IP in the Creative Industry

This guide addresses the Intellectual Property (IP) issues often faced by creative businesses in various sub-sectors of the creative industry in China.

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.

Remember that copyright protects only the expression of an idea, not the idea itself.

Industrial Designs

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.

A design patent gives you the exclusive right to use or allow others to use your design in China for 10 years.

Trade Secrets

In China: on November 1st, 2019 the Anti-Unfair Competition Law will come into effect. In this law the definition of trade secrets is expanded beyond business and technology related information. Commercial know-how can now also be protected as a trade secret in Chinese courts.

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.

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.
Cost effective protection of creative ideas and designs in China generally requires a combination of knowledge, prevention and business savvy. Preventive strategies for the protection of IP generally include:

- **IP Contractual protection**
- **Preventive operating measures**
- **Registration of IP**

Industrial designs, invention patents, utility models, and trademarks must all be properly registered to be protected in China. Have a plan in place to determine which IP you will register.

You can protect your IP contractually by ensuring that your contract clearly stipulates the ownership of the IP and contains proper confidentiality provisions. In lieu of a full contract, insist on having a confidentiality agreement beforehand.

Business savvy and employing preventive operating measures can go a long way in ensuring that your IP is protected. Draw a line prior to negotiations on how far you are willing to skirt on IP protections so that you know when to walk away.