

Lisa Lu, September 20, 2023



Business Digitalisation: Managing Software as Intellectual Property

数字化商业: 软件知识产权管理



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Guide

1. Introduction
2. Why to register your Copyright?
3. Registration: Step by step guide
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4. How to find/edit the saved information in draft box
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Guide to copyright registration in China

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European Commission

GUIDE

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5. Contractual Protection and Preventive Confidentiality Measures
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Industry 4.0 and IP Protection

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INTELLECTUAL PROPERTY ADVICE FOR YOUR BUSINESS



Six EU-funded helpdesks offer free resources to your small or medium-sized business to help you manage your intellectual property.

<https://ec.europa.eu/ip-helpdesk>

Speaker's Bio



Lisa Lu

IP Business Advisor

@ *China IP SME Helpdesk*

Lisa.lu@china-iprhelpdesk.eu

Lisa Lu is the IP Business Advisor at China IP SME Helpdesk in Beijing, where she advises European SMEs on intellectual property rights matters. She holds a double master's degree in law from the China University of Political Science and Law and University of Hamburg. Before joining the China IP SME Helpdesk at the European Chamber, Lisa worked as a trademark attorney for the Ferrante Intellectual Property and Chang Tsi & Partners. She mainly focused on the fields of trademark prosecution, trademark enforcement, copyright protection and unfair competition. During her time working in both law firms, she dealt with a variety of clients including but not limited to automotive performance, media, entertainment, new energy, apparel, architecture design, data management, e-commerce, household products, HVAC, and fire & security. Her clients included a range of globally leading companies and small and medium-sized enterprises (SMEs). Lisa is fluent in Chinese and English.

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01 | Software copyright 软件著作权

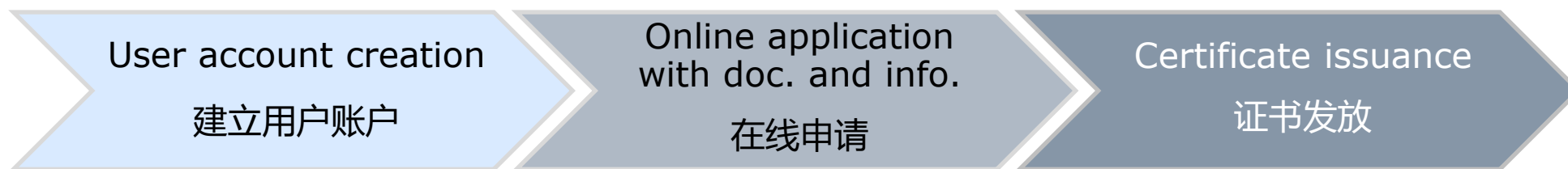
- Automatic protection in 178 countries of Berne Convention 自动保护
- Enforcement requires certificates 维权需要证书
- Fast (60 days), free of charge for software
快速 (60日) , 免官费
- Protection terms: 50 years 50年保护期
- Prima facie evidence 初步证据
- Source code of the software → protected 保护源代码
Core idea behind that source code → **NOT** protected 不保护核心



01

Copyright registration:

- Copyright Protection Centre of China (CPCC) & Blockchain
版权保护中心&区块链



Time: 60 days



Costs: Free of charge



Blockchain platforms

➤ UniTrust (联合信任)

➤ Huicun (汇存)

www.tsa.cn



02 | Patent protection 专利保护



2.1

Invention patents vs Utility models vs Design patents

- ***Invention patents***: new technical solutions or improvements to a product or process, functionality.
20 years of protection. 3-6 years of registration procedures.
发明专利: 产品、方法或者其改进所提出的新的技术方案，20年保护期，3-6年申请注册周期
- ***Utility models***: products with new shape or structural physical features, functionality.
10 years of protection. 6 months-1 year of registration procedures.
实用新型: 产品的形状、构造或者其结合所提出的适于实用的新的技术方案，10年保护期，半年到1年申请注册周期
- ***Design patents***: the aesthetic aspects of the product, non-functionality.
15 years of protection. 6 months-1 year of registration procedures.
外观设计: 产品富有美感并适于工业应用的新设计，15年保护期，半年到1年申请注册周期

02 | Patent protection 专利保护



2.2 Software patent

- Hardware equipped with software 搭载软件硬件
Software with technical features (rare) 具有技术功能的软件
→ Invention patents
- Graphic user interface (GUI) with/ without the products displayed 图形用户界面
→ Design patents

02

Patent protection 专利保护

2.3

Two routes

- **National 国内申请:** directly with the CNIPA 国知局
Priority claims: 12 months for invention and utility model;
6 months for design patent
- **International 国际申请:**
 - PCT: invention patent and utility model
 - Hague system: design



03 | Trademark & Trade secrets 商标和商业秘密



3.1

Trademark 商标

- Name of the software 软件名称
Chinese name 中文商标
- First-to-file principle 在先申请原则
& bad faith registration 恶意注册

3.2

Trade secrets 商业秘密

Software → know-how of engineers
and other employees 技术秘密

03 | Trade secret 商业秘密



3.3 How to protect trade secrets (5 steps) 五步保护商业机密

- Identify and catalogue your trade secrets 识别商业秘密并归类
- Use a combination of physical, technical and contractual barriers 结合使用物理、技术和合同手段保护
- Document trade secret protection measures you take, in case of a dispute later on 文件记录所采取的商业秘密保护措施，以防后续争议
- **Implement a trade secret protection policy within your company, making sure your employees understand your expectations**
在公司内部实施商业秘密保护政策，确保您的员工知悉保护要求
- Consider non-disclosure agreements (NDA) before entering negotiations with third parties 在与第三方谈判之前，考虑签订保密协议(NDA)

04 | License agreement 许可协议



Important Contract Provisions to INCLUDE

- Definition of the scope of use of software 软件使用范围的定义
Monitoring of the licensee's activities: Prevent unauthorised use of the software
监控被许可人的活动: 防止未经授权使用软件
- Ensuring the validity of your agreement 确保协议的有效性
Protection of new software code generated: Address ownership issues
保护新生成的软件代码: 所有权归属
- Assignments or transfers: Prevent your software from being transferred to third parties without your permission
转让: 防止软件在未经许可的情况下转让给第三方

04 | License agreement 许可协议



Important Contract Provisions to **INCLUDE**

- IPR produced by employees: Avoid future disputes 职务发明：避免纠纷
- Confidentiality: Protect your confidential information 机密：保护您的机密信息
- Dispute resolution: Applicable law is Chinese law and jurisdiction is in China
争议解决：适用法律为中国法律，管辖权在中国
- Termination 合同终止
- Language: including Chinese(and English) 语言：包括中文 (及英文)

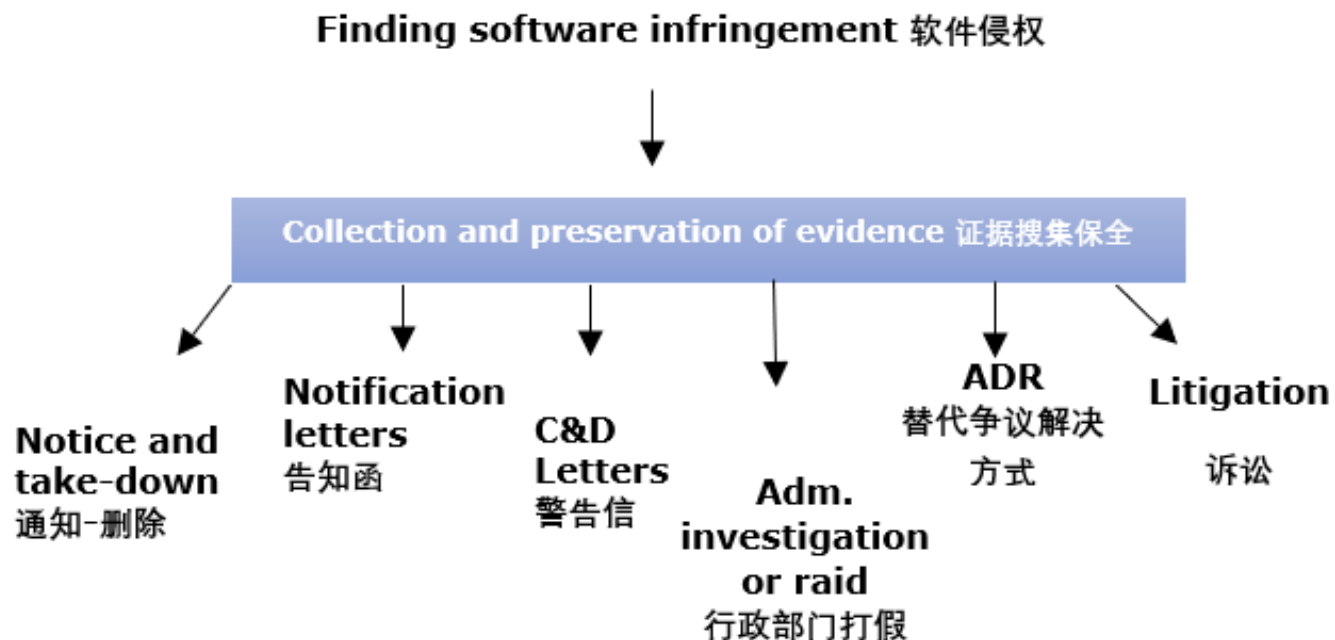
05

Remedies for software infringement

- Different options

5.1

Roadmap of enforcement actions



5.2

Evidence collection 证据搜集

- Ownership 所有权
- Use evidence of the owner 使用证据
- Infringement evidence 侵权证据

5.3

Evidence preservation 证据保全

- Notarisation 公证
- Blockchain: Internet courts 区块链：互联网法庭

06 | Take-away messages



- ✓ Though copyright is automatically granted, you should consider copyright recordal, and prepare documents that establish ownership of copyright in software.
- ✓ Please consult a patent attorney for patent registration.

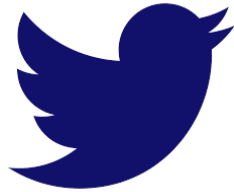


- ✓ Use the 5 steps to protect the trade secrets.
- ✓ Make sure license agreements are suitable for China and are enforceable against your counterparty.
- ✓ Evidence collection and preservation is essential to enforce your rights in China.



- ✓ Contact the China IP SME Helpdesk ***question@china-iprhelpdesk.eu***

Stay connected!



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Questions?

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3 working
days

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EVENT FEEDBACK FORM



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