

What You Should Know About China's Copyright Law

Basic principles

The People's Republic of China ("PRC") is a member of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) and the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS").

In order to be eligible for protection, a work must have the nature of originality. That is, the ideas expressed in the work do not need to be new but the form in which they are expressed must be an original creation of the author. Furthermore, the nature of originality is independent of the quality or the value attaching to the work.

Any foreigner or foreign enterprise which first publishes works within the territory of the PRC may enjoy copyright protection under the PRC Copyright Law. A work of a foreigner or a foreign enterprise published outside the territory of the PRC can receive this protection in accordance with a bilateral agreement or international treaty.

The PRC Copyright Law provides for protection of various forms of works, such as

- literary works,
- oral works,
- music works,
- choreographic works,
- works of fine art,
- architectural works,
- photographic works, cinematographic works,
- computer software,
- maps, and
- technical drawings.

In particular, works of applied art which are created by foreigners or foreign enterprises can seek protection in the PRC.

A copyright owner is entitled to decide whether the work will be made available to the public, to state his/her name on the work and to revise the work. He/she also enjoys the right to reproduce, distribute, perform and lease the work, as well as to disseminate the work via information networks and to adapt, translate and compile the work.

A copyright of a work commences on the date of completion. The copyright includes two aspects: moral rights and economic rights.

Moral Rights

An author's moral rights include the right to claim authorship of the work and the right to object to any distortion, mutilation or other modification or other derogatory action in relation to the work. These rights are perpetual. Furthermore, they remain with the author even after the author has transferred his/her economic rights.

Economic Rights

The term of protection for an individual's economic rights is the individual's whole lifespan plus 50 years after his/her death, ending on 31 December of the 50th year after his/her death.

The term of protection for a company's work is 50 years, ending on 31 December of the 50th year after the work's initial publication.

The PRC Copyright Law also provides for protection of neighboring rights, which include the rights of performing artists of their performances, the rights of producers of sound and video recording, and the rights of broadcasting organizations of their radio and television programs.

A copyright owner may voluntarily apply for copyright registration for the work with the Copyright Protection Center of China ("CPCC"), which is designated by the National Copyright Administration ("NCA"). A registration certificate issued by the CPCC serves as prima facie evidence for the existence of copyright. Registration of a copyright can be useful to fight counterfeiters.

Registration

In order to apply for copyright registration with the CPCC, the applicant will need to file an application with CPCC together with required supporting documents. The CPCC will complete the examination of the application within 30 days from the acceptance date. If the application meets the requirements of the CPCC, it will issue a *Certificate of Copyright Registration*.

Licensing

A copyright owner is permitted to license others to exercise the copyrights, excluding the moral rights specified in the PRC Copyright Law. The license agreement is not subject to registration with the Chinese authorities.

Assignment

A copyright owner is permitted to assign all or part of the rights excluding the moral rights specified in the PRC Copyright Law. The assignment is not subject to registration with the Chinese authorities.

Enforcement

In accordance with the requirements of TRIPS, both administrative relief and judicial relief are available to copyright holders if they want to take action against copyright infringement in the PRC. A copyright holder may file a complaint with the local copyright administration against copyright infringement in the PRC if the infringement has also impaired the public interest. Court action is also possible. The local copyright administration and the court have the power to seize infringing work and to order the infringer to cease the infringement. The local copyright administration may also impose fines but only courts are entitled to award damages.

The amount of damages for copyright infringement will be calculated according to the actual losses of the copyright holder. If the actual losses are difficult to calculate, the damages paid will be based on the

illegal revenues earned by the infringer. If neither of them can be determined, courts may award damages of up to RMB 500,000 under the PRC Copyright Law.

For further information and assistance, please contact

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