

# W&B IP Newsletter



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## Contents

### Patent

Amendment to the P.R.C. Patent Law to Take Effect on June 1, 2021 .....	2
CNIPA Publishes 2019 National Patent Agency Industry Development Report .....	3

### Trademark

Over 1000 China Domestic Goods Item Names included into the Madrid Goods and Services Database .....	3
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### Copyright

CNIPA Publishes 2019 China Internet Copyright Industry Development Report .....	4
CAVCA's Copyright Royalties in 2019 Reach 2.76 Hundred Million RMB .....	4

### Intellectual Property

2020 Top 500 Chinese Enterprises Published: Owning a Total of 484300 Invention Patents .....	5
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## Patent

### Amendment to the P.R.C. Patent Law to Take Effect on June 1, 2021

On October 17, the 22<sup>nd</sup> Session of the Standing Committee of the 13<sup>th</sup> National People's Congress voted through the *Amendment* to the P.R.C. *Patent Law* (the “*New Law*”). The *New Law* raises the upper limit of statutory damages to 5,000,000 RMB, and the lower limit to 30,000 RMB. The *New Law* will take effect on June 1, 2021.

The *Amendment* to the P.R.C. *Patent Law* this time mainly covers three important aspects:

(1) The first is to strengthen the protection for the patentees' legitimate rights and interests, including increasing the damages for infringement upon patent rights, improving the provisions on burden of proof, perfecting the pre-trial preservation against infringing conduct, bettering the administrative protection for patent rights, adding the principle of good faith, introducing the patent term compensation mechanism and adding provision relating to early resolution procedure for disputes over pharmaceutical patents.

(2) The second is to promote the exploitation and application of patent rights, including improving the mechanism for service inventions, introducing the opening licensing system for patents, and strengthening the patent conversion services.

(3) The third is to perfect the patent granting system, including further improving the mechanisms concerning protection for design patents, adding circumstances in which the grace period for novelty can be applied, and improving the mechanism for patent evaluation report.

In order to further strengthen the protection for IP rights, the *Amendment* introduces the mechanism of punitive damages. Specifically, the People's Court can determine the amount of damages between equivalent and five times the amount of the losses suffered by the patentee, the profits obtained by the infringer, or the licensing fee of the patent, and thus fully exert the deterrent power of law. The *New Law* also raises the amount of statutory damages by setting forth upper limit at 5,000,000 RMB and lower limit at 30,000 RMB.

To meet the needs of enterprises, the *Amendment* this time further improves the mechanisms relating to design patents:

(1) Protection will be granted for partial design patents.

(2) The protection term of design patents will be extended to 15 years.

(3) Domestic priority system is introduced for design patent applications: if an applicant files a patent application in China for the same subject again within six months after it/he files the application for the design patent for the first time in China, the applicant may enjoy priority.

In order to better confront emergency situations and extraordinary conditions such as the epidemic prevention and control, to promote timely application of the relevant invention and creation in areas such as disease treatment, to solve public health problems, and to respond to the inventors' needs for broadening the exceptional circumstances of non-loss of novelty, the *New Law* adds a new provision to the said exceptional circumstances to preclude loss of novelty, i.e. “(if the invention) is published for the sake of public interests for the first time when the nation encounters emergency situations or extraordinary conditions”.

## Patent

### CNIPA Publishes 2019 National Patent Agency Industry Development Report

To optimize the development environment for the patent agency industry and to consolidate the statistics, analysis and use of the industry's basis data, recently the IP Rights Application and Promotion Office under the CNIPA formulated and published the *2019 National Patent Agency Industry Development* (the "Report").

According to the *Report*, China's patent agency industry kept on growing in 2019, with its service ability gradually enhancing, its service scope constantly expanding and its operating system moving forward in a healthier direction. By the end of 2019, 47918 professionals across the nation have been qualified as patent agents, and 20192 of them have been actually practicing. The total number of patent agencies has reached 2691 (excluding Hong Kong, Macau and Taiwan regions).



(Source: National Intellectual Property Administration)

## Trademark

### Over 1000 China Domestic Goods Item Names included into the Madrid Goods and Services Database

Recently 1002 China domestic goods (services) items including "automobile motor spark plugs", "toy cameras", "yellow rice wine" and "traditional Chinese rice pudding" were added into the WIPO's Madrid Goods and Services Database. Chinese applicants will be able to directly fill in the application forms through the online application system for Madrid international registration of trademarks.

In recent years, to meet domestic enterprises' needs for "going abroad" trademark overseas portfolios, the National Intellectual Property Administration ("CNIPA") has identified Madrid international registration as an important step in the Administration's trademark work. The online application system for Madrid international registration of trademarks has been completed through independent development to smooth the full-course electronic

## Trademark

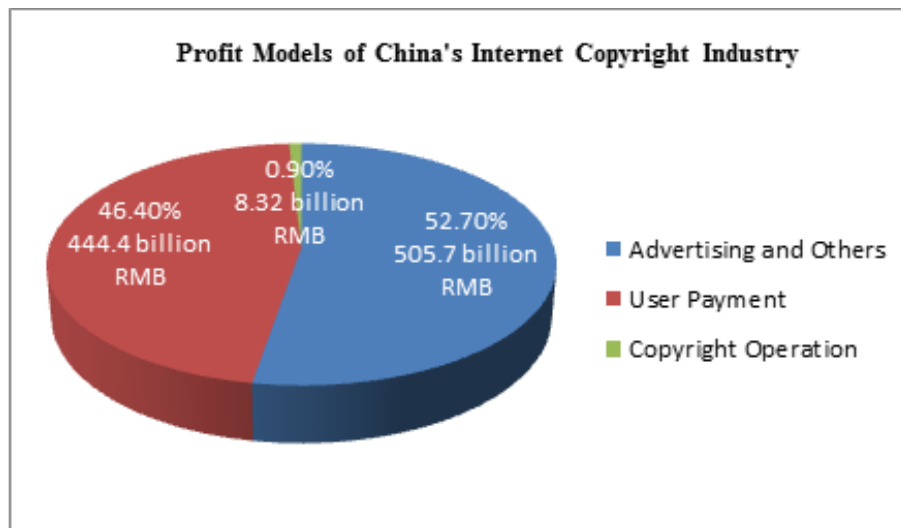
channel for Madrid international registration and further to enhance the efficiency of trademark overseas portfolios for domestic enterprises. Through January to September this year, CNIPA received a total of 5836 applications for Madrid international registration, at the year-on-year growth rate of 28.3%. By the end of June 2020, the accumulative number of valid Madrid international registrations filed by Chinese applicants has come to 41232.

(Source: the government affairs WeChat account of CNIPA)

## Copyright

### CNIPA Publishes 2019 China Internet Copyright Industry Development Report

Recently the National Intellectual Property Administration (“CNIPA”) published the *2019 China Internet Copyright Industry Development Report* (the “*Report*”). According to the *Report*, in 2019 the market scale of China’s Internet copyright industry reached 958.42 billion RMB at the annual growth rate of 29.1%. Major profit models of the industry include user payment, copyright operation and advertising income, the respective scales and proportions of which are shown in the chart below. In terms of the market structure, the core business trend of the industry kept stable, the industry structure became more diversified and the profit models were gradually formed. The new industry status presented great potential.

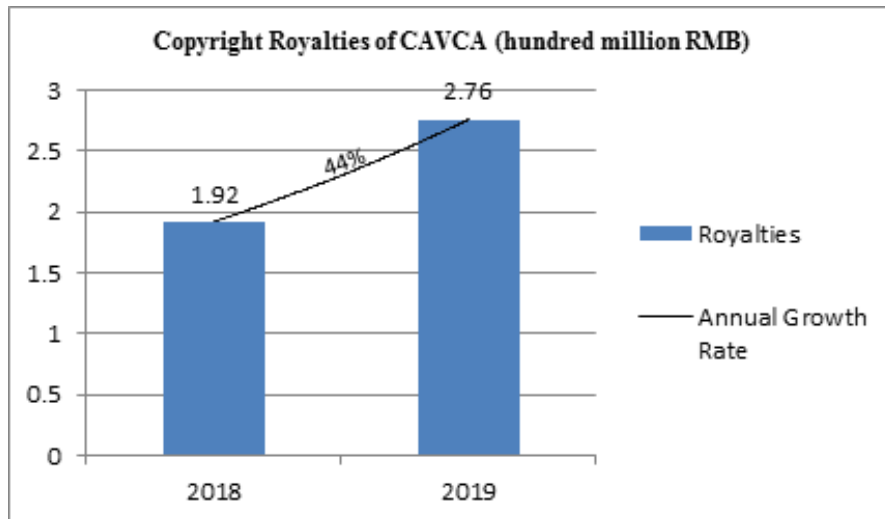


(Source: National Copyright Administration)

### CAVCA’s Copyright Royalties in 2019 Reach 2.76 Hundred Million RMB

Recently, China Audio-Video Copyright Association (hereinafter “CAVCA” or the “Association”) published its *2019 Annual Report* (the “*Report*”). According to the *Report*, in 2019 CAVCA collected copyright royalties in the total amount of 2.76 hundred million RMB, at the annual growth rate of 44% with respect to the 1.92 hundred million RMB in 2018.

## Copyright



In 2019 CAVCA also strengthened its licensing team building and market exploitation. Licensing business offices that were directly under the Association’s management were opened in the 31 provinces, autonomous regions or municipalities directly under the central government. In the second half of 2019, the Association launched its electronic contract signing system to optimize the contract signing procedure and enhance the work efficiency.

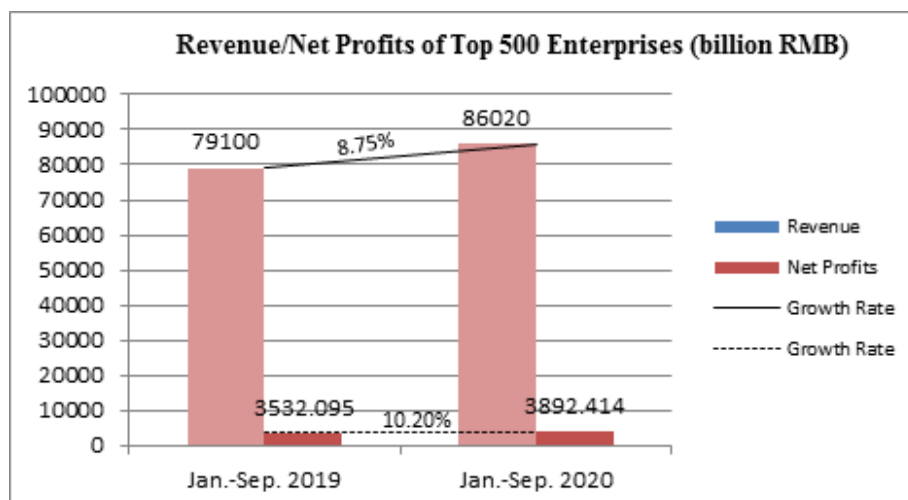
(Source: China Intellectual Property News)

## Intellectual Property

### 2020 Top 500 Chinese Enterprises Published: Owning a Total of 484300 Invention Patents

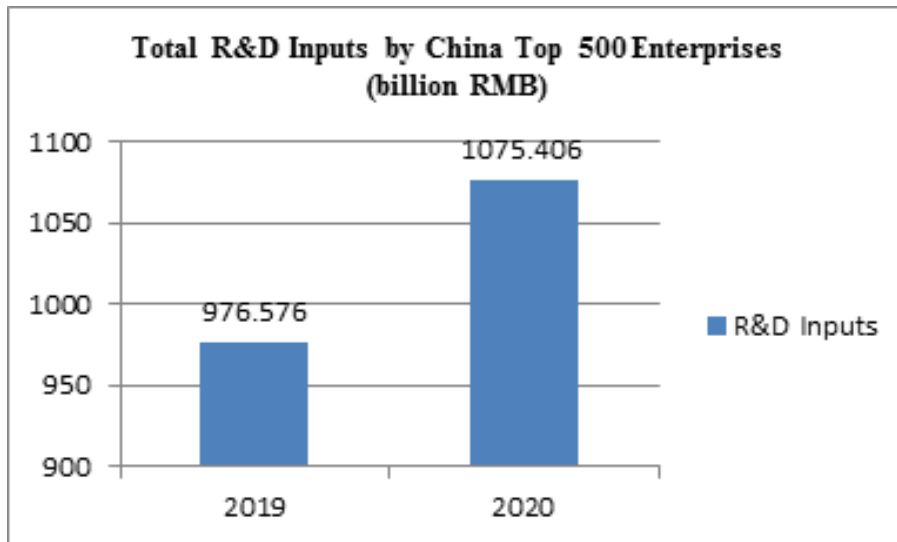
On September 28, China Enterprise Confederation and China Enterprise Directors Association published the list of “2020 Top 500 Chinese Enterprises”. As revealed by the relevant data, more and more large enterprises are empowering themselves by increasing R&D inputs and strengthening protection for IP rights.

Judging by the statistical data this year, the Top 500 Enterprises are showing healthy developments in their economic performance, with significant rises in both business revenue and net profits in 2020, as are shown in the chart below.



## Intellectual Property

431 out of the 2020 Top 500 Enterprises provided their R&D data (by comparison, 426 of the 2019 Top 500 Enterprises provided such data). Their total R&D inputs show a considerable increase with respect to the amount in 2019, as shown the chart below. In addition, the R&D inputs by the 2020 Top 500 Enterprises account for 63.55% of the total R&D inputs of all enterprises across the nation in 2019.



396 out of the 2020 Top 500 Enterprises provided their patent-related data (such number is equivalent to that in 2019). These enterprises own a total of 1,239,300 patents, arriving at the annual growth rate of 11.85%. Of these patents, 484,300 are invention patents, reflecting the annual growth rate of 19.40%.enterprises across the nation in 2019.

(Source: Economic Daily)