

## Tech, Media & Telecom

### **MCC INTERVIEW: Christopher Staton Spicer / Akin Gump Strauss Hauer & Feld LLP**

# Making Cross-Border Movie Magic

*U.S.-China film deals present opportunities and challenges*

**C**hristopher Staton Spicer is a partner in Akin Gump's corporate practice. Focusing primarily on entertainment and media finance, he represents financial institutions and other financiers with respect to their film and television lending. He also advises borrowers, distributors, independent production companies, high-net-worth individuals, funds, completion guarantors and others involved in various aspects of the production, financing and distribution of film and television projects. Below he discusses his practice as it relates to cross-border film deals, in particular in China. His remarks have been edited for length and style.

**MCC:** Your practice, with its emphasis on film finance and especially U.S.-China cross-border film deals, would be the dream of many lawyers. How did you find your way from the University of Washington and Georgetown Law to a practice that has industry trades, such as Hollywood Reporter and Variety, spotlighting you as one of the top young players in the Hollywood film industry?

**Spicer:** The story of how I got here is not dissimilar to the story you hear about an actor or actress in line at Starbucks who suddenly gets discovered. Mine is similar, though I'm certainly not as cool as a film actor. I was practicing real estate law in Dallas and had always wanted to do entertainment, as did my little brother, who is a producer in Hollywood. He had a class at the UCLA Producers Program with one of the partners in our firm, Steve Fayne, and he introduced me to Steve and to the head of their program, Barbara Boyle. She also happened to be very good friends with John Burke, who was the head of the entertainment group here at Akin Gump at the time.

They needed someone with finance experience because, odd as it sounds, real estate finance and film finance aren't that different. The day before my interview, John had run into Barbara. She's been around for

a long time, has run companies and is at UCLA. I'm guessing she said, "You've got to hire this person, or else I'm going to make your life miserable." I had done some things to be in the right place at the right time, and the complementary skill set that I had



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developed in real estate finance translated into film finance.

From Steve's perspective, I didn't seem completely incapable of doing the job.

**MCC:** It seems that quite a few players want to put money into China film deals, from high-net-worth individuals to studios to major banks and financiers of all kinds, though there's a quota system under the country's current WTO agreements, which will be renegotiated next year. How do you see this playing out? It seems like a lot of money chasing a limited number of opportunities.

**Spicer:** Traditionally, what Hollywood insiders were looking for in relation to

China was the possibility of money coming into the U.S. for exploitation in the U.S. film market. What we've seen recently is a flip: Various investors – those from China and the U.S., and other investors around the globe – are seeing what a huge market China is. It's also a relatively closed market; it's hard to get into, and investors want to deploy money in that space. There is a quota system and a lot of money chasing what does seem like a limited number of opportunities. If you look at what's happening with some of the deals, like the Legendary deal, for example, although there clearly is a U.S. studio component, a huge focus of that deal seems to be exploitation of films in China.

We're working on a few deals now where a key component of the deal is investors partnering with the right Chinese company – whether it's a distributor, financing vehicle, corporate conglomerate that has theater chains, etc. A significant part of these transactions moving forward will be the production of Chinese-language films for exploitation in China. In that way, you get a large-budget film for exploitation in the Chinese market that is not subject to the quota system.

**MCC:** In a related question, you recently wrote a review of the American films released in China in the last year to give some guidance, which is lacking in China itself, on just what type of film is likely to pass muster with the authorities and what isn't. What conclusions were you able to draw from the films released last year?

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**Spicer:** Generally speaking, the State Administration of Radio, Film, and Television (SARFT), which is China's governing body for entertainment and media, publishes guidelines. The films that are heavy in social disruption, that encourage criminal activity, violations of law, criticisms of government, are likely not going to pass through the quota or are going to require censorship. Anything that portrays distortions of Chinese history, has too much sexual or vulgar content, or breaches of public morality generally doesn't pass muster. Although some of these huge franchise films have elements of rebellion or social upheaval, generally speaking, there's not a ton of gratuitous sex, or the Marvel movies are not upsetting governmental authority. The interesting thing is that a lot of people will do things specifically to make a film more appropriate for the Chinese market, whether by editing particular cuts of a film or re-creating the film altogether.

The first example I saw of this that really resonated with me was when we worked on a film called "Looper." The director, Rian Johnson, who is directing one of the new "Star Wars" movies, was doing a film in which someone was going to stop his life of crime, retire and move to France. They changed that place, they built it into the film, and some old guy who had seen the future tells the person, "No, no, no. You really want to retire in China, not in France." Then, the place they end up going is China, and they filmed a portion of the film in China. Pretty early on, a Chinese company made a fairly significant investment in that film.

**MCC:** *From a legal or business standpoint, what are the top challenges facing those seeking to put their money to work in films aiming for the Chinese market? How about those from outside China seeking to invest in the growing Chinese film industry?*

**Spicer:** The biggest challenge I see is you really do need partners who understand the business in China – they need to understand how production works there, how the legal process works. For the Chinese companies that I think have been successful in investing in the United States – the Wandas of the world and the Bonas – they have U.S. partners who are familiar with bringing product from China to the United States and can explain to them how processes in the United States, and investments and deals, might work differently than in China.

One of our largest clients this past year was East West Bank. They have a presence in the United States and China. It's very helpful from the business side. They have banking offices and operations in China, Hong Kong and the United States, but they also have people in the United States and China who understand the Chinese market from a business and deal perspective, as well as from a Chinese compliance perspective. That's helpful when you're doing deals.

**MCC:** *The regulatory climate in China can be very challenging, particularly given the cultural differences between regions. As a non-Chinese player, do you find you need local boots on the ground to make sure your clients fully understand the nuances of doing business in a region with tremendous cultural variations, even within the same country? We're told, in some regions, contracts are sacrosanct, while in others, they are honored more in the breach because that's the way things are done.*

**Spicer:** Traditionally, I think contracts are viewed differently in Chinese business deals when compared with a typical deal in the United States.

**Working on a complicated transaction, especially one involving cross-border issues, is incredibly satisfying.**

It's not necessarily a good or bad thing; it's just something you need to be aware of. For example, there might be a five- or six-page short-form agreement for a Chinese co-financing deal – when, in the U.S., a similar deal would have a very detailed 50-page agreement – and you would just know there are certain other points that would need to be done later.

In the U.S. market and in Western Europe, the industry has been around for a long time, so most parties have been through the process of "Here's what needs to happen in a film deal. Here's everything that needs to happen in a television deal. Here's everything that needs to happen in a studio slate financing." We know that every deal is different, but there are a lot of variables that everyone is familiar with. Everyone in the industry also generally knows and understands production very well.

In China, the market is not as mature, and film is a relatively new industry. So, the extensive detail in contracts and the minutia of how production works, they're not necessarily the same as here. I think, when you're in production, if, for example, you're getting government incentives in China, a long and detailed contract may not be necessary. Whereas, in the United States, you would need an extensive list of contracts and other documents, in China a producer with a relationship can pick up the phone and talk to someone at SARFT, so it really isn't the same system.

**MCC:** *Can you tell us how IP considerations play into your work? Are there special steps you have to take to ensure your clients are protected and on and on? What kind of due diligence takes place before the film financing deal can close? Is IP theft an issue?*

**Spicer:** I am not an IP lawyer, but the short answer is yes. Before any film financing deal can close, whether it's for a single picture or a slate facility that has a bunch of pictures coming in, before anyone gets money in connection with a certain film, there's a laundry list of things that you need to close a deal. It can be 20 documents, 40 documents, 50. All the documents are important, but some are more important than others.

Chain of title is one of the two or three major checkbox items that need to be 100 percent clean and covered. The chain of title is related to the IP, and to make sure that the producer you are lending money to in a particular film or television project actually owns the IP they purport to own. You can imagine how that can be simple, such as when a screenwriter writes a spec script, just writes it himself/herself without being paid, and sells it to a producer. That person will file the screenplay with the U.S. Copyright Office. The lender will take a copyright mortgage on it. That's really all there'll be for chain of title; it's very simple.

Then, as you can imagine, with other transactions, it can be massively complicated and take volumes and volumes to go through. The easiest example is the "Terminator" franchise. It's been through two or three bankruptcies. There have been four or five movies. It's been around since the late '70s, early '80s. Going through and tracing the IP to make sure the right person owns the rights to exploit that movie is a very, very difficult process.

Especially with this focus on mining old properties, if you have an estate, like a Robert Ludlum novel for example, you've got to make sure that all the underlying IP and rights get transferred from the publisher. If you're talking about IP theft and illegal downloading and streaming of videos and the Kim Dotcoms of the world, that's one thing. Generally speaking, we protect against that by making sure the rights, wherever they were originated, get from point A to the person to whom we're loaning money. It has to be 100 percent clean.

**MCC:** *The recently announced deal between Dalian Wanda and Legendary seems like a watershed moment for Chinese investment in Hollywood, more important than Wanda's eyebrow-raising purchase of AMC. What's your take on the deal? Is there reason to believe the Chinese will be successful in their Hollywood experience when so many others before have flopped?*

**Spicer:** I think Thomas Tull and the team at Legendary are still going to be heavily involved in the day-to-day operations of the studio, doing what Legendary does in the United States. I think this is probably an example of a Chinese partner understanding Thomas Tull and his team having a successful track record of producing a certain type of film.

It will be interesting to see how successful it is for Legendary to go into the Chinese market and using Wanda's expertise there to really expand their reach within China. I think Warner Bros. just did a deal with China Film Group, a company that distributes Warner's films. We'll see where that goes in terms of Warner producing China-language movies that are larger-budget action movies.

**MCC:** *Media reports have suggested that many players in China and the U.S. have less of an interest in actually doing deals and making films, and more of an interest in being seen to be doing deals together. Indeed, some say China is working hard to learn Hollywood's tricks of the trade to pump up its own film industry. What's your take? There certainly seems to be a lot of busted deals along the path.*

**Spicer:** Stepping back, as you might imagine, any local market with an expanding middle class and money to invest is generally a market filled with people who want to invest. It's not unique to China that people want to learn some of the film industry and how certain productions work as part of their investment so they can then go back to their own country to

produce films themselves. That does definitely happen. It goes to what we were discussing earlier about needing to know who's real and who's not, who has the ability to make deals happen and who doesn't.

There's a huge difference between the "arrangers" of financing, and you can filter these out pretty quickly. These are people who want to say, "Oh, I've got this deal with this person," and then try to use that to go out and arrange money. Those tend not to work. That's why you tend to see press releases on that, and then nothing really happening from them. I think everyone has an interest in doing deals. I do think there is some value in the Chinese market to being associated with a certain type of studio or financier or content creator. That makes sense. If you're looking for recognition as an industry expert within China, it would make sense that you would want to be associated with experienced big names in the international film and television space.

**MCC:** *Can you share with our readers the single most satisfying aspect of your practice?*

**Spicer:** Working on a complicated transaction, especially one involving cross-border issues, is incredibly satisfying when you see it come to fruition – especially because, often times, it won't just be China, but you'll have a piece in China and a piece in the Caymans or the British Virgin Islands, etc. You'll have people all over the globe working on a deal. By the same token, there's a frustrating aspect. If you're doing a deal that has a China component and then a Cayman Islands component, for example, or a UK component, and you're sitting in L.A., Cayman is four hours ahead of you, so you've got to be up at potentially 5 or 6 a.m. to talk to them. China is 15 hours ahead, so it really is a 24/7 process. That's interesting and fun, but at the same time, it can be frustrating and challenging when you're trying to coordinate among various corners of the globe. Some people need more sleep than others.