

## Understanding Copyright Protection in China

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When doing business in China, it is essential for any overseas company to protect its Intellectual Property Rights (IPR) to safeguard company revenue, reputation, and brand. With more and more creative firms and individual artists selling their services in China, copyright infringement is a risk that can easily be mitigated through China's voluntary registration system.

### Copyright Definition

According to the World Intellectual Property Organization (WIPO), *"Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films to computer programs, databases, advertisements, maps, and technical drawings."*

Copyright includes 'moral rights' that protect the non-economic interests of the individual which cannot be waived, licensed or transferred, and 'economic rights' that grant the owner exclusive rights to exploit the works for financial gain through the authorized use of their works by others.

According to WIPO, *"Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such."* In other words, copyrights protect the original, creative and tangible expression of an idea but not the idea itself.

## Copyright Protection

Copyrights are protected by the “Berne Convention for the Protection of Literary and Artistic Works” dated 9 September 1886 that was last amended on 28 September 1979. China signed the treaty on 10 July 1992.

In China, copyrights are protected according to the latest version of the Copyright Law of the PRC that took effect on 1 April 2010. The “Copyright Protection Centre of China” (CPCC) in Beijing under the “National Copyright Administration of the PRC” (NCAC) administers copyright protection nationwide.

According to Article 1 of the Copyright Law, the purpose of the Law is to “...*protect the copyright of authors of their literary, artistic and scientific works and the rights and interests related to copyright...*”.

Moreover, Article 3 states that copyright works “...*shall include literature, art, natural sciences, social sciences, engineering and technology works created in the following forms: (1) written works; (2) oral works; (3) music, drama, opera, dance, acrobatic and artistic works; (4) fine arts and architecture works; (5) photographic works; (6) film works; (7) graphic and model works; (8) computer software; and (9) other works as provided for in laws and administrative regulations.*”.

Copyright protection is granted to companies for 50 years from the date of creation or publication whereas for individuals it is the lifetime of the creator plus 50 years. However, there is no time limit for the right of authorship, right of publication, right of reproduction, right to revision and right to preserve the integrity of the works.

## Copyright Registration

In China, as with all the 164-member countries of the Berne Convention, copyright protection is obtained automatically upon the creation, publication, broadcast, or performance of an original work without the need for registration.

However, China has a **voluntary registration system** that can help resolve copyright disputes and facilitate financial transactions and transfer of rights.

It is highly recommended that foreign individuals and overseas companies get their copyrights registered in China and get an official **Copyright Registration Certificate** issued as this will save a lot of time and effort in case of infringement and enforcement.

The Certificate is recognized by the Chinese administrative authorities and courts as automatic evidence of ownership. Otherwise, to determine the rightful ownership, the original work must be submitted, and any overseas documents translated, notarized, and legalized before they will be accepted as proof.

## **Copyright Application**

After the application for Copyright Registration has been filed, the CPCC will review the application materials, determine the application fee, and notify the applicant. When the application fee has been paid, the applicant will receive a payment receipt and application acceptance notice.

The examination is typically completed within 30 working days after which the Copyright Registration Certificate is issued.

## **Copyright Enforcement**

Before any official action can be taken to enforce your copyrights in China, it is important to first gather and preserve evidence of the alleged infringement such as screenshots, hyperlinks, photos and purchased product samples that illegally use the copyright.

However, only evidence collected and notarized by a **Chinese public notary** is accepted by the local SAMR and admissible at the People's Court.

## **National Copyright Administration of the PRC**

The quickest and cheapest way is to file a complaint with the local office of the NCAC which can conduct an onsite inspection of the premises, order the infringer to cease all illegal activities, confiscate illegal income, confiscate and destroy all the infringed goods including the materials and equipment used.

The NCAC can also impose a **fine of up to RMB 250,000** on the infringer but cannot award any compensation, which is the exclusive right of the People's Court.

## **People's Court**

Alternatively, the copyright holder can file a lawsuit with the People's Court which can order an immediate injunction to preserve evidence, confiscate all infringing goods, materials and equipment used, confiscate illegal income, demand a public apology and award damages.

The compensation amount is either based on the actual loss suffered by the infringed copyright owner or according to the profits made by the infringer. Otherwise, the People's Court can award **statutory damages of up to RMB 500,000**. If neither party is satisfied with the ruling, an appeal can be made to a higher court.

## **General Administration of Customs (GAC)**

An effective way to prevent any illicit goods from entering or leaving China is to get the Chinese registered copyright recorded with the GAC which is done online in Chinese.

Registered companies in China can do it on their own while all others shall use a local authorized lawyer.

After the required information and documents have been recorded online with GAC, the approval takes about 30 days and valid for **10 years** or for the duration of the registered copyright (whichever is shortest). This can be renewed if the copyright is still valid.

### **Extra Line of Defence**

Although copyright protection is an automatic right granted in China without the need for registration, taking advantage of China's voluntary registration system is highly recommended.

The issued Copyright Registration Certificate is recognized by the Chinese authorities and People's Courts as automatic proof of ownership and offers an extra line of defence by saving the author precious time, effort, and cost in case of infringement and enforcement.

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