

Advantages of Voluntary Copyright Registration in China Explained

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China, like the United States, is a party to the Berne Convention for the Protection of Literary and Artistic Works. As such, in general any literary or artistic work created in the US will also be protected in China.

Unlike trademark rights, which are based on use or registration (depending on the country of adoption and use), copyright rights are automatically generated once the creation of the relevant work has been completed and do not require any compulsory registration. Nonetheless, some Berne Convention countries, including China and the US, offer a system of voluntary copyright registration in order to provide a way for the copyright owners to record the particulars of the copyright in the works they created/own and other related transactions. Copyright registration in the US is also a prerequisite for filing a lawsuit for infringement, and depending on when registration occurs relative to the date when infringement began, copyright registration in the US, can provide enhanced statutory remedies once liability is established.

This article provides an introduction to the voluntary copyright registration system in China and some key advantages in holding a copyright registration in China enforcement actions.

Voluntary copyright registration in China

Voluntary copyright registration in China is administered by the Copyright Protection Center of China (CPCC). The CPCC, after receiving an application for copyright registration, will only review the application documents to ensure that all the formality requirements for copyright registration are met before approving a registration. No

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substantive examination will be conducted by the CPCC in relation to the application by looking into the validity of the underlying copyright rights. The whole process will generally take a few months to complete.

Obtaining a copyright registration in China is a relatively cost-efficient process since the CPCC does not require notarization and legalization of the application documents, except the certificate of good standing of the applicant pursuant to the recently-updated requirements of the CPCC.

Once registered, a copyright registration certificate will be issued by the CPCC. The certificate will contain the important particulars relating to the work registered, such as the title of the work, the name of the author, the name of the copyright owner, the mode of creation, the date of completion and the place of creation, etc. A sample of the subject work as recognized by the CPCC will be attached to the certificate.

Key advantages in holding a copyright registration in China

If a US copyright owner wishes to initiate a copyright enforcement action in China, such as online takedowns, administrative raid, trademark opposition and invalidation, border interception at the Chinese Customs, and civil and criminal proceedings, it first has to prove that it owns the copyright in the subject work in question. A copyright registration certificate issued by the CPCC may serve as *prima facie* proof of the holder's ownership of the copyright in the subject work.

By contrast, if no copyright registration is obtained in China, a US copyright owner will be required to submit documents to prove its ownership of the copyright in the subject work, which is a notoriously difficult task and expensive exercise for foreign copyright owners. In China, a witness statement such as a declaration/affirmation of creation and ownership of a work alone will not be given much weight by the Chinese courts and government enforcement authorities, and will not be welcomed by the major trading platforms for takedown purposes either. In addition, even assuming a US copyright owner is able to produce the relevant documents required to prove its ownership in the subject work, those documents must first meet the formality requirement of notarization and legalization and must be translated into Chinese before they can be admitted as evidence in an enforcement action in China. This onerous formality requirement and its cost implication might simply deter a US copyright owner from taking enforcement action.

A copyright registration in the US for the same work is normally not very helpful in serving as *prima facie* evidence of proof of the registrant's ownership, primarily because it does not include an officially- recognized sample of the subject work attached to the registration certificate.

Trademark opposition and invalidation actions in China – Conflict with prior copyright in an artistic work is a valid opposition/invalidation ground under Article 32 of the Chinese Trademark Law. The Chinese trademark authorities have been more willing to recognize the effect of a copyright registration in China in ascertaining and determining the issue of the opponent's/petitioner's ownership of copyright in the work in

question, especially where the copyright registration certificate submitted by the opponent/petitioner predates the filing date of the disputed trademark filing, or there is some other favorable circumstance or evidence in the case, notwithstanding that the copyright registration is obtained without going through any substantive examination.

Administrative Raid Action – The copyright administration authority requests that a copyright owner prove its copyright ownership as a pre-condition for accepting a complaint of copyright infringement filed by the rights owner. A copyright registration certificate as issued by the CPCC in Chinese will be good evidence to overcome this first hurdle in an administrative raid action on the complainant. Unless the infringer can provide conflicting evidence to successfully rebut the validity of the copyright registration in China, the copyright administration authority will officially accept the complaint for further investigation and review.

Online takedowns – Online takedowns have become frequent enforcement actions taken by US copyright owners to protect their IP rights in China. To file a copyright takedown complaint with the major online trading platforms in China such as Taobao, Tmall and JD, a complainant is required to submit proof of its ownership of the copyright to the platform. In this situation, a copyright registration certificate in China will obviously be the most preferred *prima facie* evidence that those trading platforms would like to receive for verification, as a copyright registration certificate is an official certificate issued by a government body (*i.e.*, the CPCC), which contains all the necessary particulars for the platforms' verification. A copyright takedown request can only be filed with those online trading platforms after the platforms have completed their verification process and recognize the complainant's copyright ownership.

Enforcement via Chinese Customs – Customs/border interception of goods suspected to have infringed other's trademark rights, copyrights or patent rights is also an important way to protect the owners' rights and interest and enforce against infringers. In order to avail oneself of the Customs protection, an IP rights owner will normally need to record its IP rights with the Chinese Customs in advance. With regard to the recordal of copyright rights with the Chinese Customs, Section 7(2) of the Implementing Measures of the Regulations on Customs Protection of IP rights in China specifically provides that a copy of the copyright registration certificate, together with a sample of the work officially recognized by the CPCC in China, are acceptable proof of the applicant's copyright ownership for purpose of recordal. Otherwise, a foreign copyright owner will need to go through the difficult and expensive exercise as mentioned above to prove its copyright ownership to the Chinese Customs.