry has exploded over the last twenty years as an international art form. Now, more than ever, producers look to foreign markets to recover the profit on a film. Film stars from countries outside the West have increasingly made their way into the American public's consciousness. Technology and increased international cooperation have played no small part in this expansion. With recent, rapid growth in communication technology, the world has increasingly shrunk, which creates more opportunities for people to share unique ideas and tell stories that bridge cultural divides. Film has never been more accessible or widely accepted as an art form than now. Yet, against this landscape of unprecedented international communication and interdependence, authoritarian governments have used technology to clamp down on free expression and censor the art that makes its way to their borders. This paper audits the censorship schemes of Saudi Arabia and China; exposes the threat that these censorship schemes pose to film, art, and free markets outside of their borders; examines the lackluster, non-specific, and toothless international response to the censorship crisis; and proposes to link censorship reduction in those countries with the enforcement of existing trade agreements with China and Saudi Arabia.¹

1. While this paper originally discussed film censorship in Iran, given that the currently political relations between Iran and the United States are influx, the analysis of Iran film censorship has been removed from this paper.

I. INTRODUCTION	3
II. FILM CENSORSHIP: A HISTORY OF SILENCE.....	6
III. CENSORSHIP SCHEMES: CHINA AND SAUDI ARABIA.....	8
A. Censorship as a Social Norm in China	8
1. Cutting Out the Creative: China’s “Film Industry Promotion Law” Penalizes Expression in the Film Industry	12
2. The Effects of Film Censorship Laws on Domestic and International Films Released in China.....	14
B. Censorship in Saudi Arabia: A History of Violence.....	25
1. Saudi Censorship Law: Policy and Practice	28
2. Long Arm of the Law: How Saudi Arabia Censors International Content within its Borders.....	31
IV. DEFICIENCIES IN THE INTERNATIONAL RESPONSE TO FILM CENSORSHIP.....	34
A. China: An Imbedded Concentration on Market Access over Reform.....	35
B. Saudi Arabia: Expediency over Accountability.....	37
V. PROPOSED SOLUTION: INCORPORATING CENSORSHIP DEREGULATION INTO INTERNATIONAL TRADE AGREEMENTS	38
VI. CONCLUSION	45

I. INTRODUCTION

In September 2019, an animated children's film caused international outrage. Vietnam, China, and the Philippines banned the film.² The film, *Abominable*, a joint venture between DreamWorks and the Shanghai-based Chinese production company, Pearl Studio, follows a spunky teenage girl who stumbles across the abominable snowman.³ Together, she and her friends go on an epic, magical quest to reunite the friendly abominable snowman with his family.⁴ On its face, the film seems to be relatively uncontroversial.⁵ However, one scene in the film caused, what some have described as a “geopolitical nightmare” for the parent studio, DreamWorks.⁶ The film included a scene that featured a map in the background behind the characters.⁷ On that map, the “nine-dash line” is clearly visible.⁸

The nine-dash line is China's self-proclaimed territorial hold over the South China Sea.⁹ China's neighbors vigorously protest China's grip on the area.¹⁰ The South China Sea covers an area of some 3.5 million square kilometers, boarded by Brunei, China, Indonesia, Malaysia, the

2. Bethany Allen-Ebrahimian, *Hollywood Is Paying an 'Abominable' Price for China Access*, FOREIGN POL'Y (Oct. 23, 2019, 11:16 AM), <https://foreignpolicy.com/2019/10/23/abominable-china-dreamworks-propaganda-hollywood/>.

3. See Peter Travers, *'Abominable' Review: How to Train Your Yeti*, ROLLING STONE (Sept. 25, 2019, 12:24 PM), <https://www.rollingstone.com/movies/movie-reviews/abominable-movie-review-889089/>.

4. *Id.*

5. See Allen-Ebrahimian, *supra* note 2.

6. *Id.*

7. *Id.*

8. *Id.*

9. See Allen-Ebrahimian, *supra* note 2.

10. See Sreenivasa Rao Pemmaraju, *The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility*, 15 CHINESE J. INT'L L., 265, 266–67 (2016) (“[The South China Sea] lies to the ‘south of China and the islands of Hainan and Taiwan; to the west of the Philippines; to the east of Vietnam; and to the north of Malaysia, Brunei, Singapore and Indonesia’ China claims sovereignty and historic rights over all the islands and other maritime features of South China Sea which lie beyond the 12 mile territorial sea limit of China as well as that of any other coastal State. These ‘historic rights’ are illustrated by a map depicting what has since come to be known as the dotted/nine-dash line.”) (quoting *The South China Sea Arbitration (Phil. v. China)*, PCA Case Repository 2013–19, at para. 3).

Philippines, and Vietnam.¹¹ Because of its desirable central geographic position¹² between major trading partners in the Eastern Hemisphere, control of the South China Sea has been a major political issue for decades, made more contentious by China's expansionist practices in the region.¹³

Since at least 1953, China has claimed that the territorial waters encircled by the nine-dash line are under Chinese jurisdiction.¹⁴ However, in 2016, a multinational adjunctive panel at the Permanent Court of Arbitration disagreed with the Chinese claim.¹⁵ The international panel held that China could no longer use the nine-dash line to make historic claims to the South China Sea.¹⁶ Further, the panel found that China had "no legal basis" for maritime claims.¹⁷ Yet, three years later, the nine-dash line showed up on a map in the animated children's film, *Abominable*.¹⁸ The geographical mark did not go unnoticed on the international stage as countries in Asia responded with near-universal outrage and several countries banned the film outright.¹⁹

11. *Id.* at 266.

12. Zhiguo Gao & Bing Bing Jia, *The Nine-Dash Line in the South China Sea: History, Status, and Implications*, 107 AM. J. INT'L L. 98, 99 (2013) ("The South China Sea forms part of the vital route of maritime trade and transport for East Asian and Southeast Asian states and their trading partners in Asia, Africa, and beyond.")

13. Arbitrators for the Permanent Court of Arbitration found that China's recent large-scale land reclamation and construction of artificial islands was incompatible with its obligations during the dispute resolution proceedings, insofar as China has inflicted irreparable harm to the marine environment, infringed on the exclusive economic zone of the Philippines, and destroyed evidence of the natural condition of features in the South China Sea that formed part of the Parties' dispute. *See The South China Sea Arbitration (Phil. v. China) PCA Case Repository 2013–19*, at paras. 993, 716, 1181.

14. *See id.* at para. 181.

15. Having found that none of the features claimed by China were capable of generating an exclusive economic zone, the Tribunal found that it could — without delimiting a boundary — declare that certain sea areas are within the exclusive economic zone of the Philippines because those areas are not overlapped by any possible entitlement of China. *See id.* at para. 6; *see also* Hannah Beech, *Just Where Exactly Did China Get the South China Sea Nine-Dash Line From?*, TIME (July 19, 2016, 2:30 AM), <https://time.com/4412191/nine-dash-line-9-south-china-sea/>.

16. *See The South China Sea Arbitration*, at para. 278.

17. *See* Beech, *supra* note 15 (quoting *The South China Sea Arbitration*, at para. 592).

18. *See* Allen-Ebrahimian, *supra* note 2.

19. *Id.*

DreamWorks's inclusion of the controversial demarcation deserves examination. Many would question why a film studio based in the United States would include a line in the South China Sea so maligned by major allies in the region.²⁰ Industry watchers in the West cite the inclusion of the line as part of a growing trend of international film companies to tailor or edit their films to be palatable to the Communist government in Beijing.²¹ Increasingly, the international film industry has pandered to the whims of heavy-handed censors not only in China, but in other dictatorial countries, such as Saudi Arabia, in order to gain access to markets in those countries.²² On its face, the deference seems to go against closely held artistic ideals of free expression.²³ But, entry into those markets, particularly China, can mean millions and perhaps even billions of dollars for the companies that choose to self-censor.²⁴ *Abominable* made over \$21 million (USD) in China alone.²⁵ The film industry's self-censorship in the face of restrictive, censorious international laws raises several

20. See Mary Hui, *China's Controversial South China Sea Map Is Entering Pop Culture Thanks to US Companies*, QUARTZ (Oct. 14, 2019), <https://qz.com/1727522/chinas-illegal-south-china-sea-map-made-it-into-abominable/>.

21. See *id.*

22. See, e.g., Dezan Shira, *Navigating Restrictions in China's Film Industry*, EASTWEST BANK (Feb. 22, 2016), <https://www.eastwestbank.com/ReachFurther/News/Article/Navigating-Restrictions-In-China-Film-Industry>; Lisette Voytko, *Hollywood Criticized For Pandering To China Out Of Fear Of Losing Lucrative Box Office Sales*, FORBES (Aug. 5, 2020), <https://www.forbes.com/sites/lisettevoytko/2020/08/05/hollywood-criticized-for-pandering-to-china-out-of-fear-of-losing-lucrative-box-office-sales/?sh=702fd6485672>; Tatiana Siegal & Alex Ritman, *Pressure Mounts on Hollywood to Distance Itself From Saudi Arabia*, HOLLYWOOD REP. (Oct. 12, 2018), <https://www.hollywoodreporter.com/news/hollywood-saudi-arabia-will-khashoggi-scandal-ruin-business-1151994>

23. See *Freedom of Expression in the Arts and Entertainment*, ACLU, <https://www.aclu.org/other/freedom-expression-arts-and-entertainment> (last visited Oct. 30, 2020).

24. See Ciara Linnane, *China's Movie Box Office Is Overtaking U.S.'s — and, Yes, Investors Can Get in on It*, MARKETWATCH (May 22, 2018, 11:54 AM), <https://www.marketwatch.com/story/movie-box-office-in-china-now-bigger-than-us-as-domestic-films-draw-big-audiences-2018-05-21>; see also Tom Brueggemann, *China's Box Office Is Now Bigger than North America: It's Time to Start Worrying*, INDIEWIRE (Apr. 6, 2018, 11:00 AM), <https://www.indiewire.com/2018/04/chinas-box-office-is-now-bigger-than-north-america-its-time-to-start-worrying-1201949453/>.

25. *Abominable* (2019), THE NUMBERS, [https://www.the-numbers.com/movie/Abominable-\(2019\)#tab=international](https://www.the-numbers.com/movie/Abominable-(2019)#tab=international) (last visited Oct. 30, 2020).

uncomfortable questions about the value of artistic expression and the legitimacy of permissive film culture in the face of the human rights abuses that are present in China and Saudi Arabia.

This Article presents a potential economic solution to the increasingly salient issue of censorship in both China and Saudi Arabia. First, Part II.A and B describe the origins of the censorship schema in China and Saudi Arabia. Part III highlights the consistent failure of the international community to respond to censorship of international film and media in any meaningful way, the economic considerations behind the lackluster response, and the impact censorship laws have on the international film industry. Part IV argues for international condemnation of the harsh censorship schemes in the aforementioned countries and for the enforcement of existing trade agreements against China and Saudi Arabia, focusing particularly on the General Agreement on Tariffs and Trade (“GATT”) and the General Agreement of Trade in Services (“GATS”).

II. FILM CENSORSHIP: A HISTORY OF SILENCE

The United States is not completely innocent regarding the censorship of film. As early as 1917, the United States government began censoring the content of films and regulating what films could be shown to the public.²⁶ One of the earliest examples of early censorship is Margaret Sanger’s feminist documentary, *Birth Control*, shown just once before New York licensing commissioner George Bell denounced the film as “immoral, indecent, and contrary to public welfare” and banned further screenings.²⁷ The Supreme Court officially censored the film in its decision in *Mutual Film Corp. v. Industrial Commission of Ohio*.²⁸ In that

26. See Laura Filion, *Margaret Sanger’s Banned Film*, MARGARET SANGER PAPERS PROJECT (Mar. 17, 2015), <https://sangerpapers.wordpress.com/2015/03/17/margaret-sangers-banned-film/>. E.g., Geoffrey Knox, *Birth Control and the Media: Sanger, Disney and Beyond*, CONSCIENCE MAG. (May 12, 2014), <http://consciencemag.org/2014/05/12/birth-control-and-the-media-sanger-disney-and-beyond/>; Bob Mondello, *Remembering Hollywood’s Hays Code, 40 Years On*, NPR (Aug. 8, 2008), <https://www.npr.org/templates/story/story.php?storyId=93301189#:~:text=Remembering%20Hollywood’s%20Hays%20Code%2C%2040%20Years%20On%20For%20more%20than,it%20was%20always%20taking%20hits.>

27. See Filion, *supra* note 26.

28. See generally *Mut. Film Corp. v. Indus. Comm’n of Ohio*, 236 U.S. 230 (1915).

case, the Supreme Court held that First Amendment protections did not apply to film because film was not art but “a business pure and simple.”²⁹

Thereafter, the imperious Hays Code strictly regulated the bounds of acceptable film content from 1930 onward.³⁰ The Hays Code identified “pointed profanity,” “licentious or suggestive nudity — in fact or in silhouette,” “any inference of sexual perversion,” “miscegenation,” “white slavery,” and “childbirth,” among others, as prohibited topics.³¹ It was not until experimental film began to take off in the 1960s that the Hays Code’s hold on Hollywood began to weaken; Congress repealed the Hays Code in 1968 and replaced it with the modern Motion Picture Association of America (“MPA”)³² rating system.³³ The MPA is significantly less strict than the Hays Code; the MPA commission rates films, which suggests what age demographic should see the film rather than policing what can and cannot be put into a film.³⁴

Mutual Film held as authoritative legal precedent until 1952 when the case *Joseph Burstyn, Inc. v. Wilson* overturned it.³⁵ In *Joseph Burstyn*, the Supreme Court reversed its *Mutual Film* decision and recognized film as an artistic medium entitled to protection under the First Amendment.³⁶ This recognition, to a large extent, prevented the government from interfering with, censoring, or placing content-based restrictions on films in the United States.³⁷ Ultimately, this reversal in legal precedent

29. *Id.* at 244–45 (“We cannot regard [the censorship of movies] as beyond the power of government.”).

30. THE MOVIES IN OUR MIDST: DOCUMENTS IN THE CULTURAL HISTORY OF FILM IN AMERICA 213–14 (Gerald Mast ed., 1982).

31. *Id.*

32. *Who We Are*, MOTION PICTURE ASS’N, <https://www.motionpictures.org/who-we-are/> (last visited Nov. 11, 2020).

33. *See Film Ratings*, MOTION PICTURE ASS’N, <https://www.motionpictures.org/film-ratings/> (last visited Oct. 30, 2020) (MPA stands for Motion Picture Association. The commission rates every film shown in theaters from “G” for general audiences to “NC17,” which indicates that no one under seventeen will be admitted.).

34. *See id.*

35. *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 499, 506 (1952) (holding that a film a New York censor deemed “sacrilegious” was a “restraint upon freedom of speech” and thereby a violation of the First Amendment).

36. *Id.* at 501. *See also* John M. Finnis, *Reason and Passion: The Constitutional Dialectic of Free Speech and Obscenity*, 116 U. PA. L. REV. 222, 230–31 (1967).

37. *See* Finnis, *supra* note 36, at 230.

contributed to the demise of the Hays Code and hastened the death of government film censorship in the United States.³⁸

III. CENSORSHIP SCHEMES: CHINA AND SAUDI ARABIA

A. Censorship as a Social Norm in China

Film censorship in China is not taboo, as it is in the West; in fact, censorship is an accepted norm. Since its inception in 1949, the Communist government of the People's Republic of China has kept a firm hand on the cultural proclivities of its people. It stifles debate when debate moves too far from the Communist Party line, and the government crushes both political and cultural dissent.³⁹ This is no more evident than in the political philosophy of the current President Xi Jinping.⁴⁰ Unlike democratic countries, where political dissent and multi-party political systems are common, China operates in a dictatorial, single-party system.⁴¹

To maintain a hold on the country, the Communist Party in China propagates a complete rejection of the notion of the individual for the collective good of the whole.⁴² Individual free will, expression, and

38. *See id.*

39. *See* Kevin Carrico, *China's Cult of Stability Is Killing Tibetans*, FOREIGN POL'Y (June 13, 2017, 3:11 PM), <https://foreignpolicy.com/2017/06/13/self-immolation-and-chinas-state-cult-of-stability-tibet-monks-dalai-lama/>; Ben Wescott, *Tiananmen Square massacre: How Beijing turned on its own people*, CNN (June 3, 2019), <https://www.cnn.com/2019/06/02/asia/tiananmen-square-june-1989-intl/index.html> ("After a tense two weeks, on the night of June 3, convoys of armed troops entered Beijing with an aim to clear the square by whatever means necessary. Blocked by civilians in the streets who were attempting to protect the students, the troops opened fire. Students, workers and other ordinary citizens fought back, setting fire to some military vehicles, but they were overwhelmed.").

40. *See Profile: China's President Xi Jinping*, BBC NEWS (Feb. 25, 2018), <https://www.bbc.com/news/world-asia-pacific-11551399>.

41. *See* Zheping Huang, *Xi Jinping Says China's Authoritarian System Can Be a Model for the World*, QUARTZ (Mar. 9, 2018), <https://qz.com/1225347/xi-jinping-says-chinas-one-party-authoritarian-system-can-be-a-model-for-the-world/>.

42. *See China and the Principle of Self-Determination of Peoples*, 6 ST. ANTHONY'S INT'L REV. 79, 80 (2010) ("The existing situation lacks any semblance of self-determination, despite the fact that various ethnic minority areas in China have been

autonomy are subservient to the will of the state.⁴³ For example, Wu Banggou, the Communist Party's top legislative official, commented on the Party's rejection of individualism and liberalism in a 2009 speech he gave to the National People's Congress — China's governing legislature — and stated, “we will never simply copy the system of [international] countries or introduce a system of multiple parties holding office in rotation . . . Although China's state organs have different responsibilities, they all adhere to the line, principles and policies of the Party” and added that Communist Party leadership should be strengthened and “the correct political orientation maintained.”⁴⁴

To retain the “correct political orientation” amongst its citizens, China deploys a variety of censoring technologies, primarily on citizen's phones and internet routers.⁴⁵ This allows China to control what information its citizens have access to, making it easier for the Communist government to promulgate its message of collectivism.⁴⁶ For example, China strictly regulates internet access in the country; the Ministry of Information closely monitors online activity.⁴⁷ Internet routers, “devices that deliver and direct packets of data back and forth between networks, are an essential part of internet networks.”⁴⁸ The Communist government “filters” the data that goes through routers in China and programs routers to block political, religious, or any other category of content that it deems out-of-step with Party groupthink.⁴⁹ Interestingly, many privately-held companies choose to self-regulate the amount of internet access they allow by running diagnostic tests to see which words, phrases, and web addresses Chinese authorities block at the router level.⁵⁰ The companies then block

designated ‘autonomous’ province-level jurisdictions In Chinese, ‘autonomy’ is 自治 (zizhi), which literally means ‘self-rule.’”).

43. STEPHEN MOSHER, *THE BULLY OF ASIA: WHY CHINA'S DREAM IS THE NEW THREAT TO WORLD ORDER*, 3–4, 13–14 (2017).

44. *China ‘Will Not Have Democracy’*, BBC NEWS, <http://news.bbc.co.uk/2/hi/asia-pacific/7932091.stm> (last updated Mar. 9, 2009).

45. *See How Censorship Works in China: A Brief Overview*, HUM. RTS. WATCH, <https://www.hrw.org/reports/2006/china0806/3.htm> (last visited Oct. 30, 2020).

46. *See generally id.*; *see also* Hofstede Institute, *What About China?*, <https://www.hofstede-insights.com/country/china/> (last visited Nov. 16, 2020).

47. *Id.*

48. *Id.*

49. *See id.*

50. *Id.*

those words, phrases, and web addresses without waiting to be asked by the authorities.⁵¹ This practice allows privately held multinational companies such as Yahoo!, MSN, and Google to avoid complaints from Chinese officials and to stay in the good graces of the authorities who control their license to operate.⁵² With private companies choosing to self-regulate the internet to cater to Chinese wishes, the Communist government has turned its eye back to regulating its citizens. Recently, the Chinese government has also deployed a mass “surveillance blanket” over its cities.⁵³ Not only are citizens in China constantly under surveillance, via cameras, microphones, and sweeps of their internet history, China is also implementing a “social credit system.”⁵⁴ The Chinese government compiles the scores of every citizen by utilizing advances in artificial intelligence, data mining, and storage to construct detailed profiles on all Chinese citizens.⁵⁵ The accompanying network of surveillance cameras “constantly monitors citizens’ movements, purportedly to reduce crime and terrorism.”⁵⁶

Under this “social credit system,” Chinese citizens are given a score based on how well they adhere to Communist values.⁵⁷ Every citizen starts

51. *Id.*

52. *See id.*

53. Paul Mozur, *A Surveillance Net Blankets China's Cities, Giving Police Vast Powers*, N.Y. TIMES (Dec. 17, 2019), <https://www.nytimes.com/2019/12/17/technology/china-surveillance.html>.

54. ORWELL'S NIGHTMARE: CHINA'S SOCIAL CREDIT SYSTEM, ASIAN INST. POL'Y STUD. (2017) [hereinafter ORWELL'S NIGHTMARE]. *See also* Celia Hatton, *China 'Social Credit': Beijing Sets Up Huge System*, BBC NEWS (Oct. 26, 2015), <http://www.bbc.com/news/world-asia-china-34592186>.

55. *See* ORWELL'S NIGHTMARE, *supra* note 54.

56. Anna Mitchell & Larry Diamond, *China's Surveillance State Should Scare Everyone*, ATLANTIC (Feb. 2, 2018), <https://www.theatlantic.com/international/archive/2018/02/china-surveillance/552203/>.

57. ORWELL'S NIGHTMARE, *supra* note 54 (“On June 14, 2014, China’s State Council published a planning outline for the construction of a social credit system (2014-2020): ‘a social credit system is an important component part of the Socialist market economy system . . . It is founded on laws, regulations, standards and charters. It is based on a complete network covering the credit records of members of society and credit infrastructure.’ Under this new system, all Chinese citizens are to be rated in four main areas — administrative affairs, commercial activities, social behavior, and the law enforcement system. The government plans to establish a mechanism for reward and punishment by 2020.”).

off with a score of 1,000 points.⁵⁸ NPR reported the ranking as follows: 960 to 1,000 points is an A; 850 to 955 points is a B; 840 to 600 points is a C; and any score below that is a D and designates the score-holder as “untrustworthy.”⁵⁹ Those deemed by the system to be “untrustworthy” can face severe repercussions.⁶⁰ They are banned from staying in certain hotels, they can be placed on a travel blacklist, and their children may even be unable to attend college.⁶¹ Examples of serious violations include drunk-driving, embezzlement, and fraud.⁶² Other violations can include playing too many video games, having a lawsuit brought against you in court, defaulting on a loan, and spreading what the government deems to be “fake news.”⁶³ Even honking in traffic can cause a person’s citizen score to drop.⁶⁴

The citizen score has large-scale practical effects on the lives of those forced to live under it.⁶⁵ For example, Chinese lawyer Li Xiaolin tried to use his national identity card to purchase a plane ticket.⁶⁶ The airline rejected the purchase because Mr. Li had been deemed “untrustworthy” by his citizen score.⁶⁷ The Chinese Court blacklisted him for losing a defamation suit.⁶⁸ Though he wrote an apology letter, the court rejected his apology, and without notice, placed Mr. Li on a travel blacklist, which prevented him from purchasing plane tickets and traveling abroad.⁶⁹

58. Stacey Vanek Smith & Cardiff Garcia, *China Tests a ‘Social Credit Score’*, NPR (Oct. 18, 2018, 5:00 AM), <https://www.npr.org/2018/10/31/662436265/china-tests-a-social-credit-score>.

59. *See id.*

60. *See id.*

61. *See* Nandra Nittle, *Spend “Frivolously” and Be Penalized Under China’s New Social Credit System*, VOX (Nov. 2, 2018, 6:50 PM), <https://www.vox.com/the-goods/2018/11/2/18057450/china-social-credit-score-spend-frivolously-video-games>.

62. *See id.*

63. *See id.*

64. *See* ORWELL’S NIGHTMARE, *supra* note 54.

65. *See* Mary Wang, *China’s Chilling ‘Social Credit’ Blacklist*, HUM. RTS. WATCH (Dec. 12, 2017, 4:40 PM), <https://www.hrw.org/news/2017/12/12/chinas-chilling-social-credit-blacklist>.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

Paradoxically, it is in this Orwellian⁷⁰ environment that the world's second-largest film market thrives.

1. *Cutting Out the Creative: China's "Film Industry Promotion Law" Penalizes Expression in the Film Industry*

In 2017, the Standing Committee of the National People's Congress, China's governing body promulgated a new film censorship schema.⁷¹ The law, entitled the Film Industry Promotion Law of the People's Republic of China, governs the creation, filming, distribution, and screening of films within China.⁷² While claiming the law respects the "freedom of the film creation,"⁷³ Article 3 requires those who engage in filmmaking to act as a "service to the people and [a] service to socialism, persist in prioritizing social benefit, and bring about social benefit consistent with economic benefit."⁷⁴ What that language precisely means is unclear, however, in practice this law allows Chinese officials broad leeway in determining whether to censor a film.⁷⁵

Article 16 contains a non-exhaustive list of banned material.⁷⁶ For example, films created and shown in China must not contain "incitement of resistance to or undermining of implementation of the Constitution, laws, administrative regulations;"⁷⁷ "endangerment of the national unity, sovereignty or territorial integrity; leaking state secrets; endangering national security; harming national dignity . . . ;" "undermining ethnic

70. GEORGE ORWELL, 1984, 240 (1949) ("Nothing that he does is indifferent. His friendships, his relaxations, his behavior towards his wife and children, the expression of his face when he is alone, the words he mutters in sleep, even the characteristic movements of his body, are all jealously scrutinized. Not only any actual misdemeanor, but any eccentricity, however small, any change of habits, any nervous mannerism that could possibly be the symptom of an inner struggle, is certain to be detected. He has no freedom of choice in any direction whatever."), *quoted in* ORWELL'S NIGHTMARE, *supra* note 54.

71. *See generally* Film Industry Promotion Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Nov. 7, 2016, effective Mar. 1, 2017) [hereinafter Film Industry Promotion Law].

72. *See generally id.*

73. *Id.* art. 4.

74. *Id.* art. 3.

75. *See generally id.*

76. *Id.* art. 16.

77. *Id.* art. 16(1).

unity;” “undermining of national religious policy, advocating cults or superstitions;”⁷⁸ and “endangerment of social morality, disturbing social order, undermining social stability.”⁷⁹

The law requires all films shown in cinemas, film festivals, or on streaming sites to obtain a special license denoting government approval.⁸⁰ The film is then reviewed a five-person panel of “experts” who can make comments and recommendations on the film.⁸¹ Those recommendations are referred to the State Administration of Press, Publication, Radio, Film and Television (“SAPPRFT”). This panel, made up of thirty-seven members of China’s Executive Branch, can then approve or reject the film.

The law also places a limit on the number of foreign films shown in Chinese cinemas per year.⁸² The Chinese government accepts only thirty-four foreign films for screening per year on a revenue sharing basis.⁸³ Additional foreign features can be imported and shown in China on a “flat fee basis.”⁸⁴ This means that Chinese companies license the films for distribution in China, but do not give studios a cut of box office.⁸⁵ Those films must adhere to the Film Industry Promotion Law or the director must make appropriate cuts in order to conform with the law.⁸⁶ Violations of the Film Industry Promotion Law can result in punishments such as confiscation of the film in question, seizure of between five and ten times the amount of profit from showing the film, a concurrent fine of 250,000

78. *Id.* art. 16(5).

79. *Id.* See also Mary Lynne Calkins, *Censorship in Chinese Cinema*, 21 HASTINGS COMM. & ENT. L.J. 239, 241 (1998) (“By so elevating politics above art, and by presuming that the two are inextricably linked, China has left creativity vulnerable to governmental scrutiny, censorship, and co-optation. Film, as a particularly visible and communicative media, is particularly subject to governmental interference, and the Chinese government has exploited that vulnerability to the fullest.”).

80. Film Industry Promotion Law, *supra* note 71, art. 25.

81. *Id.*

82. Sarah Zheng, *China quietly opens the door to more foreign films*, S. CHINA MORNING POST (Oct. 23, 2018), <https://www.scmp.com/news/china/diplomacy/article/2169837/china-quietly-opens-door-more-foreign-films>.

83. *Id.*

84. Brent Lang & Patrick Frater, *China Film Quota Talks Could Be a Casualty in Trump’s Trade War*, VARIETY (Mar. 29, 2018), <https://variety.com/2018/film/news/china-film-quota-hollywood-trump-trade-war-1202739283/>.

85. *Id.*

86. Film Industry Promotion Law, *supra* note 71, art. 2.

yuan (\$2,306.00 USD) where unlawful gains are less than 50,000 yuan, and a ban for five years on the legal persons responsible for the film.⁸⁷ Violators may also receive fines and/or revocation of their business license should the government determine that they engaged in fraud or endangered the “national dignity, honor and interests, or social stability” of the state.⁸⁸ These determinations are up to the government and seem primarily based on subjective standards of what content is good for the Communist regime.⁸⁹

2. *The Effects of Film Censorship Laws on Domestic and International Films Released in China*

Given the strict parameters in which filmmakers and artists must operate when premiering a film in China, the deference in recent decades afforded to China’s increasingly strict censorship scheme may seem inexplicable until one examines the potential economic benefits of marketing a foreign film in China. The economic incentive for studios to push content in China is enormous.⁹⁰ Experts expect China’s film market to surpass the U.S. box office as the largest in the world in the next decade.⁹¹ Chinese audiences have historically been more willing to attend theaters to see original blockbusters than American audiences in recent years.⁹²

87. *Id.* arts. 47, 53.

88. *Id.* arts. 47, 50.

89. *See, e.g.,* Kathleen Parker, *At Least ‘South Park’ Stands Up to China’s Censorship*, WASH. POST (Oct. 8, 2019, 2:11 PM), https://www.washingtonpost.com/opinions/at-least-south-park-stands-up-to-chinas-censorship/2019/10/08/99cfd584-ea07-11e9-85c0-85a098e47b37_story.html.

90. *See, e.g.,* *Do Chinese Films Hold Global Appeal?*, CHINA POWER, <https://chinapower.csis.org/chinese-films/> (last visited Oct. 30, 2020) (“In 2019, the Chinese box office raked in \$9.3 billion.”).

91. Uptin Saiidi, *China’s Box Office Is Expected to Surpass the US in 2020. That’s Good News for Hollywood*, CNBC (Nov. 9, 2019, 2:55 AM), <https://www.cnbc.com/2019/11/05/chinas-box-office-is-expected-to-surpass-the-us-in-2020-thats-good-news-for-hollywood.html>.

92. *See* Richard Corliss, *5 Things We’ve Learned in 5 Years of Box Office Reports*, TIME (Apr. 5, 2014, 10:00 AM), <https://time.com/49440/box-office-reports/>.

While U.S. box office receipts have remained stagnant, the budget for international studio films has ballooned in the last decade.⁹³ The average production costs of a Hollywood blockbuster in 2013 was around \$200 million, with an additional \$50 million to \$100 million spent on marketing, depending on the budget of the film.⁹⁴ Compare those figures to 1996, when the average cost of making and marketing a Hollywood blockbuster hovered around a total of \$60 million.⁹⁵ Needing to recover their investment, film studios have increasingly looked to burgeoning domestic markets, such as China.⁹⁶ For example, the six major Hollywood studios comprising the MPA⁹⁷ earned more than 70% of their 2014 box office revenue outside the United States and Canada.⁹⁸ As domestic box office returns stagnate, revenue from the domestic market in China has steadily

93. See Eric Buchman, *Why Are Movies More Expensive than Ever When Tech Makes Them Easier to Make*, DIGIT. TRENDS (Dec. 10, 2014), <https://www.digitaltrends.com/movies/why-hollywood-movies-are-more-expensive-to-make-than-ever/>.

94. See Pamela McClintock, *\$200 Million and Rising: Hollywood Struggles with Soaring Marketing Costs*, HOLLYWOOD REP. (July 31, 2014, 5:00 AM), <https://www.hollywoodreporter.com/news/200-million-rising-hollywood-struggles-721818> (“[W]ith the exception of in China, Hollywood continues to wrestle with rising marketing costs, particularly overseas, which can make up 70 percent of a film’s gross thanks to booming markets in Russia, Latin America and Asia. Two years ago, the cost had crept up to \$175 million globally. Now, studios say it has hit the \$200 million mark per picture — a 33 percent increase from the \$150 million spent in 2007 on the first *Transformers*.”).

95. Bernard Weinraub, *Average Hollywood Film Now Costs \$60 Million*, N.Y. TIMES (Mar. 5, 1997), <http://www.nytimes.com/1997/03/05/movies/average-hollywood-film-now-costs-60-million.html>.

96. See Dorothy Pomerantz, *Why Americans Should Care that the Chinese Box Office Will Hit Almost \$5 Billion This Year*, FORBES (Nov. 3, 2014, 5:24 PM), <https://www.forbes.com/sites/dorothypomerantz/2014/11/03/why-americans-should-care-that-the-chinese-box-office-will-hit-almost-5-billion-this-year/?sh=1674099c7447/>. E.g., Michael Martina, *James Cameron Takes 3-D Film Venture to China*, REUTERS (Aug. 8, 2012, 3:56 AM), <https://www.reuters.com/article/uk-china-jamescameron-3-d/james-cameron-takes-3-d-film-venture-to-china-idUKBRE8770AG20120808>; Li Hui, *China and Hollywood Shake Up the Box Office*, CKGSB (June 19, 2015), <http://knowledge.ckgsb.edu.cn/2015/06/19/movie-industry/china-and-hollywood-shake-up-the-box-office/>.

97. *Who We Are*, *supra* note 32 (“Our members are: Walt Disney Studios Motion Pictures, Netflix Studios, LLC, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, and Warner Bros. Entertainment Inc.”).

98. MOTION PICTURE ASS’N, THEATRICAL MARKET STATISTICS 4 (2014).

grown over the past decade.⁹⁹ In 2015, four of the highest grossing films of the year — *Furious 7*, *Cinderella*, *Jurassic World*, and *Avengers: Age of Ultron* — relied heavily on the Chinese market to make a profit.¹⁰⁰ Falling returns at the American box office, along with the rise of streaming services, has created a film industry desperate for a steady, uncomplicated, and virtually guaranteed revenue stream.¹⁰¹ China provides it. Hence, the desire to enter the domestic market in China has led some film makers to tailor their films specifically to appeal to Chinese censors.¹⁰²

To accomplish this censor-catering, some internationally-based filmmakers offer previews of their films to Chinese censors.¹⁰³ Other filmmakers add plot elements that play into Chinese propaganda and China's military superiority complex.¹⁰⁴ For example, for *Iron Man 3* ("IM3"), director Joss Whedon shot separate scenes featuring Chinese stars for the Mandarin-language version, a move that was sure to appeal to both Chinese censors and audiences alike.¹⁰⁵

99. Corliss, *supra* note 92 ("America doesn't matter. In 2009, according to a new study by the Motion Picture Association of America, customers in North America spent \$10.6 billion on movie tickets, compared to 36% of the foreign market (\$18.8 billion). Last year, domestic revenue was up a bit, to \$10.9 billion, but the international tally had risen to \$25 billion; so only 30% of worldwide ticket sales were from the U.S. and Canada. Business over the past five years has been stagnant here but up one-third in the rest of the world. The region the MPAA calls EMEA — Europe, the Middle East and Africa — accounted for \$10.9 billion in 2013, the same as North America, while the biggest growth came from Asia Pacific: up from \$7.2 billion to \$11.1 billion. Japan brought in \$2.4 billion, India \$1.5 billion and China a celestial \$3.6 billion. That China bonanza, an increase of 27% over 2012, is as much as last year's top dozen movies earned in North America.").

100. *China Yearly Box Office*, BOX OFF. MOJO, <http://www.boxofficemojo.com/intl/china/yearly/> (last visited Oct. 30, 2020).

101. See Corliss, *supra* note 92 ("Most blockbusters register about two-thirds of their worldwide take internationally, and some much more. The last two *Ice Age* animated features, only moderate hits at home, amassed 80% of their global gross abroad. Foreign audiences go for action movies, even for ones Americans reject. Last month's racecar drama *Need for Speed* has earned less than \$40 million here but \$130 million (or 77% of its total gross) in foreign markets.").

102. See, e.g., *id.*

103. Michael Cieply & Brooks Barnes, *To Get Movies into China, Hollywood Gives Censors a Preview*, N.Y. TIMES (Jan. 14, 2013), <http://www.nytimes.com/2013/01/15/business/media/in-hollywood-movies-for-china-bureaucrats-want-a-say.html>.

104. See *id.*

105. See Corliss, *supra* note 92.

IM3 earned \$135 million in China and Hong Kong as a result.¹⁰⁶ The computer-generated imagery (CGI) monster movie, *Pacific Rim*, struggled during its domestic release in the United States, but recouped internationally, where it made more than \$111 million in China alone.¹⁰⁷ Films that studios project will fail in traditional home markets, or films that need to succeed in order for the studio to fund smaller budget, prestige award season films, are often edited to show the Communist Chinese government in a positive light, frequently with the Chinese government rescuing the main character in the eleventh hour.¹⁰⁸

Chinese censors seem aware of the power they yield in the marketplace and have exercised their power without scruple.¹⁰⁹ The Communist government only allows thirty-four foreign films in China *per year*.¹¹⁰ China Film Co-Production Company president Zhang Xun has mandated Hollywood and international studios kowtow to its demands to earn one of those thirty-four coveted spots, or alternatively to bypass the quota system altogether, and studios have bent over backwards to meet, and sometimes exceed, those demands.¹¹¹ Since the 1990s, Hollywood has created films about nearly every controversial international topic, from the

106. *Id.*

107. *Id.* (“The monster-bot movie *Pacific Rim* struggled to reach \$100 million in North America last summer; yet it made more than that (\$111.9 million) in China alone.”)

108. *See, e.g.*, *ARRIVAL* (FilmNation Entertainment 2016) (Chinese general wisely calls off an attack on the alien spaceship that saves humanity); *PACIFIC RIM* (Legendary Pictures Productions, LLC 2013) (Chinese military figures are key to the survival of the main characters); *BATTLESHIP* (Hasbro Studios 2012) (Chinese military saves hapless American military).

109. According to Professor Ying Zhu, “Chinese censors can act as world film police on how China can be depicted, how China’s government can be depicted, in Hollywood films.” Therefore, she fears it is possible “films critical of the Chinese government will be absolutely taboo.” Frank Langfitt, *How China’s Censors Influence Hollywood*, NPR (May 18, 2015), <http://www.npr.org/sections/parallels/2015/05/18/407619652/how-chinas-censors-influence-hollywood>.

110. Matthew Dresden, *China Film: Quota? What Quota*, CHINA L. BLOG (June 19, 2018), <https://www.chinalawblog.com/2018/06/china-film-quota-what-quota.html>.

111. *See* Andrew Pulver, *China Demands ‘Positive Images’ in Return for Access to Markets*, GUARDIAN (Nov. 6, 2013), <http://www.theguardian.com/film/2013/nov/06/china-hollywood-positive-images-movies>.

Holocaust¹¹² to the Rwandan genocide¹¹³ to the Turkish slaughter of Armenian Christians.¹¹⁴ However, it is difficult, if not impossible, to name a film produced by a major Hollywood studio about the realities of living under China's Communist party rule since the turn of the millennium.¹¹⁵

This deference to China was not always the standard in the industry. In the 1990s, multiple Hollywood films depicted Chinese oppression in Tibet.¹¹⁶ The Chinese government has refused to acknowledge Tibet as a country and has cracked down on religious expression in Tibet.¹¹⁷ Films like *Seven Years in Tibet* and *Red Corner*, both released in the 1990s, were

112. See, e.g., *THE DIARY OF ANNE FRANK* (Twentieth Century Fox 1959); *SOPHIE'S CHOICE* (ITC Entertainment 1982); *SCHINDLER'S LIST* (Amblin Entertainment 1993); *THE READER* (Mirage Enterprises 2008); *INGLORIOUS BASTERDS* (A Band Apart 2009); *THE ZOOKEEPER'S WIFE* (Scion Films 2017).

113. See Linda Melvern, *Hotel Rwanda — Without the Hollywood Ending*, *GUARDIAN* (Nov. 17, 2011), <https://www.theguardian.com/commentisfree/2011/nov/17/hotel-rwanda-hollywood-ending>.

114. Alex Ritman & Mia Galuppo, '*The Promise*' vs. '*The Ottoman Lieutenant*': *Two Movies Battle Over the Armenian Genocide*, *HOLLYWOOD REP.* (Apr. 21, 2017), <https://www.hollywoodreporter.com/news/promise-ottoman-lieutenant-two-movies-battle-armenian-genocide-996196>.

115. See Martha Bayles, *Hollywood's Great Leap Backward on Free Expression*, *ATLANTIC* (Sept. 15, 2019), <https://www.theatlantic.com/ideas/archive/2019/09/hollywoods-great-leap-backward-free-expression/598045/>. ("Historically, the more profitable markets — the ones Hollywood cared about — were in democratic countries, where the film-classification boards operated under the rule of law. The changes they demanded, if any, were typically modest . . . China has broken this mold. Simultaneously the world's most profitable and censorious market, China has led Hollywood down the path of submission to a state censorship apparatus whose standards are as murky and unpredictable as those of most democratic countries are clear and consistent. In the words of a 2016 guide to film producers aspiring to work in the People's Republic: 'China and its one-party government currently lack . . . clear guidelines and standards. As such, it's difficult to know whether or not a proposed project may fall afoul of the censors, whose whimsy seems to be determined in large part by the higher ranks of the Chinese Communist Party (CCP) — an organization for which projecting the image of a stable society is considered paramount to preserving its hold on power.'").

116. See Benjamin Carlson, *Has Hollywood Sold Out on Tibet?*, *CNBC* (May 19, 2013, 9:53 PM), <https://www.cnn.com/id/100749313>.

117. Krithika Varagur, *The Coming for the Dalai Lama's Soul*, *FOREIGN POL'Y* (Jan. 22, 2019, 12:33 PM), <https://foreignpolicy.com/2019/01/22/dalai-lama-reincarnation-beijing-politics-tibet/> (noting the Chinese government kidnapped the child selected to be the next Dali-Llama and installed their own choice as next-in-line).

critically acclaimed and received wide releases.¹¹⁸ Advocating for Tibetan independence was especially popular among celebrities, like Richard Gere.¹¹⁹ Suddenly, the film industry's climate changed.

In 1997, Disney released the film *Kundun*, a biographical film directed by Martin Scorsese about the early life of the Dali-Llama.¹²⁰ The film accurately depicted the power-struggle between Tibetan monks who were trying to hang on to their ancient religion and culture, and Chinese communists who were seeking to suppress and control the nation of Tibet.¹²¹ China's leaders objected to Disney's plans to distribute the film, even to the point of threatening Disney's future access to China as a market.¹²² Universal Pictures had already bowed to China's threats "turn[ing] down the chance to distribute *Kundun* for fear of upsetting the Chinese [government]."¹²³ Disney continued with its plan to distribute the film, and the film opened in 1997 with a limited release to glowing reviews and critics calling the film "beautifully and intelligently made."¹²⁴ *Kundun* went on to receive four Academy Award nominations.¹²⁵ However, China

118. Maggie Farley, *Hong Kong Bows to Beijing in Turning Away 3 U.S. Films*, L.A. TIMES (Nov. 4, 1997) <https://www.latimes.com/archives/la-xpm-1997-nov-04-fi-50007-story.html>; see also Susan Waxman, WASH. POST (Nov. 1, 1997), <https://www.washingtonpost.com/archive/lifestyle/1997/11/01/china-bans-work-with-film-studios/9f3a23e3-4d83-4749-898c-bd1fef276f03/>.

119. Maya Oppenheim, *Richard Gere says he's been dropped from big Hollywood movies because China doesn't like him*, INDEP. (Apr. 20, 2019), <https://www.independent.co.uk/arts-entertainment/films/news/richard-gere-big-hollywood-movies-china-tibet-buddhist-dalia-lama-chinese-audience-blockbusters-a7693256.html>.

120. David Barboza & Brooks Barns, *How China Won the Keys to Disney's Magic Kingdom*, N.Y. TIMES (June 14, 2016), <https://www.nytimes.com/2016/06/15/business/international/china-disney.html>.

121. Jack Blattman & Amit Shumowitz, *Tibetan Culture in America: A Preview*, COLUM. U. BLOG, <https://blogs.cuit.columbia.edu/jfb2143/2016/12/20/kundun/> (last visited Nov. 16, 2020).

122. See Barboza & Barns, *supra* note 120.

123. Hongmei Yu, *From Kundun to Mulan: A Political Economic Case Study of Disney and China*, 22 ASIANetwork EXCH. 13, 16 (2014), <https://pdfs.semanticscholar.org/b3c1/018db96752ea8990298246bc1e923f9bf558.pdf>.

124. Barry Norman, *Martin Scorsese's KUNDUN conundrum*, RADIO TIMES (Apr. 4–10, 1998).

125. Keith Phipps, *Everybody Loves Martin Scorsese — Except Maybe the Oscars*, RINGER (Feb. 6, 2020, 9:44 AM),

did not react well to Disney's defiance.¹²⁶ China banned Scorsese from ever entering China.¹²⁷ The Chinese government banned all Disney films and pulled all Disney cartoons from Chinese television.¹²⁸ Ultimately, despite the film's success in the United States, Disney CEO Michael Eisner flew to Beijing to apologize to the Chinese government.¹²⁹

Omitting so-called "offensive" plotlines to make a film palatable in China has become something of a Hollywood pastime.¹³⁰ The 2013 zombie movie *World War Z* altered the location of the origin of the zombie outbreak from China (in the books) to North Korea.¹³¹ The 2016 film *Doctor Strange* changed the "Ancient One," a Tibetan monk in the original comics, to a white woman played by Tilda Swinton.¹³² Doctor

<https://www.theringer.com/movies/2020/2/6/21126150/martin-scorsese-oscars-history-losses>.

126. See Barboza & Barns, *supra* note 120.

127. Carlson, *supra* note 116.

128. See Barboza & Barns, *supra* note 120.

129. See *id.*

130. See Clare Baldwin & Kristina Cooke, *How Sony Sanitized the New Adam Sandler Movie to Please Chinese Censors*, REUTERS (July 24, 2015), <http://www.reuters.com/investigates/special-report/china-film/> (The internal debates within film studios over how and when to alter a movie or script extend beyond the direct dictates of Chinese censors, however. U.S. filmmakers self-censor scenes, dialogue, images, and themes they fear will jeopardize their film's chance of receiving Chinese approval for import. During the production of the movie *Pixels*, content was eliminated prior to viewings by Chinese censors to forestall any objections, including a scene where the Great Wall is destroyed, references to an e-mail hack attributed to a "Communist" source, and a connection between the movie's antagonists and the Chinese government. That this content was edited out of both the film's international and U.S. releases, partially as a result of concern over media backlash if two versions of the film — one for China and another for the rest of the world — were released, highlights China's encroaching influence in Hollywood).

131. Lucas Shaw, *Fearing Chinese Censors, Paramount Changes "World War Z"*, WRAP (Mar. 31, 2013), <https://www.thewrap.com/fearing-chinese-censors-paramount-changes-world-war-z-exclusive-83316/> ("When executives at Paramount viewed the latest cut of the \$175 million Brad Pitt zombie film 'World War Z,' they were not concerned by the violence or its reengineered ending. They were worried about a minor plot point that involved a sensitive topic: China. In the offending scene, characters debate the geographic origin of an outbreak that caused a zombie apocalypse and point to China, a Paramount executive told TheWrap.").

132. Chris Fuchs, *Tibet Supporters Protest Marvel's 'Doctor Strange' over Changed Character*, NBC NEWS (Nov. 3, 2016, 6:44 PM),

Strange grossed more than \$40 million in China.¹³³

More recently, films have gone from the “hear no evil, see no evil” approach to outright supporting the Communist regime.¹³⁴ Proactively positive depictions of Chinese science and military capabilities have become almost commonplace in big-budget action films.¹³⁵ For instance, *Transformers: Age of Extinction* ends with the Chinese military saving the hapless American protagonists.¹³⁶ *Age of Extinction* is the highest-grossing film of all time in China, making more than \$300 million.¹³⁷ In the 2015 film, *The Martian*, NASA strands an astronaut alone on Mars with no way to help him until China’s space agency comes to the rescue and announces the country has a special rocket it is willing to lend the Americans.¹³⁸ Chinese officials selected *The Martian* to be one of the

<https://www.nbcnews.com/news/asian-america/tibet-supporters-protest-marvel-s-dr-strange-over-changed-character-n677706>.

133. Gus Lubin, *Forget Whitewashing: ‘Doctor Strange’ Goes Out of Its Way to Appeal to China*, BUS. INSIDER (Nov. 7, 2016, 1:48 PM), <https://www.businessinsider.com/doctor-strange-popular-in-china-2016-11#:~:text=%22Doctor%20Strange%22%20had%20a%20strong,Captain%20America%3A%20Civil%20War.%22>.

134. See Michael C. Wall, *Censorship and Sovereignty: Shanghai and the Struggle to Regulate Film Content in the International Settlement*, 18 J. AM.-EAST ASIAN REL. 37, 57 (2011).

135. See, e.g., ARRIVAL, *supra* note 108 (Chinese general wisely calls off an attack on the alien spaceship, saving humanity); PACIFIC RIM, *supra* note 108 (Chinese military figures are key to the survival of the main characters); BATTLESHIP, *supra* note 108 (Chinese military saves hapless American military).

136. See David S. Cohen, *‘Transformers’: A Splendidly Patriotic Film, If You Happen to be Chinese*, VARIETY (July 13, 2014), <https://variety.com/2014/film/columns/transformers-age-of-extinction-patriotic-for-china-1201257030/>.

137. See Frank Langfitt, *Autobot\$ Rule: Why Transformers 4 Is China’s Box Office Champ*, NPR (Aug. 11, 2014, 5:06 AM), <https://www.npr.org/sections/parallels/2014/08/11/339485807/autobot-rule-why-transformers-4-is-chinas-box-office-champ>.

138. Michael Martina, *China Official Says Film ‘The Martian’ Shows Americans Want Space Cooperation*, REUTERS (Apr. 22, 2016, 7:30 AM), <https://www.reuters.com/article/us-china-space/china-official-says-film-the-martian-shows-americans-want-space-cooperation-idUSKCN0XJ1C2>. See also Kenneth Longden, *China Whispers: The Symbolic, Economic, and Political Presence of China in Contemporary American Science Fiction Film*, 2 OPEN CULTURAL STUD. 151, 152 (2018) (stating that *The Martian* highlights the economic dynamics behind China’s relationship with Hollywood and its presence in international science fiction film — a dynamic that

thirty-four foreign films screened in China; the film made \$50 million in China alone.¹³⁹ However, in the novel of the same name, the Chinese government has far less to do with the hero's rescue.¹⁴⁰ Further, US law specifically prohibits NASA from working with China¹⁴¹, making The Martian's depiction of such an event interesting to say the least.

In 2016, the film *Arrival* depicted Chinese generals as measured, reasonable men who helped save the world from nuclear war late in the third act.¹⁴² The 2018 film, *The Meg*, co-starred Chinese superstar Fan Bingbing, a woman with virtually no name recognition in the West, but a tremendous following in China.¹⁴³ The film featured a futuristic ocean research station located off the coast of China, run by brilliant and heroic Chinese protagonists.¹⁴⁴

This proactive messaging not only affects foreign films, but also local films. In 2018, the Communist government issued even tighter regulations for the local industry and began to encourage the exclusive production of patriotic films, as well as films that promote "socialist values" to a youth-centric audience.¹⁴⁵ "Audiences should expect to see more 'positive

Kokas sees as a double edged sword and which may ultimately mean "more China-related content for global audiences").

139. See Longden, *supra* note 138, at 156.

140. See generally Anthony Weir, *THE MARTIAN* (2011).

141. Consolidated and Further Continuing Appropriations Act, Pub. L. 112-55, sec. 539 ("None of the funds made available by this Act may be used for the National Aeronautics and Space Administration (NASA) or the Office of Science and Technology Policy (OSTP) to develop, design, plan, promulgate, implement, or execute a bilateral policy, program, order, or contract of any kind to participate, collaborate, or coordinate bilaterally in any way with China.").

142. Jonathan Papish, *Chinese Moviegoers Dead on 'Arrival'*, CHINA FILM INSIDER (Jan. 23, 2017) <http://chinafilminsider.com/china-box-office-chinese-moviegoers-dead-arrival/>.

143. See Steven Lee Myers, *Fan Bingbing, China's Top Actress, Talks of Comeback After Scandal*, N.Y. TIMES (Aug. 2, 2019), <https://www.nytimes.com/2019/08/02/world/asia/fan-bingbing-comeback-scandal.html>.

144. Patrick Frater, *'The Meg' Aims Big at China, but Will Audiences Bite?*, VARIETY (Aug. 8, 2018), <https://variety.com/2018/film/news/the-meg-shark-movie-china-will-audiences-bite-1202897561/>.

145. See Pei Li & Christian Shepherd, *China Tightens Grip on Media with Regulator Reshuffle*, REUTERS (Mar. 21, 2018, 3:05 AM), <https://ca.reuters.com/article/worldNews/idUSKBNIGX0JG>; see also Patrick Brzeski, *Chinese Industry on Edge After "Depressing" Censorship of Shanghai Festival's Opening Film*, HOLLYWOOD REP. (June 15, 2019)

energy’ movies from now on,” said Xu Juan, an analyst with Huatai Securities, a Chinese film analytics company.¹⁴⁶ In keeping with China’s new focus on positive messaging in their films, Chinese officials censored a multi-million-dollar Chinese-made blockbuster because the films lacked “socialist values.”¹⁴⁷ Simultaneously, the government has recently tightened control over online content. This includes increasing the censorship of blogs, culling live-streaming platforms,¹⁴⁸ monitoring messaging apps such as WhatsApp, and heavily regulating some of the country’s top internet firms regarding their content.¹⁴⁹ International companies such as Google have to adhere to the censorship requirements demanded by the Communist government in order to do business in the country.¹⁵⁰ In China, the ability to surf the web freely is virtually nonexistent.¹⁵¹ For example, in 2018, comedian John Oliver covered internet censorship in China.¹⁵² The comedian noted that China heavily censored images of Winnie the Pooh.¹⁵³ In fact, posting memes of the bear can incur heavy fines and jail time.¹⁵⁴ The reason the loveable

<https://www.hollywoodreporter.com/news/shanghai-festival-chinese-industry-edge-opening-film-pulled-due-censorship-1218647>.

146. See Li & Shepherd, *supra* note 145.

147. See *id.*

148. Livestreaming is a live video stream that allows users to market products, play video games lives, and interact with those watching. John Clark, *Livestreaming: What You Need to Know for a Successful Stream*, FORBES (Feb. 8, 2018, 10:00 AM), <https://www.forbes.com/sites/theyec/2018/02/08/livestreaming-what-you-need-to-know-for-a-successful-stream/>.

149. *How Censorship Works in China: A Brief Overview*, *supra* note 45. See also Peter Lorentzen, *China’s Strategic Censorship*, 58 AM. J. POL. SCI. 402, 412 (2014).

150. Rene Pastor, *FAANG Report: Some Google staff quit over plan to bow to China censorship; Apple Watch could save lives*, PROACTIVE INVESTOR (Sept. 14, 2018), <https://www.proactiveinvestors.com/companies/news/204953/faang-report-some-google-staff-quit-over-plan-to-bow-to-china-censorship-apple-watch-could-save-lives-204953.html>.

151. See Lorentzen, *supra* note 149, at 410.

152. See Tiffany May, *John Oliver, Having Mocked Chinese Censorship, Is Censored in China*, N.Y. TIMES (June 21, 2018), <https://www.nytimes.com/2018/06/21/world/asia/john-oliver-china-ban.html>; *Why You Can’t Talk About John Oliver in China*, BBC NEWS (June 21, 2018), <https://www.bbc.com/news/world-asia-china-44557528>.

153. See May, *supra* note 152.

154. See, e.g., Isabella Nikolic, *University of Minnesota Student Is Jailed in China for Tweets Comparing President Xi Jinping to a Cartoon Villain and Winnie the Pooh*,

bear is not welcome in China is that some Chinese dissenters have noted that the Chinese president Xi Jinping bears a resemblance to Mr. Pooh.¹⁵⁵ When Mr. Oliver brought up the meme on his show, China's government immediately censored the episode.¹⁵⁶ In fact, according to the *New York Times*, after the episode premiered, attempts to create posts with the words "John Oliver" resulted in error messages.¹⁵⁷ The episode completely disappeared in China, as did all references to the content therein.¹⁵⁸

Not all filmmakers have bowed to China's crackdown on critical or immoral content, but such a stance can have devastating consequences for filmmakers and studios alike. Quentin Tarantino recently refused to cut a scene from his film *Once Upon a Time in Hollywood*, in which a stuntman wins in a fight against Chinese cultural icon Bruce Lee.¹⁵⁹ Censors in China wanted Tarantino to either remove the scene entirely or to edit it in such a way as to portray Bruce Lee as winning the fight.¹⁶⁰ Tarantino refused, and the film failed to gain distribution in China; this move cost the studio, Sony Pictures, millions in revenue.¹⁶¹ Another recent Oscar-nominated film, *Captain Phillips*, fell \$9 million short of its anticipated earnings after finding itself unable to distribute in China because of the film's positive portrayal of the United States military.¹⁶²

The culling of creativity and the increasing tendency of international filmmakers to proactively tailor their films for Chinese consumption raises questions about the veracity of the art itself, the hypocrisy regarding censorship, particularly in the Americas and Europe, and the role of China in shaping international entertainment in the coming century.

Daily Mail (Jan. 23, 2020), <https://www.dailymail.co.uk/news/article-7920537/University-Minnesota-student-jailed-China-tweeting-pictures-cartoon-villain.html>.

155. See May, *supra* note 152.

156. *Id.*

157. *Id.*

158. *Id.*

159. Sonny Bunch, *Quentin Tarantino Shows How to Take a Stand Against China and Shame the Censors*, WASH. POST (Oct. 14, 2019, 12:07 PM), <https://www.washingtonpost.com/opinions/2019/10/22/quentin-tarantino-shows-how-take-stand-against-china-shame-censors/>.

160. See *id.*

161. See *id.*

162. Baldwin & Cooke, *supra* note 130.

B. Censorship in Saudi Arabia: A History of Violence

While China derives its censorship code from its revolutionary roots in the 1940s, the Kingdom of Saudi Arabia has an entirely different approach to censorship, but it achieves roughly the same censorious result. The Kingdom of Saudi Arabia is an absolute monarchy, one of only a handful that remain in the modern world.¹⁶³ The House of Saud,¹⁶⁴ which founded Saudi Arabia in 1932, holds absolute power in the country.¹⁶⁵ The Ministry of Culture and Information strictly controls all media, including film and television, in Saudi Arabia.¹⁶⁶ The Ministry enforces a strict moral code on all media outlets based on a conservative interpretation of the Islamic faith.¹⁶⁷ Saudi Arabia is a predominantly Sunni country, which has led to discrimination against religious and political minorities who often incur harsher taxes and more severe punishments for criminal activity.¹⁶⁸

163. See SYEEDA KHATOON, *THE POLITICAL ROLE OF OIL AND THE HOUSE OF SAUD* 2 (2005) (“The kingdom of Saudi Arabia is a monarchy characterized by the exceptionally important role of the royal family, ‘the House of Saud.’ Members of the dynasty fill most key positions and maintain a near monopoly over political activity in the country. To make matters worse, the royal family has followed a policy of extreme discretion, making its structures, divisions and duties more in matter of speculation than of fact. Non royal political affairs are equally obscure, because political activity outside the royal family is banned. Hence, Saudi Arabia is an absolute monarchy with an unelected consultative council that acts like a parliament.”).

164. *Chronology: House of Saud*, PBS: FRONTLINE, <https://www.pbs.org/wgbh/pages/frontline/shows/saud/cron/> (last visited Feb 28, 2019) (“1932: Abd al-Aziz ibn Saud declares himself king and gives his name to the country: Saudi Arabia. To keep his new kingdom united, he marries a daughter from every tribe as well as from the influential clerical families — more than twenty wives, although never more than four at one time, in accordance with the Quran. These unions produce 45 legitimate sons and an unknown number of daughters (daughters are not counted). Abd al-Aziz then begins consolidating power away from the brothers and cousins who helped him conquer the peninsula in favor of his own sons. Every Saudi king since has been a son of Abd al-Aziz ibn Saud.”).

165. *Id.*; KHATOON, *supra* note 163.

166. See *Explore the Ministry of Culture*, SAUDI ARABIA MINISTRY CULTURE, <https://www.moc.gov.sa/en> (last visited Nov. 16, 2020).

167. See R. Stephen Humphreys, *Islām and Political Values in Saudi Arabia, Egypt and Syria*, 33 MIDDLE E. J. 1, 3–4 (1979) (“Fundamentalism . . . insists that change must be governed by traditional values and modes of understanding.”).

168. See Rafael L. Bardají, *Religion, Power and Chaos in the Middle East*, 15 EUR. VIEW 87, 88–89 (2016).

In this highly conservative, deeply religious country, punishment for speaking out against the government or the religious majority can be severe.¹⁶⁹ Capital punishment is legal in Saudi Arabia.¹⁷⁰ In 2019 alone, the government executed 184 people.¹⁷¹ As of October 2020, the government has executed four people.¹⁷² Crimes that traditionally carry the death penalty include murder, adultery, apostasy, terrorism, and witchcraft.¹⁷³ Executions are carried out indiscriminate of the purported perpetrators age or culpability. For example, in 2012, amid the Arab Spring pro-democracy protests, authorities arrested, tortured, and sentenced two 17-year-old students to death.¹⁷⁴ Mujtaba al-Sweikat was

169. See *Saudi Arabia: 37 Put to Death in Shocking Execution Spree*, AMNESTY INT'L (Apr. 23, 2019, 5:15 PM), <https://www.amnesty.org/en/latest/news/2019/04/saudi-arabia-37-put-to-death-in-shocking-execution-spree/>.

170. See GAIL J. BUTTORFF, PARTICIPATION, BOYCOTT, AND PROTEST IN AUTHORITARIAN ELECTIONS, AUTHORITARIAN ELECTIONS AND OPPOSITION GROUPS IN THE ARAB WORLD, 17–18 (2016); *Saudi Arabia executed record number of people in 2019 — Amnesty*, BBC NEWS, <https://www.bbc.com/news/world-middle-east-52358476> (last visited Nov. 16, 2020).

171. Guy Davies, *Saudi Arabia Executed A Record Number of Prisoners in 2019: Report*, ABC NEWS (Jan. 14, 2020, 4:06 AM), <https://abcnews.go.com/International/saudi-arabia-executed-record-number-prisoners-2019-report/story?id=68250502>.

172. Kareem Fahim, *Saudi Arabia, A World Leader in Executions, Weighs Ending Capital Punishment for Drug Crimes*, WASH. POST (Aug. 27, 2020, 5:00 AM), https://www.washingtonpost.com/world/middle_east/saudi-arabia-executions-mbs/2020/08/26/b6488bb4-e314-11ea-82d8-5e55d47e90ca_story.html.

173. See U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Country Report on Human Rights Practices, Saudi Arabia* (2007).

174. Eve Hartley, *Ali Mohammed Al-Nimr Sentenced To Crucifixion In Saudi Arabia For Attending Pro-Democracy Protest*, HUFFINGTON POST UK (Sept. 22, 2015), https://www.huffingtonpost.co.uk/2015/09/22/teenager-sentenced-to-death-by-crucifixion-in-saudi-arabia_n_8177584.html?guccounter=1&guce_referrer=aHR0cHM6Ly9lbi53aWtpcGVkaWEub3JnLw&guce_referrer_sig=AQAAAGH39eQtvXwglr2waO9Fetpg_z-te637Xpcp0BUW6VlyjRBsxBgrrspOUx9gHB7M0wqsr5-mrJXmi13s6K5Szs8TLc3vq7IUGXKGQKzfk_zgMOEeentxqi5QQbZMoOhyYvS5bqoOGYazX7yBxRk4vZ4O-aBYCA_ApknNoaMk3viG3; Mike Martindale, *Officials urge help for Saudi Student facing beheading*, DETROIT NEWS (July 16, 2017), <https://www.detroitnews.com/story/news/world/2017/07/16/saudi-student-faces-execution/103761306/>.

beheaded in 2019.¹⁷⁵ The other teenager is currently still imprisoned.¹⁷⁶ His sentence may be commuted because he was sentenced to death as a minor, but his fate remains unclear.¹⁷⁷

The government also arrested an independent reform sheikh, Nimr al-Nimr, who was critical of the Saudi government and popular among Saudi pro-democracy youth.¹⁷⁸ The sheikh received a death sentence for encouraging political protests and was executed along with other accused “terrorists” in 2016.¹⁷⁹ Terrorism can be defined in Saudi Arabia as attending pro-democracy rallies, encouraging people to protest, or commenting in pro-democracy groups online.¹⁸⁰ Saudi government officials tend to use terrorism as a cover label for thought crimes, activities considered normal work by opposition politicians in democratized nations.¹⁸¹ For example, in 2017, as Crown Prince Mohammed bin Salman touted economic and social openness in the traditionally closed-off country, the authorities arrested critics of the Royal Family *en masse*; an effort that gathered pace with the arrests of prominent religious leaders,

175. Elizabeth Redden, *The Execution of Mujtaba al-Sweikat*, INSIDE HIGHER ED (May 2, 2019), <https://www.insidehighered.com/news/2019/05/02/executed-saudi-student-was-allegedly-convicted-basis-confession-obtained-under>.

176. David Rose & Jonathan Rothwell, *Saudi Arabia Ends Death Penalty and Flogging for Minors*, GUARDIAN (Apr. 27, 2020) <https://www.telegraph.co.uk/news/2020/04/27/saudi-arabia-ends-death-penalty-minors-flogging/>.

177. *Id.*

178. Nicola Slawson, *Saudi execution of Shia cleric sparks outrage in Middle East*, GUARDIAN (Jan. 2, 2016), <https://www.theguardian.com/world/2016/jan/02/saudi-execution-of-shia-cleric-sparks-outrage-in-middle-east>.

179. Al Jazeera Staff, *Saudi Arabia executes 47 on terrorism charges*, AL JAZEERA (Jan. 3, 2016), <https://www.aljazeera.com/news/2016/01/03/saudi-arabia-executes-47-on-terrorism-charges/>.

180. Reuters Staff, *Amnesty: Saudi plans anti-terror law to stop dissent*, REUTERS (July 22, 2011), <https://www.reuters.com/article/cnews-us-saudi-protests-law-idCATRE76LIVZ20110722>.

181. See, e.g., Ayman M. Mohyeldin, *No One Is Safe: How Saudi Arabia Makes Dissidents Disappear*, VANITY FAIR (July 29, 2019), <https://www.vanityfair.com/news/2019/07/how-saudi-arabia-makes-dissidents-disappear> (“Omar Abdulaziz . . . planned to publicize the plight of the kingdom’s political prisoners and tried to sabotage the Saudis’ online propaganda efforts by sending out anti-government videos, mobilizing followers, and devising social media schemes to counterprogram messages posted by the regime.”).

some of whom now face the death penalty.¹⁸² It is this untapped and untested market, rife with political uncertainty and hard line fanaticism, that studios sought to enter when the Crown Prince lifted the theater ban.

1. Saudi Censorship Law: Policy and Practice

Like China, the Saudi government owns all domestic radio and television stations and closely monitors privately-owned print media.¹⁸³ The law prohibits criticism of Sunni Islam, the royal family, or the government.¹⁸⁴ The official media policy, first released by the King in 1982, instructed journalists to uphold Islam, oppose atheism, promote Arab interests, and preserve the cultural heritage of Saudi Arabia.¹⁸⁵ The head of the Ministry of Information has the power to appoint and remove the editors of newspapers, ostensibly so that the newspaper only runs stories the government deems to uphold “Islamic values.”¹⁸⁶ The Ministry also issues guidelines to television studios and journalists that dictate the way certain topics, such as foreign policy, should be covered.¹⁸⁷

In practice, these guidelines act as a virtual ban on any news story, book, television show, or film that does not explicitly promote the royal family, Saudi Arabian domestic policy, or Islam.¹⁸⁸ Until recently, the Kingdom banned all international media within the Kingdom and news organizations reported only what the Ministry of Information explicitly

182. Adam Coogle, *The High Cost of Change in Saudi Arabia*, HUM. RTS. WATCH (Nov. 4, 2019), <https://www.hrw.org/the-day-in-human-rights/2019/11/04>.

183. See WILLIAM A. RUGH, ARAB MASS MEDIA: NEWSPAPERS, RADIO, AND TELEVISION IN ARAB POLITICS 71 (2004) (“[t]he government has the right to stop a paper from publishing.”).

184. See Freedom House, *Saudi Arabia* (2016), <https://www.justice.gov/eoir/page/file/916396/download>.

185. *Id.* See also Saudi Arabia’s Constitution of 1992 with Amendments through 2013, art. 39 (stating that mass media and all other vehicles of expression shall employ civil and polite language, contribute towards the education of the nation and strengthen unity. It is prohibited to commit acts leading to disorder and division, affecting the security of the state and its public relations, or undermining human dignity and rights. Details shall be specified in the Law).

186. Law of Printing and Publication, 2003 (Royal Decree, M/32, 3/9/1424 H), art. 4 (Saudi Arabia).

187. See *id.* art. 2; RUGH, *supra* note 183.

188. See *id.* art 3; RUGH, *supra* note 183.

approved.¹⁸⁹ Additionally, the Ministry of Information closely monitors the internet and consequently, streaming services.¹⁹⁰ Like China, the Saudi Arabian government requires censoring software on all personal computers in order to filter out websites and streaming services that may show unapproved content by the Ministry of Information.¹⁹¹

The ban on international media began in the mid-1980s when hardline Sunni clerics banned Saudi cinemas after the government took an ultra-conservative turn following Saudi religious extremists' 1979 siege of the Grand Mosque in Mecca.¹⁹² Thereafter, Saudi society turned towards a particularly conservative form of the religion that discouraged public entertainment.¹⁹³

However, in the last few years, Crown Prince Mohammed bin Salman — the new heir apparent to the Saudi Arabian throne — apparently urged his father to ease the cinema ban in order to make the isolated country a more palatable investment opportunity to international countries and companies.¹⁹⁴ The new push to open up to the West appears to be driven by the Crown Prince's determination to lessen his country's dependence on oil.¹⁹⁵ In pivoting toward the rest of the world, the Crown Prince apparently sees an opportunity to become, at least in part, a central player

189. See RUGH, *supra* note 183.

190. U.S. Dep't of State, *supra* note 173.

191. See Saeed Alqahtani, *Cyber Crimes Committed by Social Media Users in Saudi Arabia*, AL TAMINI & CO. (Nov. 2016), <https://www.tamimi.com/law-update-articles/cyber-crimes-committed-by-social-media-users-in-saudi-arabia/>; *The Internet in the Mideast and North Africa: Free Expression and Censorship*, HUM. RTS. WATCH, <https://www.hrw.org/legacy/advocacy/internet/mena/saudi.htm> (last visited Nov. 12, 2020).

192. See Alan Cowell & David D. Kirkpatrick, *Saudi Arabia to Allow Theaters After 35-Year Ban*, N.Y. TIMES (Dec. 11, 2017), <https://www.nytimes.com/2017/12/11/world/middleeast/saudi-arabia-movie-theaters.html>; *Mecca 1979: The Mosque Siege that Changed the Course of Saudi History*, BBC NEWS (Dec. 27, 2019), <https://www.bbc.com/news/stories-50852379>.

193. This conservatism also extends to women drivers, non-traditional dress, and public mixing between men and women. See Cowell & Kirkpatrick, *supra* note 192.

194. *Id.* See also Karl Vick, *The Saudi Crown Prince Thinks He Can Transform the Middle East. Should We Believe Him?*, TIME (Apr. 5, 2018, 7:40 AM), <https://time.com/longform/mohammed-bin-salman/>.

195. Ben Hubbard & Kate Kelly, *Saudi Arabia's Grand Plan to Move Beyond Oil: Big Goals, Bigger Hurdles*, N.Y. TIMES (Oct. 25, 2017), <https://www.nytimes.com/2017/10/25/world/middleeast/saudi-arabias-grand-plan-to-move-beyond-oil-big-goals-bigger-hurdles.html>.

on the global stage; hence, the return of cinema.¹⁹⁶ The return of cinemas, however, comes with restrictions. The Crown released legal guidance on film censorship, stating that any entertainment shown in theaters or streamed in the country could not, under any circumstances, depict an action that Saudi authorities deem to contradict Sharia Laws and moral values in the Kingdom.¹⁹⁷ The Kingdom now plans to open up to one hundred movie theaters by 2030.¹⁹⁸

This sudden reversal in Saudi Arabia's domestic policy — from a closed, religious haven to a global vacation hotspot in the making — is, in part, due to the Crown Prince Mohammed bin Salman's plan to diversify Saudi Arabia's economy.¹⁹⁹ While the country sits on an extraordinary amount of oil, which places it amongst the wealthiest countries per capita in the world, experts project that the country is likely to begin running out of its only source of wealth in the next decade and may be completely out of oil as soon as 2088.²⁰⁰

Thus, since about 2015, the Kingdom has begun a forceful campaign to attract tourists, international stars, and media investment to a country often portrayed on the global stage as cripplingly conservative.²⁰¹ For example,

196. See Vick, *supra* note 194.

197. See Jackie Northam & Fatma Tanis, *As Saudi Arabia's Cinema Ban Ends, Filmmakers Eye New Opportunities*, NPR (Apr. 21, 2018, 7:00 AM), <https://www.npr.org/sections/parallels/2018/04/21/604269002/as-saudi-arabias-cinema-ban-ends-filmmakers-eye-new-opportunities>.

198. Ryan Faughnder, *AMC Plans Up to 100 Theaters in Saudi Arabia by 2030*, L.A. TIMES (Apr. 4, 2018), <https://www.latimes.com/business/hollywood/la-fi-ct-amc-saudi-arabia-20180404-story.html>.

199. See Vick, *supra* note 194.

200. See David Fickling, *Saudi Arabia's Gas Tank Is Running Low*, BLOOMBERG OPINION (Apr. 2, 2019, 9:39 AM), https://www.washingtonpost.com/business/saudi-arabias-gas-tank-is-running-low/2019/04/02/c98e75ce-5505-11e9-aa83-504f086bf5d6_story.html (“The 261.5 billion barrels of crude oil in its underground reserves would be enough to sustain current production rates until 2088, nearly four decades after the point when the world needs to cut its carbon emissions to zero to avoid devastating climate change.”).

201. See Penny Walker, *The World's Most Conservative Country Is Wooing Tourists Like Never Before*, TELEGRAPH (Mar. 2, 2018, 1:44 PM), <https://www.telegraph.co.uk/travel/news/saudi-arabia-issue-tourist-visa/>; *Conservative Saudi Arabia Loosens Up*, FRANCE 24 (Apr. 20, 2018), <https://www.france24.com/en/20180420-conservative-saudi-arabia-loosens>.

Saudi Arabia invited pop stars such as Nicki Minaj²⁰² to host concerts, paid name brand models millions of dollars to appear in promotional tourist videos,²⁰³ and paid B-list actors such as Armie Hammer to attend music festivals.²⁰⁴ The Kingdom is currently making every effort to appear diverse, permissive, and investment-friendly to international media, but the laws surrounding permissible content in film has remained dangerously restrictive.²⁰⁵

2. *Long Arm of the Law: How Saudi Arabia Censors International Content within its Borders*

The Kingdom's sudden willingness to engage with international culture and the prestige and wealth of the Kingdom seems to make international media companies more willing to work within the strict boundaries of the Kingdom's moral code. For example, Netflix recently made the news by removing access to an episode of Hasan Minaj's show, *Patriot Act*, which was critical of the Saudi Arabian royal family.²⁰⁶ The episode dealt with the kidnapping and murder of Washington Post columnist Jamal Khashoggi.²⁰⁷ In response to the controversy, Netflix released a statement,

202. Kendall Trammell, *Nicki Minaj Cancels Her Concert at a Saudi Arabian Music Festival*, CNN, <https://www.cnn.com/2019/07/09/entertainment/nicki-minaj-saudi-arabia-concert-trnd/index.html> (last updated July 10, 2019, 3:29 AM).

203. Eden Gillepse, *The Instagram influencers hired to rehabilitate Saudi Arabia's image*, GUARDIAN (Oct. 11, 2019), <https://www.theguardian.com/world/2019/oct/12/the-instagram-influencers-hired-to-rehabilitate-saudi-arabias-image>.

204. Christi Carras, *Why People Are Mad at Celebs for Promoting a Saudi Arabia Concert*, L.A. TIMES (Dec. 23, 2019, 12:44 PM), <https://www.latimes.com/entertainment-arts/music/story/2019-12-23/armie-hammer-ed-westwick-saudi-arabia-concert-mdl-beast>.

205. *See id.*

206. *See* James Griffiths & Euan McKirdy, *Netflix Pulls 'Patriot Act' Episode in Saudi Arabia After It Criticized Official Account of Khashoggi Killing*, CNN, <https://www.cnn.com/2019/01/01/middleeast/netflix-patriot-act-hasan-minhaj-jamal-khashoggi-intl/index.html> (last updated Jan. 2, 2019, 11:41 AM).

207. *See id.* Strong speculation indicates that Khashoggi was lured to the Saudi Arabian embassy in Turkey, beaten, chloroformed, and chopped into pieces by members of the Crown Prince's personal court. At the time the *Patriot Act* episode aired, CIA conclusions showed that the Crown Prince had ordered the hit on Khashoggi. Shane Harris et al., *CIA Concludes Saudi Crown Prince Ordered Jamal Khashoggi's Assassination*, WASH. POST (Nov. 16, 2018, 6:11 PM), https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story.html.

reading in part, “[w]e strongly support artistic freedom worldwide and only removed this episode in Saudi Arabia after we had received a valid legal request — and to comply with local law.”²⁰⁸ At the time this episode aired, Saudi Arabia had only recently allowed theaters and streaming services to operate within its borders.²⁰⁹ In demanding Netflix pull the Patriot Act episode, the Saudi government cited Article 6 of the Anti-Cyber Crime Law, which prohibits Internet content that violates “public order, religious values[, or] public morals.”²¹⁰ Breaking this law can lead to up to five years in prison and a fine of three million riyals (about \$800,000 USD).²¹¹

Saudi Arabia’s censorship laws do not exclusively apply to streaming services like Netflix. Similar to China, in order to operate within the borders of the country, filmmakers, studios, and streaming services alike must adhere to strict censorship laws surrounding film.²¹² The Saudi government only permits films that have gone through the censoring process to be screened in the country.²¹³ This apparently ensures that the films remain “in line with values and principles in place and do not contradict with Sharia Laws and moral values in the Kingdom.”²¹⁴ According to Amnesty International, Saudi Arabia has previously used anti-cyber-crime laws to crack down on artistic dissent within the country.²¹⁵

208. *Saudi Arabia: Censorship of Netflix Is Latest Proof of Crackdown on Freedom of Expression*, AMNESTY INT’L (Jan. 2, 2019), <https://www.amnesty.org/en/latest/news/2019/01/saudi-arabia-censorship-of-netflix-is-latest-proof-of-crackdown-on-freedom-of-expression/>.

209. See Northam & Tanis, *supra* note 197.

210. Royal Decree no. M/17, 8 Rabi’ 1428H, art. 6 (2007).

211. *Id.*

212. See Emily Dreyfuss, *Saudia Arabia Won’t Be the Last Country to Censor Netflix*, WIRED (Jan. 3, 2019, 7:17 PM), <https://www.wired.com/story/saudi-arabia-netflix-censorship/>. See, e.g., *Saudi Arabia: Censorship of Netflix Is Latest Proof of Crackdown on Freedom of Expression*, *supra* note 208.

213. See Jackie Northam, *Saudi Arabia Is Lifting Its Lifetime Ban on Movie Theaters*, NPR (Apr. 19, 2018, 4:31 PM); Anti Cyber Crime Law art. 6.

214. Alex Ward, *Black Panther Will Be the First Film Shown in a Saudi Movie Theater in Decades*, VOX, <https://www.vox.com/2018/4/5/17203684/black-panther-saudi-arabia-movie-ban-film> (last updated Apr. 18, 2018, 10:25 AM).

215. *Saudi Arabia: Censorship of Netflix Is Latest Proof of Crackdown on Freedom of Expression*, *supra* note 208.

In the mega-hit *Black Panther*, the movie had forty seconds of its runtime cut by its distributor in Saudi Arabia.²¹⁶ The ending scene featured a kiss between the main character and his longtime girlfriend, who were not married.²¹⁷ For decades women could not walk around without having the permission of, or being accompanied by, a male guardian, much less kiss a man to whom they are not married.²¹⁸ Cuts were made to the film without any discernable protest.²¹⁹

The *Black Panther* cut had no discernible effect on the plot structure.²²⁰ However, aggressive cuts rendered several major blockbusters, like the dark superhero film *Watchmen*, “near incomprehensible.”²²¹ Producers of the feminist action film, *The Girl With The Dragon Tattoo*, where a female spy exacts revenge on a rapist, declined to show the movie in cinemas with the requested cuts.²²² In that case, the producers’ refusal to bow to censors caused Saudi Arabia to ban the film entirely.²²³

Saudi has addressed the censorship of international film. Awwad Alawwad, Saudi’s Minister of Culture and Information, attended the Riyadh premiere and told Associated Press that “films screened in the country need to strike a balance for Saudi audiences” between remaining true to the content of the film and respecting the modesty laws of the country.²²⁴ “We want to ensure the movies are in line with our culture and respect for values. Meanwhile, we want to provide people with a beautiful show and really enjoy watching their own movies,” he said.²²⁵

216. Rex Santus, *Here’s What Was Censored from “Black Panther” in Saudi Arabia*, VICE (Apr. 19, 2018, 1:40 PM), https://www.vice.com/en_ca/article/gymnjb/black-panthers-40-second-kiss-scene-censored-in-saudi-arabia.

217. *Id.*

218. See HUMAN RIGHTS WATCH, *BOXED IN: WOMEN AND SAUDI ARABIA’S MALE GUARDIANSHIP SYSTEM 1* (2016).

219. Santus, *supra* note 216.

220. *See id.*

221. Rosie Perper, *Saudi Arabia Just Screened ‘Black Panther,’ Its First Movie in 35 Years — But a Crucial 40 Seconds of It Were Censored*, BUS. INSIDER (Apr. 19, 2018, 12:13 AM), <https://www.businessinsider.com/saudi-arabia-censors-black-pather-first-movie-in-35-years-2018-4>.

222. *Id.* *See also* THE GIRL WITH THE DRAGON TATTOO (Sony Pictures Entertainment 2011).

223. *See id.*

224. *Id.*

225. *Id.*

Despite the censorious climate, experts expect that screening films in the Kingdom will be immensely profitable for studios in the West.²²⁶ As previously mentioned, Saudi Arabia plans to open approximately 350 cinemas with 2,500 active screens by 2030.²²⁷ Saudi Arabia's Ministry of Culture has projected that the increased number of screens in the country will generate approximately \$1 billion in box office revenue each year.²²⁸ If this projection holds, this number will make Saudi Arabia one of the largest film markets in the world.²²⁹

The lack of a meaningful response from international-based media companies and the continued willingness for powerful celebrities and politicians to engage with the Saudi Arabian regime indicates that the censorship question in the isolated nation will only become more relevant, not less, as the Kingdom opens up to the rest of the world.

IV. DEFICIENCIES IN THE INTERNATIONAL RESPONSE TO FILM CENSORSHIP

Though the censorship laws in both China and Saudi Arabia have affected numerous international films and filmmakers, there seems to be little motivation amongst the international community to challenge the social schema in either country.²³⁰ The reasons behind the hesitation are manifold; some may be wary of being denied access to lucrative new markets and others may see little to gain by angering two of the most important countries on the world's stage.²³¹ International recognition of

226. See PWC, *CINEMAS IN SAUDI ARABIA: A BILLION DOLLAR OPPORTUNITY 2* (2018).

227. Lisa Richwine & Stephen Kalin, *Saudi Arabia's First New Cinema in Decades to Open*, REUTERS (Apr. 4, 2018, 1:56 PM) <https://www.reuters.com/article/us-saudi-cinemas/saudi-arabias-first-new-cinema-in-decades-to-open-april-18-idUSKCN1HB2LC>.

228. PWC, *supra* note 226, at 3.

229. *Id.*

230. See Ashley Tellis, *U.S.-China Competition for Global Influence*, Strategic Asia 2020 (2020); Catherine Rampell, *How Long Does Outrage Over a Murder Last? On Wall Street, Six Months*, WASH. POST (Apr. 19, 2019, 7:25 PM), https://www.washingtonpost.com/opinions/how-long-does-outrage-over-a-murder-last-on-wall-street-six-months/2019/04/18/6e640fc2-620e-11e9-9ff2-abc984dc9eec_story.html?noredirect=on.

231. See *Saudi Arabia: Five Reasons Why Gulf Kingdom Matters to the West*, BBC NEWS (Oct. 15, 2018) <https://www.bbc.com/news/world-middle-east-45861708>; *Most Influential Countries*, U.S. NEWS & WORLD REP., <https://www.usnews.com/news/best-countries/best-international-influence> (last visited Nov. 2, 2020).

ensorship as a serious affront to artistic expression and freedom of speech is key; without international attention, the status quo will be maintained to the detriment of artists and activists both in China and Saudi Arabia and internationally.

A. China: An Imbedded Concentration on Market Access over Reform

The international community has been preoccupied with gaining access to China's film market while ignoring the ramifications of entering said market. As illustrated above, there are clear economic benefits to engaging with the Chinese market that seem to, at least in recent years, outweigh concerns that companies or countries may have about protecting the integrity of artistic expression or freedom of speech. It is only when market access is cut off that reform efforts are attempted on the international stage. For example, in 2007, the World Trade Organization ("WTO") adjudicated a case against China for placing restrictions on imports such as films.²³² At the time, the WTO called for China to provide equal rights for all individuals and enterprises, both foreign and domestic, who import entertainment products into China on an unlimited basis by 2011.²³³ China did not comply within the required timeframe.²³⁴

However, rather than pursuing action with the WTO, China and the United States signed a "Memorandum of Understanding" in 2012.²³⁵ This document outlined an agreement for China to significantly increase market access for foreign films and to provide a greater share of revenue for American film companies.²³⁶ The agreement concerned only profit sharing and access to the Chinese market.²³⁷ The agreement said nothing about censorship, what kinds of films would be allowed into China, or how much

232. Appellate Body Report, *China — Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, ¶ 1, WTO Doc. WT/DS363/AB/R (adopted Dec. 21, 2009).

233. *See id.* ¶¶ 414–417.

234. Legal Affairs Division of the WTO, *WTO Dispute Settlement: One-Page Case Summaries 1995–2018*, 151 (2019).

235. *See generally* Memorandum of Understanding Between the United States of America and China, China-U.S., Apr. 25, 2012, T.I.A.S. No. 12-425.

236. *Id.* art. 1.

237. *See id.* arts. 2, 5, 7.

or how little China could dictate the content of the filmmakers seeking to enter its market.²³⁸

Despite its clear shortcomings, studio executives hailed the deal as a breakthrough for expanding international film access to China's burgeoning art and entertainment markets.²³⁹ This praise primarily centered around the ability for international filmmakers, particularly in the United States and other international countries, to gain access to the Chinese film market, which international studios saw as a lucrative opportunity.²⁴⁰ According to a 2014 report on China's WTO compliance from the Office of the U.S., the deal permitted SARFT to screen all foreign films and grant final approval on content, including co-productions between China and international countries.²⁴¹ Further, the Memorandum required that all filmmakers seeking to enter the Chinese market be subject to rigorous regulations set by SARFT.²⁴² Clearly, in this instance, the value of entering the market in China outweighed any concerns regarding the integrity of the film, freedom of expression, or allowing a foreign government to edit content at its leisure. Since this agreement, the international community has mounted no major effort to resist or change the censorship structure in China; if anything, the studios and steaming services based in the West have increasingly bowed to the censorious whims of the Communist regime. Additionally, there has been little in the way of action to enforce the already existing agreement. Studios and

238. *See generally id.*

239. Ethan Smith & Bob Davis, *China Agrees to Increase Access for U.S. Films*, WALL ST. J., <http://www.wsj.com/articles/SB1000142405297020488040457723017240144998> (last updated Feb. 18, 2012, 1:44 AM).

240. *See id.*

241. U.S. Trade Representative, 2014 Report to Congress on China's WTO Compliance (2014); *see also* Cieply, *supra* note 103.

242. *Id.* at 38–39. *See also* Pang-Chieh Ho, *Goodbye SAPPRT (but Not Chinese Censorship)*, SUPCHINA (Mar. 21, 2018), <https://supchina.com/2018/03/21/goodbye-sapprft-but-not-chinese-censorship/> (“China announced that it was dismantling its top media regulator, the State Administration of Press, Publication, Radio, Film and Television [T]he five-year-old institution would be succeeded by a television and radio administration that would be directly attached to the State Council, or Cabinet, giving the Communist Party further control of China's media and entertainment. . . . [T]he bodies governing film, press, and publication would be folded directly into the publicity department of the Communist Party of China.”).

companies seem hesitant to demand China adhere to its own agreements, lest the valuable Chinese market be closed to the companies entirely.

B. Saudi Arabia: Expediency over Accountability

The same unwillingness to challenge censorship laws exists in the Saudi Arabian market, though the reasons for international reticence are different. Saudi Arabia sits on one of the most profitable oil fields in the world and is a founding member of the Organization of Petroleum Exporting Countries (“OPEC”), a group of fourteen countries that control almost 80% of the world’s active oil fields and nearly half of all oil production.²⁴³ Experts have criticized OPEC as a “non-cooperative oligarchy” which operates as, essentially, a cartel, setting arbitrarily high prices for oil even when the market does not dictate such prices.²⁴⁴ Saudi Arabia has used its wealth, oil, and relative stability as a nation to exert outsized influence over the Middle East and Middle Eastern policy.²⁴⁵

Saudi Arabia’s power and influence in the region may help explain that despite numerous, recognized human rights abuses, the country has remained relatively impervious to international censure.²⁴⁶ The necessity of Saudi oil to the fuel needs of many countries and the Kingdom’s ability to set oil prices inherently creates a situation where countries are unwilling to challenge or request change from the Kingdom, even when Kingdom policy negatively impacts that country.²⁴⁷

243. *OPEC Share of World Crude Oil Reserves, 2018*, ORG. PETROLEUM EXPORTING COUNTRIES, https://www.opec.org/opec_web/en/data_graphs/330.htm (last visited Nov. 2, 2020).

244. Daniel Huppmann & Franziska Holz, *What About the Opec Cartel?* 1 (2015).

245. See TIM NIBLOCK, *SAUDI ARABIA: POWER, LEGITIMACY, AND SURVIVAL* 1–2 (2006) (“Saudi Arabia’s production of [oil] is critical to the international political economy. . . . No country exerts a stronger impact on the production and pricing of these fuels than Saudi Arabia.”).

246. See *id.* at 6 (“The third dimension is of Saudi Arabia’s strategic position and influence on regional issues in the Gulf and the wider Middle Eastern and Indian Ocean regions.”).

247. See Matt Schiavenza, *Why the U.S. Is Stuck with Saudi Arabia*, ATLANTIC (Jan. 24, 2015), <https://www.theatlantic.com/international/archive/2015/01/why-the-us-is-stuck-with-saudi-arabia/384805/>; *Is the West Too Afraid of Saudi Arabia to Impose Sanctions?*, DEBATING EUR. (Oct. 22, 2018), <https://www.debatingeurope.eu/2018/10/22/is-the-west-too-afraid-of-saudi-arabia-to-impose-sanctions/>; Yasmeen Serhan, *Why Countries Aren’t Sanctioning the Saudi*

V. PROPOSED SOLUTION: INCORPORATING CENSORSHIP
DEREGULATION INTO INTERNATIONAL TRADE AGREEMENTS

Given how imbedded the autocratic regimes in Saudi Arabia and China are and how powerful the economic incentives are in both cases to appease the leaders of those nations, loosening censorship laws in either nation may seem, at first, improbable, if not impossible. However, neither regime is impervious to international pressure, particularly when that pressure is economic in nature. The international community can broaden censorship policy within both nations; in fact, such tactics have worked before and could be used again. For example, in 2016, the United Nations Human Rights Council targeted China with a country-specific draft resolution that condemned its arbitrary use of the death penalty.²⁴⁸ The scrutiny of international human rights groups and the United Nations, combined with economic and military sanctions, led to the Chinese government reshaping policy surrounding that issue.²⁴⁹ In response to international condemnation, the Chinese government has taken steps in recent years to control its use of the death penalty, leading to a 75% decline in convictions from 2002 to 2013.²⁵⁰ If the international community sanctioned China for its censorship scheme the same way the international community sanctioned China for its position on the death penalty, it is possible that China would reduce its censorship laws in a similar manner.

Another tool in the hands of the international community to combat Chinese censorship is by petitioning the WTO Dispute Settlement Body and arguing that such censorship laws are an unfair barrier to trade.²⁵¹ A

Government Over Khashoggi, ATLANTIC (Dec. 3, 2018), <https://www.theatlantic.com/international/archive/2018/12/west-punishes-saudis-targeted-sanctions-keeps-ties/577240/>.

248. See Jamie J. Gruffydd-Jones, *Citizens and Condemnation: Strategic Uses of International Human Rights Pressure in Authoritarian States*, 52 COMP. POL. STUD. 579, 580–81 (2019).

249. *Id.*

250. *Id.* at 581.

251. See, e.g., *US Mulls Bringing Google China Censorship Case to WTO*, CHINA ECON. REV. (Mar. 2, 2010), <https://chinaeconomicreview.com/us-mulls-bringing-google-china-censorship-case-to-wto/>. See also Daniel Indiviglio, *Fighting China's Censorship Through the WTO?*, ATLANTIC (June 24, 2009), <http://www.theatlantic.com/business/archive/2009/06/fighting-chinas-censorship-through-the-wto/20070/>.

country or company bringing a case before the WTO Dispute Settlement Body could argue that the censorship laws restricting the film industry have the effect of offsetting the mutually agreed provisions of international trade treaties.²⁵² Thus, China's restriction of the human right of expression as it relates to film can be framed as a question of contract and international trade within the language of the WTO. Using this method, trading partners or studios operating in the Chinese market could use WTO law to push for the pairing down or removal of censorship laws surrounding the Chinese film industry.

It is possible to bring a WTO case successfully against China. As a member of the WTO, China has become a party to the General Agreement on Tariffs and Trade ("GATT").²⁵³ The GATT contains binding commitments on tariffs and quotas for goods.²⁵⁴ Members are required to adhere to the fundamental principles of non-discrimination, market access, and transparency.²⁵⁵ China's censorship law violates all three requirements. All members of the WTO are subject to the binding commitments of the WTO in its entirety.²⁵⁶ This means the obligations created by joining the WTO applies to all goods traded in the territory of a member state.²⁵⁷ Since some goods directly carry or enable expression, information, and ideas, the WTO can circumscribe governments' efforts to control the distribution of these goods.²⁵⁸ Theoretically, the agreements that bind China as a member of the WTO can be used to circumvent its censorship law and can be used by the WTO to restrict censorship policies.

For example, in Article XI, GATT prohibits quantitative restrictions on

252. See Indiviglio, *supra* note 251.

253. See Marrakesh Agreement Establishing the World Trade Organization art. 1, Apr. 15, 1994, 1867 U.N.T.S. 154 [hereinafter Marrakesh Agreement].

254. See General Agreement on Tariffs and Trade art. 1, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT].

255. See *Principles of the Trading System*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm (last visited Nov. 2, 2020).

256. *Id.*

257. *Membership, Alliances and Bureacracy*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm (last visited Nov. 2, 2020). See also GATT, *supra* note 254, art. XXIV.

258. *A Unique Contribution*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm (last visited Nov. 2, 2020).

the trade of goods.²⁵⁹ Under this provision, any measure that bans the importation of foreign films into a domestic market inherently violates Article XI.²⁶⁰ Article III of GATT restricts a member from treating domestic production more favorably than imported goods.²⁶¹ Thus, if a member country subjects a foreign film to restrictions that domestic films are not subject to, such a measure would violate Article III of GATT.²⁶² Arguably, China's refusal to allow more than thirty-four foreign films into their domestic market per year and the Party's insistence on editorial control of the films shown in China violate both Article XI and Article III of GATT.

Members of the WTO are also parties to the General Agreement on Trade in Services ("GATS"). GATS regulates how members of the WTO may regulate services within their country.²⁶³ Unlike GATT, which has binding obligations on all members and all goods, GATS commitments are member specific, complicating the uniform enforcement of the agreement.²⁶⁴ Like GATT, the regulations contained in GATS are based on the principles of non-discrimination, market access, and transparency.²⁶⁵ Members can agree to liberalize sections of the supply of services into their country.²⁶⁶ Further, GATS adds a requirement that a "genuine and sufficiently serious threat . . . posed to one of the fundamental interests of society" for any measure that contravenes the agreement to be justified under WTO law.²⁶⁷ China has used this

259. GATT, *supra* note 254, art. XI, ¶ 1.

260. *See id.*

261. *See id.* art. III, ¶ 1.

262. *See id.*

263. *See* General Agreement on Trade in Services art. 1, ¶ 1, May 30, 1950, 64 U.N.T.S. 814 [hereinafter GATS].

264. *See Guide to Reading the GATS Schedule of Specific Commitments and the List of Article II (MFN) Exemptions*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/serv_e/guide1_e.htm (last visited Nov. 2, 2020).

265. *The General Agreement on Trade in Services (GATS): Objectives, Coverage and Disciplines*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm (last visited Nov. 2, 2020).

266. The GATS specifies four main modes of supply for services: (1) cross border; (2) consumption abroad; (3) commercial presence and (4) movement of natural persons. Appellate Body Report, *supra* note 232, annex III. *See also The General Agreement on Trade in Services (GATS): Objectives, Coverage and Disciplines*, *supra* note 265 ("The creation of GATS [promotes] trade and development through progressive liberalization.").

267. GATS, *supra* note 263, art. XIV(a) n.5.

exception under GATS to censor information in the context of freedom of the press and freedom of financial information. For example, in 2008, the Communist government in China began restricting the dissemination of financial information regarding companies based in the United States and Europe to Chinese investors.²⁶⁸ The Chinese government began requiring foreign-based firms to submit their financial information to China's official news agency for content review before the information firm disseminated the information to investors in China.²⁶⁹ This allowed the news agency to restrict financial information from reaching the Chinese public that Chinese officials believed could adversely affect the Chinese companies and benefit foreign companies.²⁷⁰ In response, the United States evoked the GATS agreement, arguing that the restriction on the dissemination of financial information accorded less favorable treatment to foreign companies than to Chinese companies.²⁷¹ Before the case even went before the WTO Dispute Settlement Body, the Chinese government agreed to remove the restriction and allow international firms to dispense financial information uncensored by the Chinese government.²⁷² An evocation of GATS regarding the censorship of foreign film could induce the Communist government to act in a similar manner and loosen censorship laws surrounding the film industry in China.

Furthermore, China has never come into full compliance with the WTO Dispute Resolution Body's recommendations and rulings.²⁷³ While the United States did sign a Memorandum of Understanding with China, such a contract does not supersede or cancel out WTO obligations, nor does it

268. Joint Communication from China and the United States, *China- Measures Affecting Financial Information Series and Foreign Financial Information Suppliers*, ¶ 2, WTO Doc. WT/DS373/4 (Dec. 5, 2008).

269. *See id.*

270. *See id.* ¶ 3.

271. *See id.* ¶ 1.

272. Joint Communication from China and the European Communities, *China — Measures Affecting Financial Information Services and Foreign Financial Information Suppliers*, ¶ 2, WTO Doc. WT/DS372/4 (Dec. 9, 2008).

273. *China — Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds363_e.htm (last visited Nov. 2, 2020).

apply to other countries in the international community.²⁷⁴ If a country or company were to challenge China's non-compliance with the WTO Dispute Resolution Body's ruling, the WTO would likely sustain such a challenge and could lead to the dismantling of the thirty-four film per year rule that causes so much studio self-censoring.

Similarly, the film industry could combat censorship in Saudi Arabia by using international sanctions and trade agreements. While historically, interaction and sanctions against Saudi Arabia have been more limited because of their central, strategic position in the Middle East, as the country becomes more open, the possibility of adding trade addendums focused on decreasing censorship becomes more feasible.²⁷⁵ Though it is one of the most restrictive countries in the world, Saudi Arabia has a seat on the U.N. Human Rights Council.²⁷⁶ The seat is controversial, particularly considering Jamal Khashoggi's murder and Saudi Arabia's constant bombing of Yemen.²⁷⁷ However, it is one of the most consistently stable countries in the Middle East, which accounts for its continued importance on the international stage.²⁷⁸ The Human Rights Council is entitled to sanction one of its sitting members and has showed recent willingness to confront Saudi Arabia on the country's numerous human rights abuses.²⁷⁹

For example, in March 2019, the U.N. Human Rights Council, acting with thirty-six countries, including all twenty-eight European Union member states, rebuked Saudi Arabia, the "first the [K]ingdom has faced

274. The goal of the WTO's dispute resolution procedures is to bring the actions of the target back to compliance with the WTO agreements. If a member does not comply with the recommendations and rulings, the complaining side should ask the Dispute Settlement Body for permission to retaliate. *A Unique Contribution*, *supra* note 258.

275. See WTO Secretariat, *Trade Policy Review: The Kingdom of Saudi Arabia*, ¶ 2.2, WTO Doc. WT/TPR/S/333/Rev.1 (June 21, 2016).

276. Joyce Bukuru, *How Saudi Arabia Kept Its Seat on the Human Rights Council*, HUM. RTS. WATCH (Nov. 1, 2016, 4:57 PM), <https://www.hrw.org/news/2016/11/01/how-saudi-arabia-kept-its-un-human-rights-council-seat#>.

277. *Id.*

278. See *id.*; Martin H. Sours, *Saudi Arabia's Role in the Middle East: Regional Stability Within the New World Order*, 18 ASIAN AFF.: AM. REV. 43, 47 (1991).

279. See Emily Tamkin, *For First Time, Saudi Arabia Rebuked at the UN Human Rights Council*, WASH. POST (Mar. 7, 2019, 10:29 AM), [washingtonpost.com/world/2019/03/07/first-time-un-human-rights-council-rebuked-saudi-arabia/](https://www.washingtonpost.com/world/2019/03/07/first-time-un-human-rights-council-rebuked-saudi-arabia/).

from the panel since its establishment in 2006.”²⁸⁰ The Icelandic ambassador, who read the rebuke, said, “[w]e are particularly concerned about the use of the counterterrorism law and other national security provisions against individuals peacefully exercising their rights and freedoms.”²⁸¹ The Council criticized Saudi Arabia for detaining those “exercising their fundamental freedoms,” including women’s rights activists Loujain al-Hathloul, Eman al-Nafjan, and Aziza al-Yousef, all of whom had pushed for women to have the right to drive.²⁸² This is a strong rebuke from an international committee of which Saudi Arabia is a sitting member; it stands to reason that the Human Rights Council could rebuke or sanction Saudi Arabia for their censorship laws in the same way. WTO law can also be used to reduce Saudi Arabia’s censorship. Like China, Saudi Arabia is a member of the WTO and a signatory of both GATT and GATS.²⁸³ Traditionally, GATT does not involve itself in trade in oil, refined products, or petrochemicals; that role is reserved to the Organization of the Petroleum Exporting Countries (“OPEC”), of which Saudi Arabia is a founding member.²⁸⁴ Saudi Arabia’s prominent position in OPEC and strict adherence to Sharia law within its borders has historically made the international community hesitant to sue the Kingdom in a trade context, lest the petitioning country suffer adverse

280. *Id.*

281. *Id.*

282. *Id.*

283. *Kingdom of Saudi Arabia and the WTO*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/countries_e/saudi_arabia_e.htm#:~:text=Kingdom%20of%20Saudi%20Arabia%20and%20the%20WTO&text=The%20Kingdom%20of%20Saudi%20Arabia,WTO%20since%2011%20December%202005 (last visited Nov. 16, 2020).

284. OPEC is an intergovernmental organization made up of thirteen countries which together control most of the world’s oil reserves. *About Us*, ORG. PETROLEUM EXPORTING COUNTRIES, https://www.opec.org/opec_web/en/17.htm (last visited Jan. 17, 2021). It was founded by five countries (Iran, Iraq, Kuwait, Saudi Arabia, and Venezuela). *Brief History*, ORG. PETROLEUM EXPORTING COUNTRIES, https://www.opec.org/opec_web/en/about_us/24.htm (last visited Jan. 17, 2021). As of September 2018, the member countries accounted for about 40 percent of global oil production, giving OPEC a major influence on global oil prices. *What Drives Crude Oil Prices?*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/finance/markets/crudeoil/supply-opec.php> (last visited Jan. 17, 2021).

consequences.²⁸⁵ The recent willingness of the international community to rebuke the Kingdom for human rights abuses²⁸⁶ and the widespread outrage over the murder of Jamal Khashoggi,²⁸⁷ combined with the Kingdom's desire to attract Western tourists and celebrities²⁸⁸ makes this moment prime for challenging Saudi Arabian censorship law via international trade law. Using GATT, a challenging country or company could petition WTO and, in turn, Saudi Arabia, to increase the number of international films shown in Saudi Arabia. As stated above, the Ministry of Culture and Information evaluates each film coming into the nation on a case-by-case basis.²⁸⁹ A challenging country could argue that this evaluation amounts to a prohibited "qualitative restriction" of goods under Article XI of GATT.²⁹⁰ If a film produced in Saudi Arabia does not undergo the same editing process that an international film such as Black Panther underwent, then an argument could be made that the editing process by Saudi Arabian censors violates Article III of GATT.²⁹¹ Further, in conjunction with the GATT claim, the petitioning country could use the GATS agreement to argue that the editing and restriction of some content within Saudi Arabia amounts to a restriction on the free flow of telecommunications services, which Saudi Arabia has agreed to follow.²⁹² Thus, utilizing already existing international trade organizations and

285. See e.g., Dmitry Zhdannikov et al., *Exclusive: Saudi Arabia Threatens to Ditch Dollar Oil Trades to Stop 'NOPEC'*, REUTERS (Apr. 4, 2019, 8:06 PM), <https://www.reuters.com/article/us-saudi-usa-oil-exclusive/exclusive-saudi-arabia-threatens-to-ditch-dollar-oil-trades-to-stop-nopec-sources-idUSKCN1RH008>; Emad Mekay, *Global Justice: Stakes High for Rule of Law in Khashoggi Case*, INT'L B. ASS'N (Feb. 12, 2019), <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=A3DBE4A8-D66D-4F7B-BDF2-7B9DC4C74595>. See generally, JOHN KLINE, INTERNATIONAL BUSINESS: DECISION-MAKING IN A GLOBAL POLITICAL ECONOMY (2d ed. 2005).

286. Tamkin, *supra* note 279.

287. Greg Myre, *International Pressure Mounts on Saudi Arabia After Disappearance of Jamal Khashoggi*, NPR (Oct. 13, 2018), <https://www.npr.org/2018/10/13/657198759/international-pressure-mounts-on-saudi-arabia-after-disappearance-of-jamal-khash>.

288. Carras, *supra* note 204.

289. See discussion *supra* Section II.B.

290. See GATT, *supra* note 254, art. XI.

291. See GATT, *supra* note 254, Art. III.

292. The Kingdom of Saudi Arabia — Schedule of Specific Commitments, Mar. 29, 2006, GATS/SC/141, at 14.

humanitarian bodies, censorship in Saudi Arabia could be reduced or at least combatted.

VI. CONCLUSION

It is likely that China will soon become the world's largest film market and Saudi Arabia will continue to emerge as an entertainment powerhouse and cultural destination. The question is not whether international filmmakers should engage with these markets — of course they should — cultural exchange is key to fostering both international understanding and economic growth — but on whose terms such engagement should happen. Thus far, both China and Saudi Arabia have been able to perpetuate governmental ideals onto international films and have successfully encouraged streaming companies to manipulate and tailor content for each country's domestic audience or face losing millions of dollars in revenue.

Allowing authoritarian regimes to tailor, influence, or edit films to their satisfaction is an intolerable notion and must be made a central component of trade negotiation and policy going forward. As the entertainment industry grows increasingly global, allowing these regimes to project their idea of themselves onto the world without pushback sets a dangerous precedent. The proliferation of censorship in these countries will not abate without the international community rallying around fundamental reform granting equal access for the domestic distribution of foreign films and bringing both countries to full compliance with their WTO obligations. Imposing sanctions and strengthening trade policy against censorship would likely yield results in both China and Saudi Arabia. Both are members of the WTO and have become signatories to GATT and GATS. While Saudi Arabia is traditionally less open to international arbitration and litigation, China has historically abided by and yielded to international pressure via the aforementioned trade agreements.

Pursing action against China via either GATT or GATS could result in significant economic pressure for China to loosen its censorship policies surrounding the content of films shown within its borders. Additionally, bringing China into full compliance with the WTO Dispute Resolution Body's ruling will hinder Chinese censors' ability to apply China's standards to international films. It will also likely frustrate the censors' ability to manipulate the way international films are written, shot, and marketed not only within China, but also across the global market. Ideally, international pressure on trade would eventually lead to China granting

equal market access to foreign films in China. At present, a similar approach could work in Saudi Arabia as well. The country wants international attention, travel, and approval more than it has in the past. With the international community's increased willingness to sanction Saudi Arabia for its human rights abuses, and the Kingdom's desire to attract Western and international talent to the country, the likelihood is that the country would be more amenable to censorship rollbacks. Such rollbacks would allow Saudi Arabia to save face on the world's stage and benefit international filmmakers attempting to display their uncensored work.

Thus, the utilization of U.N. sanctions, existing world trade agreements, and enacting trade policy practices aimed at rolling back censorship laws should result in effective change in both countries. The framework exists to protect international film, strengthen freedom of speech around the world, and economically benefit not only the West, but the censoring countries as well. The only missing piece is the political will to enact the existing framework. There is a viable path to loosen censorship laws in two of the most restrictive, powerful countries in the world. Pursuing this path not only opens the door for greater artistic freedoms around the world, but it also has the potential to bring powerful outliers on the issue of freedom of speech in line with global norms.