

Copyright Protection in China

A Guide for European SMEs



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- 1 Introduction
- 2 What is copyright?
- 3 How is copyright relevant to my business?
- 4 Copyright Ownership
- 5 Copyright Registration
- 6 Copyright Enforcement
- 7 Conclusion

1. Introduction

Copyright is a form of intellectual property that protects a creator's exclusive right to control who reproduces or alters the product of their original creative effort. Copyright protects the producers of any original work, and is relevant to almost all businesses, not just those in the creative industry. Adequate copyright protection can form an important part of an IPR protection strategy. Businesses regularly create articles, photographs, drawings, designs, models, websites, computer software, etc., which all enjoy copyright protection. Copyright is an automatic right that arises the moment a work is created. Once a work is created, in most cases, the creator will automatically enjoy copyright protection in all 164 member countries of the Berne Convention for the Protection of Literary and Artistic Works including all European Union countries and China.

Voluntary registration for your copyright is available in China. Though your work is automatically protected by copyright the moment it is created, voluntary registration will provide proof of ownership, which can save you time and money in case of a dispute later on. For copyrights that are particularly important to the livelihood of your business (i.e., website, software, catalogue, customer database, etc.), you should strongly consider registering your copyright.

2. What is copyright?

Copyright is actually a bundle of rights enjoyed by the author or creator of an original work, or that his/her successors or licensees assigns to others.

For example, you may find that someone

has published your article without permission or crediting you, someone has edited the photograph you took, or someone has made copies of your brochure and has been using it for their company. These are all examples of **moral rights** infringement, which means you were not properly identified, the work was published without your permission and the work was distorted in a way that might harm your reputation. Moral rights are personal and cannot be waived, licensed or transferred. In infringing your moral rights, e.g., if a competitor uses your product images to promote their own counterfeit products, confusion is created, possibly resulting in loss of reputation or business.

If you find that someone has copied your software and has been selling it as their own, someone has translated your website content or someone has been distributing your video clip, then your **economic rights** have been infringed. Economic rights give you the exclusive right to exploit the work for economic gain, including the right to reproduce, distribute, exhibit, perform, broadcast, disseminate on information networks, adapt, translate and use other means to exploit the work. Only you as the rights holder have the right to personally exploit the work or license others to exploit the work for compensation.

What kinds of work are protectable by copyright?

Copyright protects the tangible expression of ideas, not the ideas themselves

Copyright protects original creative expressions of ideas that subsist in a

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fixed medium such as on a piece of paper, on an artist's canvas, on an optical disc, or on magnetically recordable media. Copyrightable expressions are known as "works". Ideas include thoughts, feelings, procedures, methods of operation, or mathematical concepts, and other products of creative and intellectual endeavours. Copyright protects only the expression of an idea, not the idea itself. For example, your detailed written description about your company's new and innovative Internet business model in your business proposal to potential investors is protectable by copyright as an expression, but the Internet business model itself and the ideas, concepts and principles behind it are not.

Most types of creative works protectable by copyright in Europe are protectable by copyright in China

Traditional types of creative works such as books, music, recordings, plays, films, paintings, sculptures, photographs, etc., enjoy copyright protection in China. Other works such as works of choreography, acrobatics, calligraphy, quyi (a traditional Chinese performance art form), model works, and databases and compilations as to the selection and arrangement of content also enjoy copyright protection in China. The basic principle for copyright eligibility is that the work be original and reproducible.

Computer software and industrial designs

Unlike Europe where computer software is protected by patents, software is expressly protected under copyright in China. Industrial and graphic designs, applied art, architectural buildings are also protected by copyright. For more information on these specific areas, please see the Helpdesk Guide on Software Copyrights.

News items and public documents are excluded

Written works such as news reports of facts and happenings, laws, regulations, administrative and court decisions, and other works created by government entities to inform the public (as well as their official translations); and calendars, forms, tables and formulas are excluded from copyright protection, although compilations of these are protected as to their selection and arrangement of content.

Does copyright protect my own publication, production, performance, or broadcast of existing works?

The concept of "neighbouring rights" of the China Copyright Law protects your own version of a publication, production, performance or broadcast of existing works. For example, your company's recording of a performance of a previously existing song is considered a derivative work and is protectable as a neighbouring right. However, please note that before you create a derivative work, you must obtain a license from the creator of the original work. Copyright licensing is explained in more detail below in Section 4: Copyright Ownership.

3. How is copyright relevant to my business?

Nearly every business across all industries and sectors possess copyright. A common misconception is that copyright is only relevant to content producing businesses, e.g., publishing firms, music distributor, film production companies. Copyright enables you to help protect against others taking credit for your creative work and using it as their own for economic gain and unfair business advantages. Businesses in all industries should take steps to identify their existing copyrights and consider registering the most important ones as part of a holistic IPR protection strategy. The proof of ownership you obtain from registering your copyright may save you time and money later on in case of a copyright dispute.

Why should copyright be an important part of my IPR strategy?

Copyright can form an important part of IP protection strategies, both as a main protection for content, and as a supplementary tool to enforce alongside other IP rights, such as design patents or trademarks. For example, if someone has copied your logo, which happens to be a unique graphic design before your trademark registration granted, you still have the option of trying to stop the infringer based on your ownership of the copyright protecting the logo. However, please note that enforcement through copyright is a weaker enforcement

Protectable by copyright	Not protectable by copyright
Books, journal articles, short stories, poems, song lyrics	Names, titles, short phrases, slogans, etc.
Songs, musical scores, notated music, other music, sound recordings	Ideas, principles, concepts
Plays, television programs, radio and film scripts, dance, acrobatics, choreography, quyi	Ideas, concepts, processing methods, algorithms, operational designs and methods
Drawings, illustrations, images, photographs, paintings, calligraphy, sculptures	Underlying news content of factual happenings or government publications
Computer programs, games, other software, websites, emails	Pre-existing material
Original and aesthetic aspects of industrial and graphic designs, architectural drawings, and 2D and 3D applied art, models, architectural buildings and structures	Content already in the public domain
Databases as to the selection of content	
Original expressions to convey facts or news, layouts and compilations of select news articles or government publications	

tool than a registered trademark or other rights and should be considered complementary to other tools. If your existing design patent or trademark is also eligible for copyright protection, you also have the option of a multiple protection approach by registering the design patent and/or trademark as a copyright as well. This will provide you with additional enforcement alternatives if confronted with infringement.

To start integrating copyright protection into your company's overall IP strategy, ask yourself the following questions:

1. What works of mine are already protected by copyright?
2. Who in my company owns those copyrights? Is it myself or the creative mind that first created it?
3. Does my company's standard employee contract include a clause about copyright ownership to decrease the chances of a potential copyright disputes?
4. Which one of those already copyrighted works are the most important to the livelihood of my company?
5. Which one(s) should I voluntarily register for?
6. Should I consider hiring a monitoring service to make sure my copyrights are not being infringed?

Your company may own more copyrights than you initially think. Graphic designs in your brochure or catalogue, images and photographs of your products, company website and its content, customer databases, standard operating procedure documents and even E-mails are all considered creative works. Infringement of those works can result in brand dilution, lost customer loyalty and lost profits for your business.

4. Copyright Ownership

How do I obtain copyright in China?

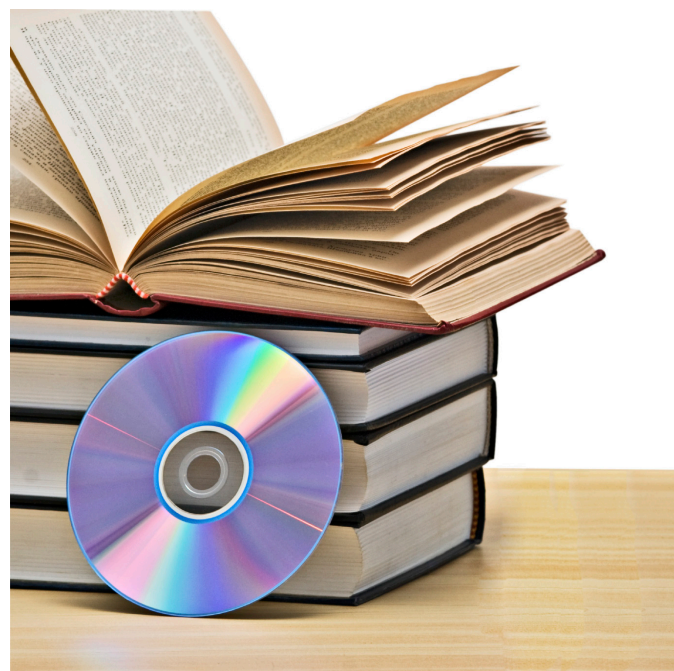
Copyright is an automatic right

Like in Europe, copyright arises in China as soon as an original work is created, even in most cases where the work is created outside of China. Copyright arises on the date the original work is created. For example, if you write a book in Germany, you automatically enjoy copyright protection in China as soon as you write the book. There is no requirement to register a copyright in order for it to be effective and enforceable in China; however, the enforcement process is made much easier with a registered copyright.

How is ownership of a copyright determined?

A copyright of a work may belong to its creator or the employer of the creator, as it is defined in the contract between those two parties in advance. Protected creative acts include those intellectual activities that directly result in the creation of the work. Acts of support such as rendering services or material or financial resources are not considered creative acts. Thus, if an individual provides only managerial support to the creation of a work, he or she is not considered a creator of the work.

Unless stated otherwise in the contract, the person or entity whose name appears on the work is the creator of the work.



Commissioned works

If you hire a third party to create a work for you, the third party owns the copyright unless the contract states otherwise. For example, if your Chinese subsidiary creates software for your company, your subsidiary owns the copyright, meaning you will not be able to exploit the work or reproduce, distribute, revise or use it in any other way without a license from your subsidiary. Therefore, it is crucial that you make copyright ownership explicitly clear in every contract. You should also consider adding a copyright ownership clause in your company's standard contract if there is not one already in place, to avoid potential disputes in the future.

Service works

If your employee creates a work for you during the course of his/her employment using mainly your business resources, your employee owns the right of attribution of authorship but you own all other copyrights, unless the employment contract says otherwise. These works might include drawings of engineering designs, product designs, maps, computer software, among others. In the case where the contract clearly states that the employee owns all copyrights of his/her work created while under your employment, you enjoy preferential rights. These include preventing the employee for two years from licensing the work to a third party without your consent, or if you give consent receiving an agreed share of the licensing fee. If you would like to consolidate all ownership of your company's copyright, your employment contracts should clearly address who owns the copyright to works created by your employees and make clear that copyrights to works created by employees be assigned to the owner in exchange for compensation, if desired.

Acquiring the copyright of another

If you would like to use somebody else's copyrighted work, you may obtain the right to use the work by license, purchase or assignment, succession, or by other contractual agreement with the copyright holder. For example, if you wish to use another's photograph on your company's website, you should contact the photographer to obtain a license to use the photograph or to purchase the copyright to the photograph.

When acquiring the copyright or right to use a copyright, it is important to understand that owning a license to use somebody else's copyrighted work is not the same as owning the copyright to the work. A license enables you to use the photograph only as the copyright owner permits, while owning the copyright enables you to freely use, duplicate, or sell copies of the work, although moral rights are to be respected. For example, when you purchase an mp3 music file or piece of software on the Internet, you are actually obtaining a license to use the mp3 music file or piece of software, not acquiring the copyright to the music or software itself. In other words, you may be able to listen or use the mp3 music file or software, but you are not allowed to copy and distribute them.

Obtaining a license or purchasing a copyright can be accomplished by concluding a contractual agreement with the copyright owner. The license or purchase is effective immediately after the contracts are signed and it does not need to be registered with any authority, unless the type of work falls within the scope of certain restricted technologies.

Fair use and statutory licenses

In China, certain reasonable or personal use of copyrighted works without permission or remuneration is permitted where the use falls within the scope of fair use. For example, quoting a small portion of a work in a scholarly article is considered non-infringing fair use. The Copyright Law contains a list of twelve acts which constitute fair use. Types of acts considered fair use in China are similar to those in Europe. Examples of permitted private use include self-study, research or self-enjoyment, appropriate quotation, reporting of current events, etc. You should avoid using a copyrighted work without permission or remuneration in a way that is not listed as fair use in the Copyright Law.

Also, the Copyright Law allows certain types of works to be used without permission as long as royalties are paid to the copyright owner. This is called a statutory license. A statutory license often applies to producers, broadcasters, and publishers who may use published works without the permission of the copyright owner but remuneration is paid and moral rights are respected. Fair use of a

copyright-protected work or the use of such work under a statutory license does not constitute an infringement of copyright.

How do I establish ownership of my copyright?

Voluntary registration

Registration of copyright is not necessary to obtain copyright protection in China, but there is a voluntary registration system. Registration is strongly recommended in certain circumstances, especially in situations where you expect to license or enforce the copyright-protected work. Although the registration certificate does not definitively prove copyright ownership, it is considered presumptive evidence of ownership unless disproved and will facilitate administrative, judicial, border and criminal enforcement actions where it is necessary to demonstrate copyright ownership. Make it simple and register your copyright!

Proving ownership of copyright

As noted above, a registration certificate is considered presumptive evidence of copyright ownership. But where the copyright is not registered or copyright ownership is challenged, evidence sufficient to definitively prove ownership varies with the type of work but typically requires the owner to produce the original work or a true copy, and any relevant contracts. As a general rule, the original work should show the author's name and the date of creation or first publication. If you are not the original author of the work, you should provide evidence to prove you obtained the copyright by commission, employment, license, assignment or succession.

5. Copyright Registration

How do I register my copyright and what documents do I need to submit?

Process

Copyright registration in China is administered by the Copyright Protection Centre of China (CPCC). Applicants begin the application process by completing the copyright registration application form and mailing the application materials to CPCC. After receiving the application, the CPCC will review the application materials, determine the application fee, and notify the applicant. After the applicant pays the application fee, the applicant will receive a notice of receipt of payment and notice of application acceptance. After acceptance, the examination of the application takes approximately 30 working days to complete. After the successful completion of the examination, the applicant will receive a Copyright Registration Certificate.

An applicant may create a user account on <http://www.ccopyright.com.cn>, complete the copyright registration application form online, then print and sign/seal the application form. Applicants must submit by mail the completed application form, the identification documents of the applicant, any documents of copyright ownership such as commission, succession, license, or assignment agreements, samples of the work, and a brief description of the work to the CPCC. The brief description of the work should describe the creative intent embodied in the work, the process by which the work was created, that the work is original, able to be reproduced, and meets the legal



requirements of a protectable tangible expression.

Copyright holders may apply directly for copyright registration or entrust an agent to apply on their behalf. Where an agent is used, the agent must additionally submit his or her identification documents and a Power of Attorney from the copyright holder.

Time

Applications for copyright registration are within 30 days after the CPCC accepts the application or if supplemental materials are required, within 30 days of receipt of the supplemental materials. However, registration may be delayed if registration fees are not paid within 10 days of receipt of the notice for payment.

Fees

Registration application fees vary depending on the type of work. There are separate fees for changes, amendments, cancellations, additional certificates, etc. There are no periodic fees for maintaining a copyright registration. The fees shown in the chart below are official fees. Agents will charge agency fees if you engage them to assist in the process.

For how long is my copyright protected?

The period of protection for the moral right of publication and economic rights, or the right to exploit the work for economic gain, is generally 50 years from the date of creation or publication, or in the case of individuals, the lifetime of the author plus 50 years. The protection period for all other moral rights such as the right of attribution of authorship, the right of publication of the work to the public, the right to alter the work, and the right to preserve the integrity of the work is forever.

6. Copyright Enforcement

How do I enforce my copyright if I discover infringement?

Process

Rights holders may enforce their copyrights through administrative, judicial, customs and criminal routes.

Investigations

As a first step to enforcing your copyright, you need to confirm any suspected infringement, and gather and preserve evidence which may be needed at a later stage. For example, if suspected infringing goods are encountered at a trade fair, you should attempt to gather business cards, take photographs, and ask questions about the source of the goods. Where suspected infringement is discovered on the Internet, you need to determine the identity of the seller or user of the copyrighted work and the ISP network on which the infringing content is stored. For serious cases, you may want to engage a lawyer or a private investigator to conduct an investigation to confirm the infringement, assess the scope of infringement, and identify the infringers. Where judicial action is contemplated, it is important that sufficient admissible evidence be gathered at this stage before infringers are alerted of your actions, e.g., notarisations of purchases of suspected infringing goods, and of downloads of web pages and online content.

Cease and desist

In minor cases or as a first-step to enforcing your copyright in serious cases, you may send a cease and desist letter to the suspected infringer requesting the infringer to stop the use of the copyrighted material. In the letter, you should identify the copyrighted work, ownership of the

Type of Work	Fees (RMB) per work	Notes
Written, oral work	100 for 100 words or less 150 for 100-5,000 words 200 for 5,001-10,000 words 300 for more than 10,000 words	Series of works in consultation
Music	300 for lyrics 200 for songs	100 for each additional work for serial works
Dramatic works, quyi, dance works, acrobatic works, works of art, photographs	300	100 for each additional work for serial works
Engineering designs, product designs, maps, schematic diagrams, model works	500	100 for each additional work for serial works
Architectural works	1,500	100 for each additional work for serial works
Filmography	2,000	100 for each additional work for serial works
Work created in a way similar to cinematography	200 for ultra-short <1 minute 300 for 1-5 minutes 400 for 5-10 minutes 800 for 10-25 minutes 1,000 for 25-45 minutes 2,000 for more than 45 minutes 100 / TV series	50 for each additional work for serial works 50 for each additional work for serial works 100 for each additional work for serial works 200 for each additional work for serial works 300 for each additional work for serial works 400 for each additional work for serial works
Compilations (including multimedia compilations)	2,000	100 for each additional work for serial works
Computer software - archive fee for source code	250 per software 120 for 100 pages of code	2 for each additional page over 100
Other works	2,000	100 for each additional work for serial works

copyright and the alleged infringing activity. The letter may also include a demand that the recipient immediately cease all infringing acts under threat of litigation or further legal action, but you should seek legal advice in advance to determine whether it is appropriate. Letters to Chinese parties should be in Chinese and sent by fax, E-mail, and by courier. A follow-up letter may be necessary. Depending on the circumstances of each case, you should consider whether to gather evidence necessary to support any potential administrative or judicial actions before sending a letter because alerting the suspected infringer may make it more difficult to gather important evidence later.

Judicial actions

The People's Courts hear civil and criminal cases of copyright infringement and judicial review of administrative decisions. You may request the Court for preliminary or permanent injunctions, to preserve evidence of infringement and property of the defendant, and to order the defendant to destroy any infringing goods or instruments of infringement, pay damages, negate the effects of the infringement, and make a public apology.

In theory, if damages can be proved, there is no limit on the amount of damages a court can award. If your losses or the illegal income of the infringer cannot be determined, the court may order the infringer to pay a maximum compensation of approximately RMB 500,000. However in reality, damage awards for copyright infringement have been relatively low, although large damage amounts have been awarded occasionally.

In circumstances that copyright infringement is at a large enough scale to constitute a crime, you can submit a criminal complaint and supporting evidence to the People's Court or the Public Security Bureau (police) for public prosecution. Criminal penalties can include imprisonment and monetary penalty.

Administrative actions

You may find that judicial proceedings are costly and time consuming, and preliminary injunctions are not always available or may be difficult to enforce in practice. China is unique in providing for administrative protection of copyright as an often faster and less-expensive alternative to judicial protection. The National Copyright Administration of China (NCAC) and local copyright administrative departments are primarily responsible for copyright administration. While not empowered to issue damages (which may only be granted by courts), the NCAC and local copyright administrative departments may order infringers to stop infringement of copyright, confiscate illegal income, confiscate and destroy pirated goods and the equipment and materials used to manufacture them, and issue fines.

In addition to NCAC and local copyright administrative departments, other administrative departments may play an important role in enforcing your copyright. The General Administration of Press and Publication (GAPP), State Administration of Radio Film and Television (SARFT), Ministry of Culture, and the State Administration for Industry and Commerce (SAIC) and local administrations for industry and commerce (AIC) may also accept certain types of complaints and conduct administrative enforcement actions for infringement of copyrights falling within their respective jurisdiction.

Border protection

It is estimated that approximately 80% of all counterfeit

goods worldwide come from China. Thus, copyright infringement and piracy in China is a concern for European SMEs in other markets in addition to China. Fortunately, border protection of copyrighted works and products by the General Administration of Customs (GAC) can be a cost-effective way to prevent counterfeit goods from entering or leaving China. You may directly apply to Customs to seize goods suspected of infringing a copyright or record your copyright with the GAC to take advantage of Customs' routine screening of shipments at all ports of entry/exit in China and facilitate seizures. If suspected infringing goods are seized, Customs will send you a notice. After you post a bond, Customs will conduct an investigation, issue a penalty decision if the goods are found to be infringing on your copyright, and then ask you how to dispose of the goods.

Can I enforce my copyright against infringers on the Internet?

China Copyright Law protects against the dissemination of a work on information networks without permission or remuneration. Furthermore, technological protection measures may be used to restrict the unauthorised access of copyrighted works including software and audio and video recordings.

China also recognises secondary liability for copyright infringement of ISPs. A copyright holder may request an ISP to disable links or access to alleged infringing works or products hosted on an ISP's network. Where the ISP complies, the ISP will not be liable for secondary infringement. However, if the ISP knew or should have known that alleged infringing works or products constituted an infringement, the ISP would remain subject to secondary liability for the underlying infringement.

Sample takedown notices and instructions can be found on NCA's website at <http://www.ncac.gov.cn/>. Notices must contain your name, contact information and physical address; a description and network address of the infringing work, performance or audio/video product to be removed; and preliminary evidence that proves the alleged infringement.

7. Conclusion

Though copyright is automatically granted and may be seemingly unimportant to some companies, your company probably owns more copyright than you might think. Copyright infringement of your product images, website content, photos, brochures, customer database, etc. can still lead to brand dilution, lost customer loyalty and lost profits. Your company should take proactive measures to identify all of your existing copyrights, prioritise them and register the ones you consider most important to your business. This will not only make proof of ownership much more straightforward in case of a copyright dispute but will also allow the option of using multiple types of rights to protect your design patents and/or trademarks. In addition, it is strongly recommended that you review your employee and commissioned work contracts to ensure it is clear who the copyright belongs to. This will help avoid potential copyright disputes and licensing issues in the future.

Copyright is an important form of IPR for all businesses and its protection should be considered a key pillar in your business' overall IPR strategy, alongside trademarks and patents.

Time

Action	Time	Additional notes
	A few weeks to several months, depending on the seriousness of the infringement	Typically, investigations will be carried out in several stages depending on the seriousness of the infringement, with each successive stage designed and conducting according to the intelligence gathered in previous stages.
Cease and desist	< 1 week to prepare and send the letter	Typically, a preliminary investigation, i.e., Internet searches will be necessary to identify the identity and address of the suspected infringer. Follow-up letters and negotiations may take several weeks or months.
Judicial actions	For first instance judgment: <ul style="list-style-type: none"> • 6 months (domestic litigations) • 18 months - 3 years (litigations involving foreigners) For second instance judgment: <ul style="list-style-type: none"> • 1 year from the date of appeal 	Duration of trial proceedings vary depending on the court and jurisdiction.
	No guidance. In some cases, action can be obtained within a few weeks.	NCAC must make a decision to accept applications within 15 days of receipt, but there is no time limit requirement for NCAC's commencement of an investigation, enforcement action or administrative decision.
Border protection	Recordal applications are processed within 30 days. Ad-hoc applications should be submitted as early as possible before the expected date of shipment of suspected infringing goods. Where goods are seized, rights holders have 3 days to notify Customs to seize suspected infringing goods and post a seizure bond.	

Fees

Action	Cost	Details
	RMB 13,000-27,000 for initial investigation	Fees may include investigators fees, lawyer fees for advice, coordination, etc., notary fees, and disbursements for sample purchases, trap orders, photographing, notarisations, etc.
Cease and desist	< RMB 7,000	Where an agent or lawyer is used, there may be additional fees for investigation and follow-up.
Judicial actions	Starting at RMB 350,000 up to first instance judgment	Fees may include court filing fees, security bonds for any preliminary injunctions, cost of investigations and evidence gathering, lawyer fees for advice, coordination, appearances, etc., notary fees, and disbursements for sample purchases, analysis, surveys, market research, trap orders, photographing, notarisations, etc.
	RMB 27,000-55,000	Fees may include administrative fees, cost of investigation and evidence gathering, lawyer fees for advice and coordination, and disbursements.
Border protection	Recordal fee: Approximately RMB 800 per recorded copyright Seizure bond amount: <ul style="list-style-type: none"> • For goods valued < RMB 20,000, equal to the value of the goods • For goods valued >RMB 20,000, equal to half the value of the goods, but no less than RMB 20,000 or more than RMB 100,000. • Approximately RMB 200,000 for a general bond 	Additional fees for storage and disposal of seized goods may also apply.

The China IPR SME Helpdesk provides free, confidential, business-focused advice relating to China IPR to European Small and Medium Enterprises (SMEs).

Helpdesk Enquiry Service: *Submit further questions to the Helpdesk via phone, email (question@china-iprhelpdesk.eu) or in person and receive free and confidential first-line advice within seven working days from a China IP expert.*

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Online Services: *Our multi-lingual online portal (www.china-iprhelpdesk.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.*



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