

## Understanding Copyright Protection and the Revised Copyright Law of the PRC from 1 June 2021

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When doing business in China, it is essential for any foreign company to protect its IP Rights to **safeguard company revenue, reputation, and brand**. With many more foreign firms and individuals selling their creative and artistic works in China, the enforcement of copyrights can easier be upheld 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.

## Revised Copyright Law of the PRC

On **11 November 2020**, the revised Copyright Law of the PRC was announced that will take effect on **1 June 2021**. It consists of **six chapters and 67 articles** that define the rights and obligations for protecting and enforcing copyrights in China.

According to **Article 1** of the revised Copyright Law, its purpose is “...*protecting copyrights and copyright-related rights and interests of authors of literary, artistic and scientific works, encouraging the creation and transmission of works...*”.

Moreover, **Article 3** states that copyright “*works shall refer to original intellectual achievements in the fields of literature, art and science which can be expressed in a certain form, including: 1. Written works; 2. Oral works; 3. Musical, drama, opera, dance, acrobatic and artistic works; 4. Fine arts and architectural works; 5. Photographic works; 6. Audio-visual works; 7. Graphic and model works; 8. Computer software; 9. Other intellectual achievements that comply with the characteristics of works.*”.

Finally, **Article 9** declares that “*Copyright holders shall include: (1) authors; and (2) any other natural persons, legal persons or unincorporated organizations that enjoy copyright pursuant to this Law.*”.

## Copyright Protection

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

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.

According to the revised Copyright Law, it is the **National Copyright Administration of the PRC (NCAC)** that oversees copyright protection nationwide. However, NCAC has authorized the **Copyright Protection Centre of China (CPCC)** in Beijing and selected local Copyright Bureaus to manage copyright registrations in China.

In China, copyright protection is automatically granted to legal persons (entities) for **50 years** from the date of creation or publication while for natural persons (individuals) it is the lifetime of the author plus **50 years**.

However, there is no time limit on the right of authorship, right of publication, right of reproduction, right to revision and right to preserve the integrity of the works.

## Copyright Registration

Nevertheless, China operates a **voluntary registration system** that can help resolve copyright disputes and facilitate financial transactions and the transfer of copyrights.

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

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

The **official fee** for filing a copyright registration application is **RMB 100-2,000**, depending on the type of work. The processing time for obtaining both the Copyright Registration Certificate and the stamped work sample is **4-6 months** but can be reduced to three months by paying an additional fee of **RMB 300**.

## 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 authorities and admissible at the People's Court.

If the copyright holder can prove that others are committing or will commit an act of infringement, it is possible prior to the filing of a lawsuit to apply to a People's Court for **property and evidence preservation** measures according to the **Civil Procedure Law of the PRC**.

## National Copyright Administration of the PRC

The quickest way to enforce your copyrights is to file a complaint with the local copyright authority where the alleged infringement is taking place (factory, fair or shop) by documenting the owned copyright and presenting evidence such as collected or purchased product samples.

If the infringing act **harms public interest**, the local copyright authority can question the parties, conduct on-site inspection, inspect, and make copies of relevant documents, give warning, order the infringer to stop the illegal activities, seal up or seize the premises, confiscate and destroy all infringing copies, materials, tools, and equipment used, and confiscate all illegal income.

If the illegal income is above RMB 50,000, a fine of **1-5 times** the illegal income may be imposed. Where there is no illegal income, or the illegal income is difficult to calculate or the illegal income is under RMB 50,000, a fine of maximum **RMB 250,000** can be imposed. If a criminal offence has taken place, **Criminal Liability** can be pursued according to the law.

### **People's Court**

The copyright holder can in addition **file a lawsuit** against the alleged infringer at the People's Court that based on a favorable ruling for the plaintiff can order the infringing copies, and used materials, tools and equipment destroyed without compensation, demand a public apology and award damages.

The People's Court can award damages based on the **actual losses suffered** by the copyright owner or the **illegal profits made** by the infringer. If the losses or profits are difficult to determine, damages may be determined with reference to the **royalties** for such rights.

For **intentional and serious infringement**, the awarded damages shall be **1-5 times** the determined amount following the standard method.

If the standard method is not feasible, the People's Court shall decide a compensation amount of **RMB 500 - RMB 5.0 million** based on the extent of the infringement. The compensation shall also include reasonable expenses incurred by the copyright holder to limit the infringement.

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

To prevent an infringer from exporting any infringed products overseas, companies can get their China copyrights registered with GAC that operates an **IP Recordal System** to help Customs officers identify, confiscate, and destroy any infringing products for export.

After the required information and documents have been recorded online with GAC, the approval process takes about 30 days and is valid for **10 years** but 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 recommended.

The issued Copyright Registration Certificate is recognized by the Chinese authorities and People's Courts as automatic proof of ownership and poses as an extra line of defence which will save the copyright holder **precious time, effort, and cost** in case of infringement and enforcement.

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