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1. INTRODUCTION

China's rapidly expanding consumer market creates both opportunities and challenges for European businesses in creative industries. Ideas and designs are the lifeblood of creative businesses and infringement can be particularly costly and damaging. However, creative ideas and designs that are not adequately protected often fall victim to infringement by potential Chinese clients or Chinese competitors.

This guide addresses the Intellectual Property (IP) issues often faced by creative businesses in various sub-sectors of the creative industry in China including in architectural design, product design, graphic design, web-design, brand design, photography and cinematography, writing, etc. The most common types of IP important to creative businesses are:

- ▶ Copyrights
- ▶ Industrial designs
- ▶ Trade secrets

2. COPYRIGHT

As in Europe, copyright in China arises automatically upon the creation of a copyrightable work. Copyrightable works include architectural or engineering drawings, works of fine art, applied art, literary works, music or sound recordings, dramatic or cinematic works, compilations, software, etc. It is important to remember that copyright protects only the expression of an idea, not the idea itself.

China also allows you to voluntarily register your copyright. Copyright registration is presumptive evidence of ownership if you wish to enforce your copyright and greatly reduces the preparation of evidence. Copyright registration in China is inexpensive, easy, and generally recommended.

However, if your copyright is not registered or you do not plan on registering it, it is important to keep evidence of creation and ownership so that you can prove your ownership of the copyright. Always indicating the author's name, date of creation, and using the © symbol on the work (including on all drafts) are simple steps you can take. Having a copy of your work notarised by a Chinese notary is also an easy and relatively inexpensive way to establish admissible evidence of creation and authorship. "Poor man's copyright", which refers to the practice of sealing and mailing a copy of the work to yourself to establish evidence of the date of creation, authorship, and the work itself is not as reliable as a notarisation because its authenticity can be challenged in court.

"Copyright registration in China is inexpensive, easy, and generally recommended."

When creating works for others or commissioning others to create works for you, make sure that your contract clearly states who owns the copyright to the >>

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works. Unlike in many other countries, in China, the commissioned party owns the copyright to the works unless the contract states otherwise.

In addition to using copyright as a form of protection, because copyright arises so easily, it is also equally important to make sure you do not infringe upon another's copyright such as when using someone else's work in your own work. For example, this can happen when you use someone else's photograph on the Internet without permission in your project proposal. It is important to obtain the permission of the copyright owner when using someone else's work.

3D design

Unlike in many other countries, in China, the scope of protection of the copyright in a two-dimensional drawing does not extend to three-dimensional applications. For example, copyright in a two-dimensional architectural design does not extend to the actual building based on the design. To fill in this gap in protection, your contract should clearly state that the copyright of any three-dimensional applications based on your two-dimensional designs belong to you.

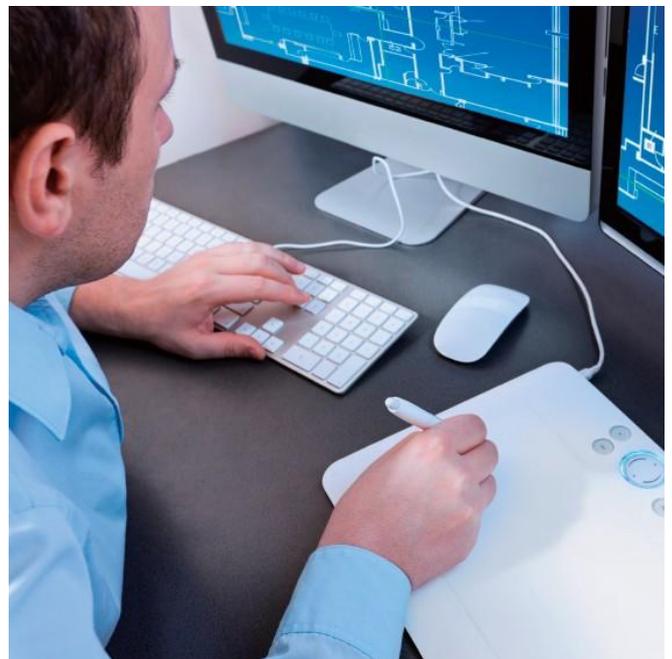


3. INDUSTRIAL DESIGNS

Industrial designs protect the aesthetic features (shape, pattern, colour) of industrial products. Industrial designs are protected as design patents in China and must be registered. Designs registered in a foreign country do not enjoy protection in China. To qualify for protection, a design cannot be an existing design and must be sufficiently distinguishable from other designs. Currently, it takes approximately 9 months to 1 year to obtain a design patent in China. A design patent gives you the exclusive right to use or allow others to use your design in China for 10 years.

You cannot register an existing design, including your own existing design, which means you have 6 months from the date you first publicly use the design, publish the design or apply for a design patent to file an international patent application. Therefore, it is strongly recommended that you consider whether or not you wish to seek design patent protection for your design before you publicly use or publish it.

In some cases, if an industrial design exhibits a high-degree of creativity and its aesthetic elements can exist separately from the functional features of the design, it can also be protected as a copyrightable work. For example, a design for a lamp with a statue base enjoys copyright protection as to the statue base. It is important to know whether or not your design can be protected as a work of applied art so that you can take proper measures to protect it. Most industrial designs do not enjoy copyright protection as works of applied art and can only be protected as industrial designs.



4. TRADE SECRETS

In China, a trade secret is any non-public information of commercial value that is treated as confidential. Trade secrets include undisclosed designs, sketches, concepts, models, project proposals, customer lists, supplier lists, price lists, contractual terms, business operational methods, contact lists, internal emails, business strategy or initiatives, negotiations, etc. However, trade secrets protection is lost as soon as the information becomes public. Measures to ensure confidentiality include the use of confidentiality agreements tied to disclosure, non-disclosure agreements with employees, use of passwords, and marking of documents as confidential.

