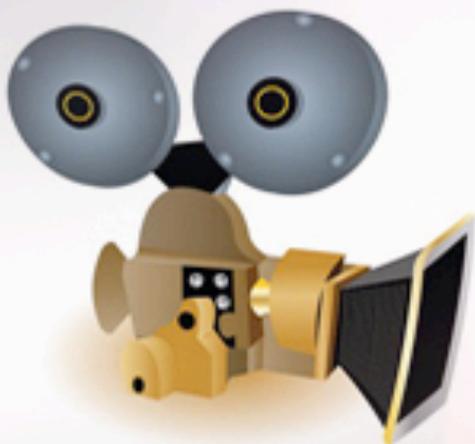


# *China Entertainment Regulation Pulse*



**News Update**

**Industry Analysis**



Co-presented by  
Shanghai TianSun Law Firm &  
Law View Partners Law Office  
Issue 1, 2016

## **Two Reasons for the Decline in the Quality of Chinese Movies since the Beginning of This Year**

According to the statistics of National Business Daily (NBD), since the beginning of June (June 1-August 23), 100 movies were released in theatres around China. Particularly, the total box office of the 75 Chinese movies amounted to RMB4.683 billion, RMB3.13 billion less than the amount of the same period last year, which was RMB7.813 billion.

In an interview with [www.dushe.me](http://www.dushe.me), Zhou Tiedong, General Manager of Beijing New Film Association Co., Ltd., explained the two reasons for the decline in the quality of Chinese movies since the beginning of this year. The first reason is investors have been too aggressive, leaving little say to technology and art teams in the movie production process. The second reason of quality decline has to do with a move toward a lower-end audience. Zhou Tiedong considered that money is the decisive factor in China's film industry today. Only when technology and art have gained critical status would it be possible to have the freedom of choosing the right investors. With the expansion of cinemas from tier-I and tier-II cities to tier-V and tier-VI cities and even smaller towns, the taste of the audience as a whole has been declining, too.

(Source: Lixiang Business Insights)



## **Japanese Comics: the New Hot Target of Buyers from China's Entertainment Industry**

A Chinese movie based on Black Jack, one of the most popular Japanese manga by Osamu Tezuka, is expected to go public at the end of 2017. According to Tezuka Productions, while China's entertainment market, including the movie and TV segments, has been expanding rapidly, there's a significant shortage of original products to satisfy the tremendous demands. Chinese buyers are sweeping across the Japanese IP sector, buying off the most popular products.

In the meantime, Japan's manga industry is in a dilemma in its exploration of the overseas market. During the recent years, total sales of Japanese manga studios to domestic TVs amounted to over 60 billion Yen, finally walking out of the shadow left over by the Lehman Brother's crisis in 2008. However, overseas sales remain weak, totaling less than 20 billion Yen. Many of the most popular manga cannot copy their success in Japan to the overseas markets. As a result, the Japanese manga market is getting increasingly self-isolated.

Selling manga copyrights to overseas buyers is generally considered a promising business. However, Yoshihiro Shimizu, director of Tezuka Productions Copyright Department has different opinions: "Currently, the situation is encouraging. However, it might change if more and more local authors are able to produce excellent products in the overseas market. The Chinese are mimicking the Japanese models. They are catching up fast in terms of character and story setup. You don't know how long the content shortage will last there. Maybe it would not be very long before 100% Chinese entertainment programs get popular in Japan."

(Source: [cankaoxiaoxi.com](http://cankaoxiaoxi.com))

## **Tencent Pictures CEO Cheng Wu: Ask not What IP Can Do for You, but What You Can Do for IP**

On Tencent Pictures' annual press conference held on September 17, 2016, the Company's CEO Cheng Wu said: "there have been quite a lot of movies and TV programs based on outsourced IPs since the beginning of this year. Today, IP has become a hot topic of discussions, as well as critics across the industry. Many people say that IP has not brought about the expected result. In my view, we are all wrong from the very beginning. Instead of asking what IP can do for us, we should really ask ourselves what we can do for IP. If we take IP only as a tool to improve awareness and increase users, or just consider the ability to monetize IP, then we are actually wasting the enthusiasm of our fans. In fact, behind each IP, there is a real person, and specific feelings. Only when we have done our best to respect and protect IP, and to enrich it

with high-quality movies and TV shows can we win the approval of our fans by making them feel that their feelings are really being valued."

(Source: ent.qq.com)

Obviously, content and value are the priorities of IP development in China going forward. For movies, the biggest investment is always "patience". It is true from the perspective of the operation and development of the entire IP industrial chain in China, too. Real high-quality IPs are not restricted to any industry, nor any specific time. They are the result of continued accumulation and self-improvement through the cooperation with foreign partners.



### **IP Development Trend Emerges along with the Accelerated Integration of Pan-entertainment Resources and the Convergence of Multiple Screens**

As "Fashion is a Smile" gets popular, its IP has become a hot target of movies, TV (including online TV) and game developers. Public companies across the TV/movie, gaming, sports and advertising sectors are seeking opportunities for IP content development, waging a wave for pan-entertainment resource integration. The monetization of pan-entertainment resources caters for "diversified tastes" of the audience. In the meantime, an imbalanced value chain stimulated by "stunning IP costs" is forcing the public companies to explore different approaches to monetize their IPs.

While enhancing its edge in contents, H. BROTHERS has been consolidating premium resources across different sectors and fields. Leveraging its core competence of creating high-quality entertainment contents, it has been trying to build an integral "big entertainment" industrial chain consisting of three major operations. In the online world, the movie/TV content operation can generate a series of side products, including gaming, online dramas, online movies, and fan economy.

In the offline world, it can generate many other derivatives, including tourism towns, and theme parks. These products generate continued profit and influence, which, in turn, would help fund H.BROTHERS' content development and increase the value of its brand. Tencent Pictures, on the other hand, is determined "not to restrict its business in movies alone". Instead, it has been attempting to drive its pan-entertainment businesses with a focus on creating IP values.

According to industrial insiders, this business model diverts the attention of the audience and re-allocates media values, and enables deeper mining of IP values. Interactive IP development enables extension to audience segments in different areas to seek additional opportunities to monetize IP resources. On the other hand, it can help improve the influence of IP in the shortest time possible.

(Source: China Securities Journal)

## **Wanda Gives up Paramount Takeover Plan**

Wanda's chairman Wan Jianlin once said: "My objective is to purchase a Hollywood studio and bring their technologies and movie production capacities into China. In Hollywood, only the "Big 6" are real global studios. I don't think any other one is. If we want to build a real movie empire, this is the step we must take."

Back in July, The Wall Street Journal reported that Wanda wished to purchase a 49% stake in Paramount. Selling these shares would enable Viacom to repay part of its USD12 billion debt. However, it was objected to by Viacom's controlling shareholder National Amusements, Inc., who argued that the transaction would harm the interest of the shareholders.

Since the ultimate controller of National Amusements, Inc., Sumner Redstone, drove former chairman and CEO of Viacom Philippe Dauman out of its board, his daughter Shari Redstone has been serving an important role on the Viacom board. In addition, he has named another five new members of the board. Stimulated by reports about Wanda's takeover plan, the market cap of Paramount has increased from USD8 billion to USD10 billion. Given the Redstone family's tight control over Viacom, the chance of Wanda's takeover is getting even slimmer. In the meantime, new changes to the stock price of Paramount are expected.

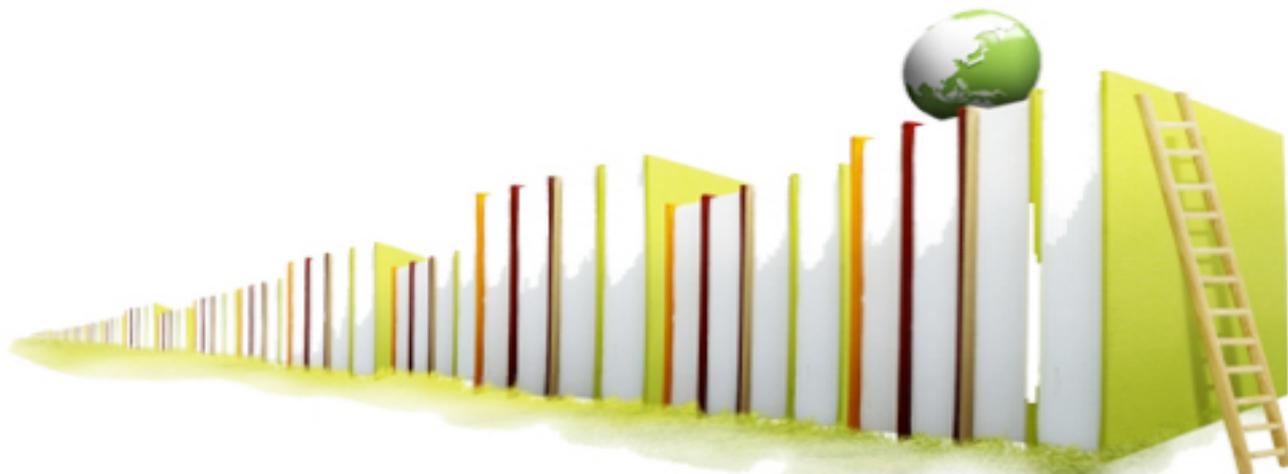
(Source: [www.entgroup.cn](http://www.entgroup.cn))

## **Two-way Opening-up of the Cultural Sector Wins Applause as the Foreign Publication Sector Embraces Private Investors**

The first joint-stock publishing house was established in Beijing, as the English editions of five popular books, including Cultural Odyssey and Chinese Cultural Heritages rolled off the printing lines to be sold to the overseas market. 10 movie and TV shows, including Big Cat after His Love, and Beijing Love Story are set to go public in Africa in 7 different languages. Three Sino-foreign joint venture cinemas were recently opened in Beijing to offer cultural product consumers with more choices. As a part of the pilot opening-up program of Beijing's service industry, the two-way opening-up of the cultural sector has opened the gate for faster, easier "bringing-in" and "sending-out" of high-quality cultural products and resources to and from the domestic market.

While trying to "go out", the cultural sector is also taking effective actions to "bring in" external resources. It is reported that since last September, three foreign brands have open cinemas in Beijing, including Lumiere Pavilions in Paradise Walk and Vanke Mall, and CGV International Cinema in Yizhuang. Currently, there are 25 foreign-invested cinemas across the city, including 20 joint ventures by Beijing and Hong Kong investors, 4 Sino-Korean joint ventures and one wholly-owned by a Hong Kong investor. As of the end of last year, Beijing led the national market with 23 cinema brands, 182 cinemas and 1,050 screens in operation.

(Source: Beijing Daily)



## **Wanda Offers to Buy the Golden Globe Awards Producer at USD1 Billion, with Exclusive Negotiation in Progress**

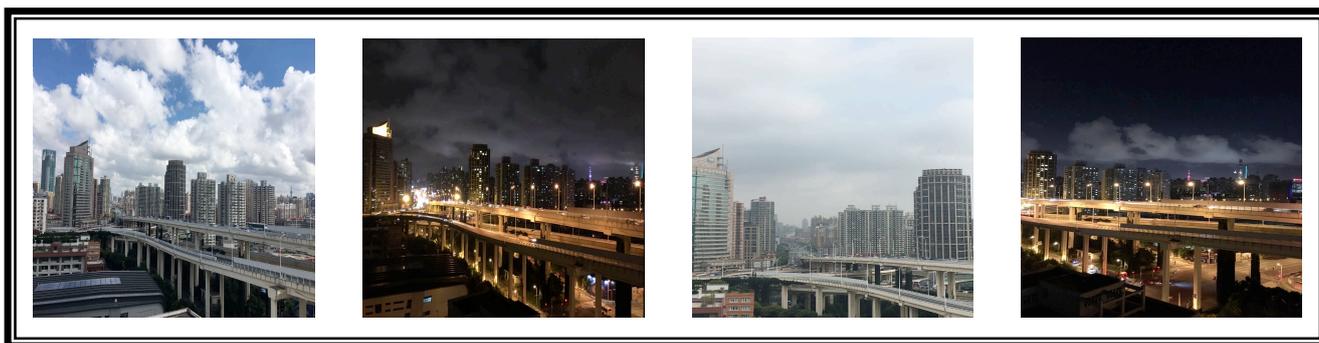
Having purchased the top cinema brand in the United States and one of the most famous Hollywood studios, Dalian Wanda Group is turning its eyes onto one of the Hollywood's supporting businesses. It has entered an exclusive negotiation stage for the purchase of Dick Clark Productions (DCP), the producer of some of the most renowned awards in the United States, including the Golden Globe Awards and American Music Awards (AMA).

According to a Wall Street Journal report, reverend Hollywood operator DCP's controlling shareholder Eldridge Industries announced in a statement that it had started an exclusive negotiation with Beijing Wanda Culture Industry Group Co, a subsidiary of Wanda Group,

aiming to close a deal satisfactory to both parties. Currently, the negotiation is still at the early stage. A possible offer of the transaction is reported to be USD1 billion, but the parties are yet to close the gap in valuation.

In 2012, Wan Jianlin purchased AMC Entertainment Holdings Inc., the second cinema operator in the United States. Currently, he is also seeking to buy Carmike Cinemas Inc. (CKEC). If these deals are closed successfully, Wanda would become the largest cinema operator in the US. In addition, Wang has also agreed to buy Odeon & UCI Cinemas Group, the largest cinema chain in Europe with USD650 million.

(Source: 21st Century Business Herald)



## **How Do "Chinese Stories" Explore Overseas Markets**

According to the statistics of authoritative organizations, including the State Administration of Press, Publication, Radio, Film and Television, Chinese movies have been troubled by low box office, low growth and low acceptance among key cinema brands in the overseas market. How to break this bottleneck? Experts suggest that, in addition to the creation of more high-quality products for overseas audiences, it is necessary to enhance the cooperation between China's movie sector and international peers.

In fact, a number of popular Chinese movies, including *Crouching Tiger, Hidden Dragon*, *Hero*, *The Battle of Red Cliff* and *Monk Comes down the Mountain* were backed by Hollywood investors. In addition to this simple investment partnership, there are a lot of other cooperation models, including "Sino-US story + joint funding" and "Hollywood movie + Chinese investment". *The Forbidden Kingdom* and *the Flowers of War* are

examples in this regard.

So far, China has signed joint movie production agreements with 14 countries, including the UK, France, Canada and India, and has actually initiated several cooperation and interaction projects. According to Zhao Weifang, researcher and vice director of Film and Movie Art Research Institute of China National Academy of Art, comprehensive and in-depth cooperation between film production sectors of China and other nations has played an important role in driving the development of both the movie aesthetics and the cultural sector in China. However, such partnerships are often troubled with poor market performance, too. Therefore, he suggests that stories be told from the Chinese perspective to reflect Chinese values, instead of focusing on the peculiarity of stories and the Sino-foreign mix structure. He's strongly against ridiculous stories and culture mixtures.

(Source: Hebei Daily)

## More Players Expected in the Foreign Movie Wholesale Game

The rapidly growing Chinese movie market has been envied by overseas producers, particularly those in Hollywood. Unfortunately, only a few foreign movies have access to this market. Each year, 34 foreign movies are imported, including 30 through the buy-out model (also known as the "wholesale model"). While the China Film Group Corporation (CFGC) is the only authorized movie importer, CFGC and Huaxia Film Distribution Company are the only two distributors of imported movies. Wholesale is a special model, whereby a domestic operator buys out a movie from its foreign proprietor by means of copyright licensing. Then the domestic operator applies for a distribution quota through CFGC or Huaxia before the movie is allowed to go public in domestic cinemas.

According to Zhang Hongsen, director of Film Division of State Administration of Press, Publication, Radio, Film and Television, China is going to open its movie market wider in 2018, allowing the import of more foreign films. The monopoly of CFGC and Huaxia in the distribution of imported movies is not expected to be broken given the current situation. There have been reports that China National Culture & Art Co., Ltd. (CNCAC) is going to be the third distributor of imported movies, but there has been no official confirmation for that yet. In fact, the increase in wholesale quotas will remain the only access for private operators to the imported movie market.

(Source: National Business Daily)

## Regulations for the Administration of Online Live Streaming Services

Promulgated, with News and Charity Webcast Services Expected to Rise On November 4, the National Internet Information Office issued *Regulations for the Administration of Online Live Streaming Services* (the "Regulations"), specifying the management responsibilities, service scope and security assurance mechanism of webcast platforms. Shortly after, Weibo released a statement, saying that, as the most influential Chinese social platform, Weibo is glad to see the regulated development of the webcast market. It pledges to work with related parties to provide users with a rich array of webcast experience. In the meantime, Weibo also points out that, in addition to individual shows and games, news, professional service and charity could also benefit from webcast. Of course, whatever fields they are in, webcast service providers must fulfill their responsibilities.

According to incomplete statistics, currently, there are over 300 webcast platforms in China, and the number is still growing fast. Some of these webcast platforms are actually playing in the gray area, trying to catch eyeballs with vulgar, or illegal contents. There are also platforms involved in news broadcasting without legal authorization. The promulgation of the Regulations is expected to help enhance the supervision, and drive the healthy, orderly development of the webcast sector.

(Source: Xinmin Evening News)



# Movie and TV Show IP Authorization in China

## Part I Basic Rules of Original Movie and TV Shows by Chinese Law

As the second largest economy in the world, China has a rapidly growing entertainment market, which is so tremendous that not a single forward-looking foreign entertainment or media company can afford to ignore it.

Today, IP is an extremely hot topic in China's entertainment industry. In fact, the reason why many movie and TV shows are in such great success is that they have excellent IP sources. Traditionally, IP, which is shortened from Intellectual Property, refers to rights in a number of areas—copyright, trademarks, and patents, etc. In the entertainment industry, there are a number of special business models derived from IP. In China, the entertainment and media industry is still in its early stage, particularly in terms of legislation and business operation model. So what have Chinese laws, particularly Copyright Law, stipulated with regard to IP? What are the potential legal risks involved in cooperation with Chinese entertainment and media companies? We are going to discuss these topics later in this series.

During the recent years, film production adapted from the popular foreign literature works has become the primary form of foreign copyright cooperation. For example, Emperor Motion Pictures and Wanda Cinemas lately announced that they have obtained official authorization to produce Chinese movies and TV shows based on Higashino Keigo's best-selling thriller fiction *Grief Grocery Store*. Haoju Drama, a subsidiary of Croton Media, bought the rights to produce Chinese TV shows adapted from the Spanish fiction *Blind Date*. HLBN will produce a Chinese TV show adapted from the popular Japanese comic series *Shinya Shokudō* (Midnight Diner).

According to China's Copyright Law, which was promulgated in 1990 and amended on February 26, 2010, copyrights shall be vested in the author, unless otherwise specified by the law. In addition, the Copyright Law further stipulates that the author refers to the person who wrote the literature work. Therefore, for any purchases of rights to produce movies and TV shows adapted from foreign literature works, the Chinese buyer would want to know the basic information about the foreign IP rights holder, or the individual author. This is also an important consideration for foreign entertainment and media companies when entering into the Chinese market. Without a good understanding of this particular requirement of potential IP buyers in China, they might encounter unnecessary troubles.

Also, China's Copyright Law stipulates that corporate works, where a work is created according to the intention and under the supervision and responsibility of legal persons or other organizations, such legal person or organization shall be deemed to be the author of the work.

It is also important for foreign entities to have a deep understanding about the above-mentioned provision. While Chinese law does provide provisions about rights ownership by legal persons, it does not mean that foreign entities may obtain the recognition of Chinese buyers for the authorization by any legal person. Chinese IP purchasers will conduct "Penetrating Examination" by tracing to the individual author and determine his/her legal relations with the foreign entity. The process usually requires the support of a large amount of legal documents.

Another important consideration for foreign entities is Chinese Copyright Law's provision about works created on commission. The law stipulates that "copyright ownership of works created on commission shall be specified in the

contract between the employer and the author. Where it is not specified in the contract, or there's no such contract, the copyright shall be vested in the author."<sup>1</sup>

However, the laws of some other jurisdictions have different provisions. For example, the Copyright Act of Thailand stipulates that "Copyright in a work created on a commission shall be vested in the employer unless the author and the employer have agreed otherwise."<sup>2</sup> A recent dispute between two Chinese entertainment companies on the movie adaptation rights for the popular Thai IP First Love (also known as "A Little Thing Called Love") is arised from different provisions of copyright laws under both different jurisdictions.

As the sole legitimate authorizer of First Love, Thailand-based Sahamongkol Film International Co., Ltd. ("Sahamongkol Film") granted an exclusive right to Beijing FengHeHui Pictures Co., Ltd. (FengHeHui") for the use of the movie, its script and elements therein in Mainland China, including but not limited to the rights to revise the movie and produce a new movie. Therefore, FengHehui holds the rights relating to this movie.

However, a Shanghai-based company, Leo Force Pictures Co., Ltd. ("Leo Force Pictures") announced that it held the exclusive global rights to adapt the script of the movie First Love. Prior to that, Leo Force Pictures had signed a licensing agreement and a letter of confirmation for the adaptation of the script with the screenwriter, who claimed to hold the entire copyright of the script, as evidenced by the fact that he had completed the literature work copyright registration for the script with the Department of Intellectual Property (Thailand).

As we can see, the two parties at issue obtained the IP authorization for movie production and script revision from two different sources—the entertainment company and the screenwriter respectively. Obviously, the focal points of the dispute are the ownership and legitimate authorizer of the IP, including the movie and the script. FengHeHui argues that its contract with Sahamongkol Film specifies that the copyright of the script belongs to a joint venture, which is the parent company of Sahamongkol Film; that the screenwriter shall be appointed by the screenwriting company; and that all authorizations shall be made exclusively by the joint venture. Leo Force Pictures, on the other hand, insists that, what Sahamongkol Film holds is not "all of the IPRs of the movie, its script and any element of the movie", but only the distribution rights of the movie itself. It also argues that, according to the script licensing agreement with the screenwriter, it should be the only Chinese producer entitled to all rights with regard to the script. Failing to solve the dispute by themselves, both parties eventually had to resort it to a court.

Let's take a look at this issue from the perspective of the laws of China and Thailand. According to the Copyright Act of Thailand, copyright in a work created on a commission shall be vested in the employer unless the author and the employer have agreed otherwise. However, according to the Copyright Law of China, copyright ownership of works created on commissions shall be specified in the contract between the employer and the author. Where it is not specified in the contract, or there's no such contract, the copyright shall be vested in the author. Obviously, with regard to rights ownership, the laws of both countries provide completely opposite provisions. In this case, the agreement between the entertainment company and the screenwriter with regard to the copyright in the script created on a commission is the key evidence.

The example above shows that any dispute existing at the IP sources would affect the subject IP's overseas market development and operation, which might result in considerable losses to either parties.

Therefore, in order to prevent such copyright dispute concerning the IP authorization by foreign entertainment companies, foreign authorizers shall conduct due diligence beforehand, and specify in the contract the relevant rights in the underlying works (including scripts, movies and TV shows) and their holders.

---

***This publication is for general guidance only and is not intended to be considered as legal advice in any specific case under any specific circumstance. We expressly disclaim all and any liability to any person for the consequences of action or non-action based on this publication. All rights reserved by Shanghai TianSun Law Firm and Law View Partners Law Office.***

---

<sup>1</sup> Article 17 of *Copyright Law the People's Republic of China*.

<sup>2</sup> Section 10 of *Copyright Act B.E. 2537 (1994), as amended, of Thailand*.

## About us

- As the best boutique firm, Tiansun Law Firm (“TSun”) focuses on providing professional legal services for entertainment & media industry. TSun was the first in China’s mainland to take up the entertainment & media law practice. Along the way, we have recruited and retained a team of elite entertainment lawyers and consulting experts. TSun and international entertainment law experts jointly unveiled the development of entertainment law in China’s mainland ten years ago. TSun lawyers are reputed for their expertise on structuring proactive and holistic legal solutions for our clients in complex transactions. TSun lawyers focus on comprehensive and in-depth legal solutions in aspects from legal risk evaluation, corporate equity design, formation, governance, operation, enterprise merger & acquisition, investment & financing, listing through works creation, copyright transaction, copyright maintenance, development of derivative products, title sponsorship, business development, endorsement, which effectively help our clients in industries like films, television series, program formats, games & animation, talent agency, performance, sports, new media in lowering legal risks and transactional risks in their business operations.
- Law View Partners is a boutique law firm in China that specializes in providing services to foreign investors and companies in high-growth sectors. Culture, Entertainment, Media and Sports industries have evolved in recent years in China. Cooperation between domestic companies and foreign companies or other organizations in this field has never been that close. We have continuously accumulated extensive experience and in-depth understanding of the regulatory environment of the industry, alongside the restriction to the application of Chinese laws, regulations and policies. Through the years, we have established a professional and efficient team to meet various needs from our clients.

### Practice Areas:

- ◎ Specialized project legal services
- ◎ Actor agency and actors’ personal legal services
- ◎ Corporate legal counsel
- ◎ Legal services for game & animation firms
- ◎ Legal services for films and televisions serials
- ◎ Legal services for sports industry
- ◎ Legal services for program formats
- ◎ Legal services for new media and internet firms
- ◎ Legal services for writers
- ◎ Legal services for theater performance

### Contact us:

#### **Shanghai TianSun Law Firm**

Address: 5E, TongSheng Mansion,  
No.458 Fushan Road, ShangHai,China  
Attn: Jane Wang  
Tel: 021-38722022-8032  
Email: wy@tsunlaw.com  
Website: www.dreamslaw.com



#### **Law View Partners Law Office**

Address: Room 1304, office Building A, No.868,  
East Longhua Rd, Huangpu District, Shanghai  
Attn: Cherie Qu  
Tel:021-63770228-809  
Email: chen.qu@lawviewer.com  
Website: www.lawviewer.com

