

Online Video Sharing, an Alternative Channel for Film Distribution?
Copyright Enforcement, Censorship, and Chinese Independent Cinema

Lin Feng

Abstract

Regarding piracy as a crime of stealing copyright holders' rightful profits, many creative industries, such as the film, music, and gaming industries, are battling for tough administrative and legal enforcement against copyright infringement. However, there is a counterargument that piracy could benefit copyright holders in the form of free promotion. Given China's tough censorship on film content, this paper investigates how online piracy complicates the distribution of independent films in China. The advance of cyber technology and high-speed Internet access has not only fuelled the spread of online film sharing but also encouraged public participation in the debate of the complex relationship between piracy, copyright, and censorship. Taking Jia Zhangke's *A Touch of Sin* (2013) as a case study, this paper evaluates the alternative business models for Chinese independent cinema as put forward by Chinese netizens.

Keywords:

A Touch of Sin, Jia Zhangke, Chinese independent film, censorship, piracy, copyright, social media, Internet

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The Internet has dramatically changed the way people access and consume a film in China. In comparison to other digital media, such as cable TV, DVD, and Blu-ray, it is much easier to purchase, watch, store, and share a film on the Internet along with the advance of cyber technologies in ePayment, cloud computing, and portable devices, such as the iPad, tablet, and smartphone. However, in addition to the licensed Internet content providers, such as Youku, Tudou, and Sohu Videos, who supply on-demand films and other types of video files to subscribed users or pay-to-watch viewers in China, films are also made available online by copyright infringers and unauthorised users who upload and share films on user-generated websites and peer-to-peer (P2P) file sharing networks.

Such consumer behaviour changes brought by the advance of information and communications technology (ICT) have a great effect on the survival and development of independent cinema in China. In recent years, the size of China's film market has been continuously growing. However, as Liu (2010, p.163) noted, despite the rapid growth, the field of Chinese independent cinema is actually shrinking. According to Jinying Li (2012, p.542), one of the key reasons leading to such a situation is the Chinese government's intensified control over content censorship, which often coincides with the authority's effort to suppress piracy and regulate copyright protection. In light of Li's observations, this paper pays particular attention to the complex negotiation between film consumers, filmmakers, and authorities in the virtual space through a case study of Jia Zhangke's *A Touch of Sin* (2014).

Premiering at the 66th Cannes Film Festival in May 2013, *A Touch of Sin* won Jia the Best Screenplay Award at the festival. However, in March 2014, one month

before the film's legitimate DVD was formally released in North America, the film was widely pirated online in China. As a result, Jia announced the decision to give up the film's theatrical release in the country. Given Jia's reputation as a leading Chinese independent filmmaker, this occurrence quickly caught the attention of Jia's social media followers. The responses from Jia's Sina *weibo* (microblog) followers highlighted the complex relationship between censorship and copyright infringement.¹ Thus, the film offers a compelling case for this paper to investigate the interaction between the cyber subculture of online film piracy and China's administrative and legal enforcement in relation to the dissemination of independent films.

Here, a short definition of independent film and its condition in the Chinese context deserves a brief mention. In many film industries, such as those of the American, French, Japanese, and British, independent films often refer to those produced outside of a studio system (Booker, 2011, p.187; Russell, 2011, p.7). While independent cinemas in those countries also face the challenge of securing exhibition and distribution outlets, the situation is even bleaker in China, where no regulation is in place to restrict the number or percentage of screens that any single (commercial) film could take. That means a commercial film, especially a blockbuster, with its financial backing from a big studio and its authority-approved distribution chains, could occupy the majority (if not every one) of film screens in theatres throughout its release regardless of the film's market and critical performance.

Although such business moves from big studios appear to be financially unwise, it actually could effectively push competitors, including independent films or low-budget films, out of the market and subsequently leave audiences with few choices in cinema. For instance, despite passing the authority's censorship, two recent independent films, Wang Xiaoshuai's *Red Amnesia* (2014) and Li Ruijun's *River Road*

(2014), only obtained a very small number screens and were arranged at the worst time of day (such as lunchtime) (Wang, 2015; Li, 2015).² While the Chinese government is still reluctant to support the idea of building a public-faced independent cinema line, Chinese independent films have to compete with commercial films in a market where audiences' choices are largely restricted to the latter type due to the monopoly from the big studios.

However, within or outside of the big studio system is not sufficient to define Chinese independent films. In comparison to the market penetration, what is more challenging to the independent filmmakers in the Chinese context is the government's conservative perception of a film as a cultural political product. As a result, the Chinese government has a tight grip on film content. Although the authority has recently relaxed its regulation of film production (a point I will return to later), it still has tough control over the film content at the release stage. Accordingly, some independent filmmakers choose to work or cooperate with state-owned studios. For instance, Jia Zhangke's *Still Life* (2006) and *A Touch of Sin* (2014) were both co-produced between Jia's own company Xstream Pictures and the Shanghai Film Group. However, even that does not guarantee that the authority will issue a film release licence (commonly known as the dragon logo), as the case of *A Touch of Sin* demonstrates.

In this context, a Chinese independent film could be defined by its double gatekeepers: the authority's tough censorship of film content and the scarcity of screens available at the big studio-dominated market. Although neither criteria could fully define Chinese independent cinema, the double challenges, in a sense, delineate the wide spectrum across which Chinese independent films are situated. At one end, they are often mixed with art films, of which the aesthetical and narrative styles often challenge the conventional commercial cinema, and consequently situate those films in

the financial disadvantaged side of the capital market of Chinese cinema. At the other end, they are also frequently referred to as underground films (also known as films without a dragon logo). Whereas the filmic aesthetics and narratives of art cinema are often targeted at niche audiences other than the mass media market, the underground cinema, of which its subversive function is highlighted as noted by Pickowicz and Zhang (2006 viii), provide an alternative voice beyond the authority's censorship control.

In this regard, what makes a Chinese film independent is in effect resting on filmmakers' effort to resist the urge to compromise their own aesthetical, commercial or political voice when face the establishment, or what Bretozzi (2016, p.74) called a strategic attitude of indifference to "the rules imposed by the Chinese production and censorship system". However, unlike Bretozzi's view of indifference as a principle of defining Chinese independent cinema, which places an emphasis on filmmakers' passive resistance, this article suggests that Chinese independent filmmakers' attitude of resistance is far more active and tactic. With this in mind, an unauthorised film in this paper primarily refers to a film that has not obtained a release licence issued by the State Administration of Press, Publication, Radio, Film, and Television (SAPPRFT) of the People's Republic of China or by its predecessor the State Administration of Radio, Film, and Television (SARFT) of the People's Republic of China, rather than the authorisation from the filmmakers and stakeholders.³

When Film Meets Internet: The Divergent Administration of Chinese Film

Dissemination in the Cyber Age

In 2013, Jia's *A Touch of Sin* was ready for public release. The film was loosely based on a number of real social events that happened in China, including a murder case conducted by Hu Wenhai who killed 14 people and injured three in 2001 in the Jinzhong

area of the Shanxi Province, the story of an A-list criminal, Zhou Kehua, who robbed millions of renminbi on various occasions and shot and killed 10 people between 2002 and 2012, an incident leading to a legal case in which a pedicure worker, Deng Yujiao, was charged with homicide for stabbing and killing her assailant—a local government official—in 2009, and a number of suicide cases that happened in Foxconn’s factory in mainland China.⁴

These real occurrences were widely reported, broadcast, and discussed in China by both traditional and new media. Due to the development of Web 2.0 technologies, Internet users were not just at the receiving end of news reports but were also actively expressing their views by posting their comments online. Among the user-generated content, some interpreted these events from a very different perspective, questioning the message delivered in the reports from the state-controlled media. For instance, some netizens’ discussions surrounding Hu Wenhai’s case reconstructed Hu’s image as an anti-corruption cult hero (Epicbook, 2004). Internet debate of Deng Yujiao’s case led to public concerns of social justice for powerless people and power abuse from local officials (Branigan, 2009). The public’s active participation in social media effectively encouraged further debate of the causes and social problems behind these incidents. As one of the active microblog users, Jia followed the news and social debates of these events closely on the websites. According to Jia (cited in Zi, 2013), the widespread use of social media has made it impossible for anyone to deny, avoid, or cover what has happened in real life.

However, despite that these social events were widely discussed in detail in Chinese mainstream media, *A Touch of Sin*’s reference to them worried many who feared that the Chinese authority’s tough film censorship would ban the film from public release (Zi, 2013). Such a conjecture was not just a result of Jia’s reputation as

an internationally-acclaimed independent filmmaker whose pre-2004 feature films were all produced and distributed outside of China's state-controlled studio system. It was also an outcome from the ambiguous status of the film's release arrangement. The film screened at Cannes Festival did not have a dragon logo—a symbol that a film has successfully passed the authority's censorship. The absence of the release licence quickly invited journalists to question the film's distribution status and its domestic release arrangement at the film's press conference.

Facing such an interrogation, Jia assured that the film had cleared censorship (Sina Entertainment, 2013a). The report of Jia's words in China raised public expectation of watching the film in mainstream cinemas (Life Week, 2013). Nevertheless, in October 2013, Internet celebrity Wang Xiaoshan posted on his own microblog that the film was banned from public release by the authority, once again casting doubt on the film's future in China's domestic market (Xiaoka Song, 2014). However, Wang's microblog post was not formally confirmed by Jia and his company at the time. On 1 March 2014, on his Sina microblog, Jia suddenly announced that the film had been pirated online, a message that was not only reposted by many of his followers but also widely reported by China's mainstream media (China National Radio, 2014; Tencent Entertainment, 2014; Sina Entertainment, 2014). Two months later, Jia confirmed in an interview (Zi, 2014a) that SAPPRFT recalled the release licence in October 2013 for further reviewing, and the authority subsequently decided to suspend the release of *A Touch of Sin* because of the film's depiction of violence and social problems.

The online piracy, the Chinese authority's changing attitude, and the various public discourses (including news reports, interviews, and social media posts and comments) surrounding the release of *A Touch of Sin* revealed at least two

complications of China's media governance. First, as Jia (cited Zi, 2013) noted, the stories in *A Touch of Sin* were nothing new to Chinese audiences. However, the recall of the film's release licence suggests that a film often faces a much tougher censorship from its governing body, in this case the former SARFT, than the content published in other media platforms, such as newspapers, magazines, and Internet sites, which were governed by the former General Administration of Press and Publication (GAPP).

Second, despite the censorship regulations publicised by the authority, the censorship board's decision of recalling the film's release permit reveals that the interpretation and implementation of the guidelines was rather inconsistent and arbitrary. As matter of a fact, the board has 36 members, but not everyone is a film or legal professional. Many of the board members are from different government departments and quangos, such as the Ministry of Public Security, Ministry of Education, Trade Union, Women's Federation, Youth League, various religious committees, and so on. While the censorship board's opinion of a film has to comply with the authority's political concerns, the lack of a clear definition of key terms, such as violence and state interests, in the film regulations indicates that each individual reviewer's opinion is very much based on his or her own tastes rather than a clear legal or administrative framework. Furthermore, not every board member is required to review a film. As a result of the vague criteria and inconsistent administrative process, the enforcement standard of China's film censorship varies widely, and many filmmakers find it very hard to follow (Zi, 2014b; BBC, 2014; Tencent Entertainment, 2013; The Economist, 2013).

In addition to the content censorship, the execution of censorship also creates problems for filmmakers. As Zhao Baohua, one of the censorship board members, revealed, the enforcement of Chinese film censorship is conducted administratively.

That means before a release licence is granted, the censorship board could issue revision notes to those films that the board deems as inappropriate, requiring the filmmakers to amend the film based on the board's suggestions. Based on this logic, Zhao argued that the Chinese authority has never officially banned any film from public release from the authority's perspective (Sina Entertainment, 2013b). However, without a public release licence, a film is denied distribution through the authority-approved theatrical channel. As such, the censorship board's decision of withholding or withdrawing a release licence bears little difference from banning a film from public release. Accordingly, filmmakers either surrender to please the authority or are trapped in a loophole of revision or the negotiation process if they do not wish to follow the censors' instruction entirely.

As a result of the tough censorship and prolonged reviewing process, many filmmakers, especially independent filmmakers, seek alternative distribution channels beyond the authority's approval. Some skip the circle of cinema release in China completely and directly release DVDs abroad, such as Li Yang's *Blind Shaft* (2003) and Fan Lixin's *Last Train Home* (2009). Some send their films to compete at overseas film festivals before obtaining the release licence (which could lead to a professional ban of the filmmaker from making a film in mainland China), such as Zhang Yuan's *East Palace, West Palace* (1996) and Lou Ye's *Summer Palace* (2006).⁵ Some change a film's nationality either through selling the copyright to a foreign company or through labelling it based on its funding source, such as Ying Liang's *When Nights Fall* (2008), which was listed as a Korean film and Lou Ye's *Spring Fever* (2009)—a film produced during the period of the director's career ban and labelled as a Hong Kong and French coproduction. All of these counter-censorship strategies, making films accessible beyond the Chinese authority-controlled distribution channel, nevertheless also

ironically increase the risk of a film being pirated in China not only because they remain to be inaccessible in the legitimate market in China but also because ripping from legitimate DVDs, recording from theatre screenings abroad, and leaking from festivals or award screenings are popular means through which the copyright infringer could steal the original film (Treverton et al., 2009, p.37).

Providing the Chinese public an underground channel of access to those rare films, piracy is regarded by Li (2012, p.544) as an alternative cultural sphere that allows the public access to barred information. However, film piracy does pose a threat to filmmakers' legal income. In this regard, the Motion Picture Association of America (MPAA), for instance, regularly refers to film piracy as "theft" and "organized [*sic.*] crime" (2015, p.4 and p.14). In 2005, China's National Copyright Administration of China (NCAC) launched the Sword Net Action to intensify its enforcement against copyright infringement. In 2009, China further launched a number of antipiracy campaigns, which demonstrated the government's growing effort to suppress the underground domains that had previously operated largely outside China's heavily regulated cultural system (Li, 2012, p.542).

Unlike the censorship that treats a film as a cultural product, the legal framework of copyright enforcement is based on the perception of film as a creative product, of which a film's importance according to economic value is prioritised. Indeed, copyright enforcement is supposed to protect creative professional's rightful income through restricting the public's access to the contents that are not authorised by the copyright holder. However, also aiming to limit the underground economy of film circulation, copyright enforcement could also be used as a means to hide the authority's real intention of suppressing the dissemination of such films that intend to bypass the authority's censorship. One example demonstrates that the Chinese government's

control of online content and unauthorised dissemination of cultural products has further intensified, along with online (video) file sharing increasingly becoming a popular means of film dissemination. In 2011, a new governing body, the State Internet Information Office (SIIO), was founded. According to China's State Council Information Office (SCIO, 2011), one of the SIIO's key aims is to unify the censorship legislation and enforcement concerning Internet content. One year later, SIIO and SARFT (SARFT, 2012) co-issued *Notice Concerning Further Perfecting the Management of Online Dramas, Microfilms and Other Such Online Audiovisual Programmes*, a regulation indicating that any film that has not been granted a release licence would not be allowed to be broadcast on the Internet.

Despite the Chinese authority adopting multiple measures including film censorship, Internet control, and copyright enforcement to restrict public access to unauthorised film content, three problems could be identified during their enforcement procedure before 2013. First, unlike censorship that was carried out by SARFT before the film reached the audiences, the copyright enforcement was very often dealt with by NCAC, an operation agency overseen by GAPP, after a film had been pirated.

Second, although both SARFT and GAPP were governed by China's Ministry of Culture, the former's control of a film's public release was centralised, while the latter's enforcement was often conducted through a bottom-to-top channel as NCAC's handling of copyright infringement heavily relied on copyright owners' reports. In addition, the approval and management of the reproduction and release of a film's physical format, such as DVD or Blu-ray discs, are often locally operated at the provincial level by GAPP (2013). While the location of a film's physical format could be linked to the location where they are produced, sold, and distributed, film piracy in virtual space has significantly blurred the lines between local, national, and even

international locations, as the Internet Protocol (IP) addresses of those who share films online may be located anywhere, not to mention the dark webs that are publicly visible, which have server IP addresses that are hidden. The technical challenge of locating the sources of where the online files are from has challenged China's current place-bound media administration and jurisdiction system.

Third, despite that the aforementioned SIIO was introduced to enhance the authority's grip on Internet censorship and to ensure that the online dissemination of a film is in line with SARFT's censorship, online enforcement heavily relies on self-censorship of Internet service providers of the content uploaded to their networks (State Council of People's Republic of China, 2000). Since the businesses of the Internet service providers are mostly commercially oriented, it is vital for those businesses to provide rare and even exclusive content, while at the same time to make their online content easily accessible by the public in order to attract visitors. In this regard, these Internet service providers are inevitably reluctant to impose harsh controls on the content, given the fact that self-censorship not only increases a business's running costs but also restricts the public's access to content that delivers the value of rareness and alternativeness. Accordingly, the imposed self-censorship tends to be less strict and consistent than that under the authority's direct control.

The divergent media governance has led to a wide variation in its own interpretation of enforcement criteria. For instance, although *A Touch of Sin* was under a prolonged strict censorship before and after the authority withdrew the release licence, there was no shortage of reports about the film in Chinese mainstream media, such as on Xinhua.com (2013) and People.com (2013a). Moreover, Jia Zhangke published two books related to the films with Shandong Pictorial Publishing House in September 2013—*A Touch of Sin Manuscript* and *A Touch of Sin: Script, Critiques and*

Interviews with Filmmakers, both of which were sold publically online. All of these circumstances suggest uneasiness and conflict in the legal and administrative frameworks in relation to China's media governance.

The Chinese authority clearly understood the issue. In order to strengthen its control of the public's access to unauthorised content, the Chinese government started to reconstruct its media governing bodies. One of the major actions was to merge SARFT and GAPP into SAPPRFT in March 2013. Converging the enforcement procedure that was previously separated as cultural (censorship) and economic (copyright) enforcement, the new governing body clearly has the intention to enhance the consistency of content censorship across different media formats and platforms as well as to prohibit any unapproved content (including those films that have yet obtain a release licence) from being disseminated via media other than cinema screens, such as cable television or online (General Office of the State Council of the People's Republic of China, 2013; SAPPRFT, 2014). Facing such tightening enforcement on censorship and increasingly constrained distribution channels, both independent filmmakers and the public are reluctant to report piracy, even though they are fully aware of the economic damage that piracy may bring, a point I will discuss in more detail in the next section.

Piracy and Film Consumption on the Internet

Although the Chinese authority started to restructure its media governing bodies into SAPPRFT to enhance its control over film content and dissemination, the negotiation among the filmmakers, the public, and the authorities in terms of accessing and restricting the public's access to Chinese independent films continues. One of the complications inserted into this negotiation is located precisely at the point of the

development of China's information and communications infrastructure and technology. As China's Internet Whitepaper (SCIO, 2014) and Thirteenth Five Year Plan (Central Party School the Communist Party of China, 2015) revealed, China has an ambition to be a leader in cyber technology. Although many people worry that the government's stress on Internet security might enable the government to violate individual privacy through technological means (Guo, 2011), the development of new ICT has also seen the evolvement of the format of online film dissemination and consumption. Moving from the offline pirated DVD market to the Internet, Chinese film viewers and their changing consumer behaviour have continued to pose a challenge to the official control of the cultural sphere that is governed and administrated by multiple operation agencies.

According to a statistical report from the China Internet Network Information Centre (CNNIC, 2014, p.51), by the end of June 2014, China had 439 million online video users, and especially the number of mobile video users saw an increase of 19.1% over a six-month period since the end of 2013. As mentioned in the last section, Jia is an active social media user. He opened a Sina microblog account as early as 2009, and by 1 March 2014, his microblog had over 14.5 million followers. In addition to his own account, Jia's production company Xstream and the film *A Touch of Sin* also have their own official microblog accounts. On 18 April 2013, Xstream (2013) posted a message to announce that *A Touch of Sin* had entered the *In Competition* section at the 66th Cannes Film Festival. The messages were quickly reposted by Jia and his followers. Shortly after Jia won the Best Screenplay Award, his microblog and many other mainstream media reported this information (People.com, 2013b; China National Radio, 2013; Sohu Entertainment, 2013). The interaction between Jia, his followers, and mass media had built up a great public interest in the film (Jia, 2013). Subsequently, when

Jia (2014) announced that the film was pirated, his post quickly received over 10,000 comments and was reposted over 32,000 times. While the film was denied a theatrical release in China, the online piracy before the legitimate DVD release suggested that the filmmaker and the film's investors had suffered from a substantial financial loss.

Nevertheless, Jia's attitude towards tough online copyright enforcement is rather ambivalent. As Li (2012, p.555) argued, the "the pirate industry has long served as a powerful circulation channel for Chinese independent films produced outside the state-controlled film institutions". In an interview with BBC (Zi, 2014a), Jia expressed a similar view, acknowledging piracy's value of bypassing China's tough censorship. Although Jia criticised that the circulation of pirated films posed a threat to filmmakers' legitimate income and could negatively affect their career as filmmakers, he also stressed that piracy had functioned as an alternative culture channel, through which the independent filmmakers' voices would be heard by the public.

Indeed, Jia's reputation as an elite Chinese independent filmmaker started abroad. Despite that many of his pre-2004 films were not officially released in China, they were in fact circulated in pirated markets. In a sense, it was film piracy that brought Jia's fame from abroad back to China. Clearly aware of piracy's fundamental role in circulating independent films in China, Jia, as many other Chinese independent filmmakers, is thus caught in the dilemma between tolerating film piracy and calling for a tough copyright protection enforcement that might be used by the authority as a tool of restricting the public's access to their films. Under this context, Jia (2014) claimed in his microblog post that his own production company would take the responsibility of repaying the investor's financial loss, rather than openly calling for the Chinese government to enact a tough copyright law or seeking legal action to prosecute those who pirated the film.

Despite that Jia (2014) claimed that financial loss resulted in his decision to suspend the project of building an independent cinema chain in China, his microblog post did not directly blame those who downloaded or shared the film. Instead, Jia's post highlighted the effort that his team had put into lobbying the authority to grant a release licence over a period of ten months, implying not only the difficulties and obstructions the filmmaker had encountered during the censorship reviewing process, but also an independent filmmaker's resistance to an easy surrender to the authority's revision request. Through social media, Jia effectively communicated with his followers regarding the dilemma that Chinese independent cinema is facing under the double challenge of piracy and censorship in today's China.

However, despite that media scholars, such as Li, recognised film piracy's role in providing an alternative cultural sphere, one key question remains unanswered. That is how an independent filmmaker could survive financially under the context that both censorship and piracy control restrict the public's access to their films. In this regard, the responses from Jia's post provided a glimpse of how filmmakers and Internet users could co-reconstruct the cultural sphere that was approved by the authority. At least three popular threads could be identified in the comments posted under Jia's post. The first group includes followers, such as zzSummer's Tail (2014), Zhao Xuan (2014), and Xu Tongkai (2014), who condemned online piracy and showed sympathy towards Jia and his company's loss. To demonstrate their awareness of copyright protection, this group of followers claimed that they rejected the idea of watching or downloading the film from pirated websites or P2P file-sharing networks. Instead, they would wait for the time when a legitimate DVD is available for purchase or when the film is allowed to be released in the theatre.

In contrast, the second thread of responses was from those who openly admitted their consumption of Jia's films via piracy. Many followers in this group expressed their gratitude to Jia's effort and bravery in probing social problems and appreciated the role of independent films as social critique suppressed by the authority. What is interesting in the second thread of responses is that it revealed that Jia's post, to some degree, ironically promoted the circulation and consumption of his own film via piracy. While some followers, as evinced in Hansen (2014), Shumen de shitou (2014) and Wazki (2014)'s comments, admitted they already watched or downloaded *A Touch of Sin* as soon as they knew from Jia's post about the leak, some other followers (hainabaichuan-zhen, 2014; Cha'na yonghen 1 shi-ai chi pingguo, 2014) even openly asked Jia and fellow followers about which sites or networks from which they could access the files of the film.

One of the most common excuses that this group of followers used to justify their action of violating copyright is the censorship and restricted access to independent films through the authority-approved channel (Zhang Yiji, 2014; Feili, 2014; Goodsirgoodsir, 2014). Blaming SARFT's censorship for the flood of trashy films, such as *Switch* (2012), *Badges of fury* (2013), and *Tiny Times* (2013), in the mainstream market, while at the same time depriving independent filmmakers' critical voice, this group of followers confirmed online piracy's role in providing an alternative cultural sphere not only for filmmakers but also for the general public.

More intriguing is the third thread that proposed compensating for Jia's financial loss, such as transferring money to Jia's account directly via an Internet bank or ePayment. The proposal to compensate for Jia's financial loss was quickly and well responded to among the director's followers (sanmao tongxue 2014; feihuashi 2014). Those netizens' suggestion of paying back money suggested that their action of pirating

a film was not just because it is cheap or free to do so but because it functioned as an unorganised protest against the authority's interference in filmmaking and viewing without a convincing explanation or transparent legal framework.

Although Jia did not respond to such payment proposals, those comments posted by his followers highlighted a key concern in Chinese independent cinema—how filmmakers could cope with tough censorship while protecting their copyright without breaking the law or compromising their voice of social critique under the current administrative framework. One notes that the Internet has posed a challenge to many conventional definitions of key terms in media studies and copyright legislation. For instance, the censorship of online film broadcasts and copyright enforcement of film piracy are often associated with a film's media status as a *dianying* (film, motion picture, movie, or more literally electric shadow); however, what exactly is a *dianying* in the Chinese context? Going through SARFT's (and SPPRFT's) regulations and administrative notices, one might be surprised to note that the term *dianying* has never been clearly defined before 2015. Even in the latest legislation documents, the closest definition that could be found is 'a film is a product created by visual-audio technology and artistic means. It comprises of a series of pictures, with or without sound, which convey a narrative. It is recorded on either film reels or digital media to a state-approved standard⁶ for public release' (National Congress of People's Republic of China 2015).

However, despite this clause that apparently attempted to clarify the definition of *dianying* in Chinese legislation and administrative regulation, more questions remain unanswered. One of the questions is how a *dianying* and a *shipin* (video) are distinguished. If a film has never been shown in the theatre, could it still be called *dianying* even though its technical qualities are up to the state-approved standard? Should a *duan pian* (short film), *wei dianying* (micro film), and a student or

experimental film also has a *dianying* status just as feature films simply because they also comprise a series of pictures that delivers narrative? To what extent and under what condition should uploading, storing and sharing a film or video on the Internet, especially through the cloud computing, be turned from private utility to public release?

In an industrial forum hosted by iQIYI⁷ in March 2014, directors Zhang Yuan and Wang Yuelun noted that the censorship enforcement of online content (including video files) is much more relaxed than film censorship in the current administrative framework (Su, 2014). While video websites might charge their customers in a pay-as-you-watch fashion for watching online videos, the blurring definition of film and video files not only challenges the censorship system but also encourages independent filmmakers to release their productions in the virtual space of the Internet under a different category (such as video) as exemplified by Fan Popo's *Mama Rainbow* (2012) that has attracted over 100,000 viewers across different online video portals between 2012 and 2015 (Sina Entertainment, 2015).

Although in the current media legislation and administrative framework, the terms *dianying* and *shipin* are used separately, the differences between them is actually unclear. The only possible criterion that has been applied is the record of production registration. The SARFT (2006) issued the regulation that any film production team, studio, or enterprise needs to register its script. Although, since 2013, the authority formally issued the regulation that the majority of film projects of general topics are no longer required to submit a full script for censorship before production, the authority still requires the film production company to submit a synopsis of the script and obtain a production permit before any filming activity.⁸ It appears to be the case that the status of being a *dianying* was decided at the point when the production company registered its synopsis with the authority and applied for the production permit. In comparison, a

video production, either by professionals or amateurs, regardless of its length, does not have to comply with such regulations. As a result, it is much easier for people to produce and then upload and share their videos on the Internet. Although Internet service providers are required to self-censor the original content that is uploaded for public viewing (SARFT and MIIT, 2008), the relatively relaxed environment of virtual space has seen a booming quantity of online videos in recent years.

Indeed, the Chinese government continues to use copyright enforcement to suppress the dissemination of unauthorised content. For instance, SARFT has teamed with the Ministry of Industry and Information Technology (MIIT)⁹ in 2009 to shut down many websites and video portals, such as btChina.net (Zeng, 2009), that provided pirated films for downloading. In June 2015, the authority updated the aims of Sword Net Action. Co-operated by the NCAC, SIIIO, MIIT, and Ministry of Public Security, the new project specially targeted film and music piracy on cloud computing (Dou, 2015). Four months later, NCAC further issued an administration notice, which required network providers shall prohibit users from illegally uploading, storing, and disseminating films and music that are produced by professional studios (NCAC, 2015). The new enforcement even allowed the authority and network storage providers to remove or block copyright infringing files from personal accounts by adopting technical measures.

However, according to an unnamed official from NCAC, the new enforcements do not affect those files uploaded and shared by copyright owners (Lai, 2015). Then, what will happen if the files are uploaded and shared by the filmmakers themselves? As Li (2012, p.556) noted, the desire to be “seen by many encourages some D-generation filmmakers to actively seek pirate releases of their own films.” Although not every filmmaker would take this action, Li’s study demonstrated that

self-piracy via uploading a film (or video) files to the Internet could be and has been used by some independent filmmakers to reach a wider audience.

As a matter of fact, the development of ICT has witnessed the emergence of new business modes. One of the examples is where Internet content providers are offered payment for selling advertisement space on their websites (or webpages), such as blogs, if the sites have a considerable quantity of viewers. Given that the line between a film and video could be easily blurred in the virtual space of the Internet and that the censorship criteria and procedure are inconsistent across different media platforms, we may ask under this context if self-piracy through file sharing has become a new form of online self-distribution.

Although Jia appeared to be concentrating on filming and promoting his next film *Mountains May Depart* (2015) shortly after he announced that he gave up the domestic release of *A Touch of Sin*, the media report and director's microblog posts suggested that Jia was at the same time busy building a new business model for interdependent cinema related to the Internet. Caixin Online (2016) revealed that in January 2015, less than a year since *A Touch of Sin* was pirated in China, Jia established his second company, Fabula Entertainment. According to an exclusive report by *Variety* (Frater, 2016), Fabula Entertainment has investment from the Chinese Internet giant Tencent. Nine months later in October 2015, Jia invested in another new media company, Yishang Communications. Shortly after that in May 2016, Jia posted a series of microblog posts, announcing the launch of Yishang Communications' new online video platform, Jia Screen, which aims to promote short films (Jia, 2016) through a legitimate online channel that protects the filmmakers' copyright.

Although Jia did not indicate that his investment and involvement in the new media was related to the incident of *A Touch of Sin*, the timing of his investment is

interesting. This is not only because Jia's new investment in those companies took place at a time that was so close to the piracy incident but also because the authority's withdrawal of *A Touch of Sin's* release licence had frustrated Jia to the extent that the director thought about quitting the film industry, as revealed in Walter Salles' documentary *Jia Zhangke, A Guy from Fengyang* (2014). Sensitive to technology changes and the challenges that independent film faces in China, Jia and Chinese audiences, as exemplified by Jia's microblog followers in this case, are both searching for a new business model and negotiate for an alternative cultural space that enhances public access to an independent film (or video).

This is not to suggest that an independent film should stop seeking theatrical release completely. After all, a theatrical release is the most desirable channel for many filmmakers. However, as discussed earlier, many Chinese independent films were unable reach to a wider audience in theatres due to the authority's control of information circulation and the big studios' control of film screens. While the pirate market has provided an alternative cultural space for Chinese independent filmmakers and audiences, it has also threatened filmmakers' rightful income. The advance of ICT and the gap of media enforcement enable filmmakers to be creative in exploring new business models through which they could negotiate their public presence as well as reduce their financial loss to piracy. In a sense, the public discourse surrounding *A Touch of Sin's* case suggests an ongoing negotiation between the authority, filmmakers, and spectators (including the Internet community of those filmmakers' social media followers) in China.

Conclusion

Under the current administration framework of censorship and copyright protection,

Chinese independent cinema must be creative in searching for a business model in order to survive. This paper presents an investigation of the opportunities and challenges that Chinese independent filmmakers are facing in today's cyber age. As the case of *A Touch of Sin* illustrated, the interaction between independent filmmakers and their social media followers not only challenges China's administration framework of copyright protection but also questions the information suppression posed by current censorship.

Treating films as a creative product, copyright administration and legislation aim to protect filmmakers' financial income. In contrast, censorship, seeing film as a cultural product, highlights its ideological value. Although both copyright and censorship administration and enforcement are often used to restrict unauthorised content from being circulated publically, their different aims and procedures left a gap that is critical for independent film to survive in China. In addition, the filmmakers' desire to reach out to wider audiences and the public's wish to access film content beyond censorship constantly contest the authority-controlled cultural spaces. Such tension drove both the enforcement and consumption of Chinese films to constantly evolve into different forms and shapes.

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¹ By the end of June 2014, there were 275 million microblog users in China, among whom, 189 million were mobile microblog users (CNNIC, 2014, p.49). Sina is one of the leading online media companies in China.

² Both Wang Xiaoshuai and Li Ruijun disclosed in their microblog that the screening of their new films were marginalised in the mainstream distribution theatres, and both filmmakers gained great support from their social media followers. As a result, mainstream cinema chains increased screens for Wang's *Red Amnesia*. Whilst Li and his team still sought to increase screens for *River Road*, the audiences in Dalian has managed to crowdfund one screening at a mainstream theatre CGV.

³ The SAPPRT was a Chinese government body regulating mass media. It was directly governed by State Council of the People's Republic of China and the Publicity Department of the Communist Party of China (also known as Chinese Communist Party Propaganda Department). Founded in 2013, SAPPRT aimed to streamline the government's media enforcement that used to be shared between two former state-level governing bodies—the SARFT and the General Administration of Press and Publication (GAPP). During the early stage of the merger, the former SARFT and GAPP were still functioning relatively separately. Even formal documents were still

issued under their names during this period. The SAPPRFT also inherited SARFT's domain name (<http://www.sarft.gov.cn/>) for its official website until April 2016 when the newly formed department has its own domain name (<http://www.sapprft.gov.cn/>) (Domain.cn 2016). Since the case discussed in this paper was produced during the transition period of the governing bodies, this paper will use both SARFT and SAPPRFT to refer to the Chinese authority who is in charge of film censorship, but the choice of the acronym will reflect the shifting of the times.

⁴ Foxconn is a Taiwanese multinational electronics contract manufacturing company, and its clients include Apple, Sony, and HP. In 2010, as many as fourteen employees from the company killed themselves, which caught media attention and public concern regarding migrant workers' working conditions and welfare.

⁵ Although the Chinese authority has for years imposed a professional ban to those filmmakers who sent their films abroad to compete at an international film festival before obtained a state approval, such practice was not formally written in any legal or administrative document until 2011 when State council's Legislative Affair Office included the item into the draft of China's first *Film Industry Promotion Act*. This was subsequently passed by the National Congress in 2015 (National Congress of People's Republic of China, 2015).

⁶ Here the state-approved standard mainly refers to technical requirement of picture and sound quality.

⁷ iQIYI is one of China's leading online video portals.

⁸ Although as early as 2008 SARFT no longer asked filmmakers to submit a full script before the production, it was not until 2013 that the General Office of the State Council formally wrote it down in its regulation. As SAPPRFT (Xinrui Song, 2013) further explained, the new regulation only applies to general topics, and projects on sensitive

topics, such as religion, military, diplomacy, judiciary, and so on, are still required to submit a full script for censorship before the production permit is granted. Nevertheless, what falls into the category of general topics is still unclear. As a result, many filmmakers, including Jia, do not think such deregulation makes much difference to their filmmaking.

⁹ The main responsibilities of MIIT include overseeing the research, development, and innovation of major technological equipment concerning the communication sector, guiding the construction of the information system, and safeguarding China's information security.