

5 questions about china law



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Anand1 ID 5283 Order # 137869 25 October 2006 5 questions about China law According to Copyright Law of PRC 2001, how many forms of works can be protected

The copy right law of PRC 2001 was formulated (FN 1) for protecting the works relating to literature, art, natural science, social science and engineering technology created in the following forms (Article 3 of Copyright Law of PRC, 2001):

Writings works;

Oral works;

Music, dramatic, quyi, dance and acrobatic works;

Painting and architectural works;

Photographic works;

Cinematographic works and works created by virtue of the analogous method of film production;

Graphic works such as diagrams of project design, drawings of product design, maps and sketches as well as works of their model, and

Computer software; and any other works set out by laws and administrative regulations.

However this Law does not apply to:

Laws, regulations, resolutions, decisions and decrees of state authorities and other documents of legislative, administrative or judicial nature, as well as their official translations;

News on current events; and

Calendar, numerical tables, general tables and formulas (according to Article 5 of Copyright Law of PRC, 2001).

2. Who is the copyright ownwer

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Authors, Chinese citizens, legal persons and other organizations shall become copyright owners according to Copy right Law of PRC, 2001 under following circumstances.

In general, copyright shall vest in the author, unless this law provided otherwise.

In relation to a work, the Chinese citizen who creates it shall be the author.

In relation to a work which is created under the sponsorship, and according to the will, of a legal person or any other organization, and for which the said person or organization has the responsibility, the said person or organization shall be regarded as the author.

If no proof to the contrary is available, the citizen, legal person or other organization whose name appears on a work shall be the author.

Copyright in a work derived from adaptation, translation, annotation or arrangement of a preexistent work shall vest in the adapter, translator, annotator or arranger, the exercise of which, however, may not infringe the copyright in the preexistent work.

Copyright in a work created by the collaboration of two or more persons shall vest in the joint authors. Any person who has not participated in the creation may not be identified as a joint author.

3. For a Chinese citizen copyright owner, how long can his right to lease a copyrighted work exist

In relation to a work of a Chinese citizen, term of protection for the right to lease his publication shall be the life of the author and 50 years after his death, and it expires on December 31 of the fiftieth year after the death of the author. In case of a collective work, term of protection expires on December 31 of the fiftieth year after the death of the last of the authors

(Article 21 of Copyright Law of PRC, 2001).

4. Can the general name of a product can be registered as trademark under the Trademark Law of PRC 2001

No. The genral name / generic name or model of a product or good in respect of which trade mark is used cannot be regisered as trade mark under the Trademark Law of PRC 2001 (FN 2). Similarly, the trade marks which consist exclusively of signs or indications which have direct reference to the quality, main raw material, function, intended purpose, weight, quantity or other characteristics of goods or services and the trade marks which are devoid of any distinctive character cannot be registered. Those signs identical with or similar to the State name, national flag, national emblem, military flag, or decorations, of the People's Republic of China, and those identical with or similar to the name of a particular venue where a central state government organization is located or the name or graph of the symbolic building of a central state government organization cannot be used as trade amrk. Similarly the names reflecting state names, international organisations, Red Cross and any name discriminating the other nations cannot be registered as trade mark. However, any visual sign capable of distinguishing the goods or service of one natural person, legal person or any other organization from those of others, including words, devices, letters, numerals, three-dimensional symbols, combination of colours or the combination of the said elements may be applied for the registration of a trademark (Article 8 of Trademark Law of PRC, 2001).

5. How long is the valid term of a trademark after it is registered

The registered trademark will be valid for a period of ten years from the date of registration (Article 37 of Trademark Law of PRC, 2001). When a registrant

wants to continue to use the registered trademark beyond the expiration of the period of validity, an application for renewal of the registration shall be made within six months before the said expiration. Where no application therefor has been filed within the said period, a grace period of six months may be allowed. If no application has been filed at the expiration of the grace period, the registered trademark shall be canceled. The period of validity of each renewal of registration shall be ten years.

References

FN 1 : Copyright Law of the People's Republic of China. 2001.

http://www.sipo.gov.cn/sipo_English/flfg/xgflfg/t20020416_34754.htm.

FN 2 : Trademark Law of the People's Republic of China. 2001. http://www.sipo.gov.cn/sipo_English/flfg/xgflfg/t20020416_34755.htm.