

Protecting Your Intellectual Property Rights (IPR) in China



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Discussion Topics

- Types of intellectual property in China—potential issues for pharma
- Territoriality
- The enforcement system in China
- U.S. and Chinese IPR enforcement resources
- Intellectual property is private property
- Common sense: The first line of defense
- Thinking strategically
- Not pulling the rip cord: Surviving a trade fair

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Types of Intellectual Property in China

- **PATENT:** Protects an invention, design, or utilitarian features of a product. Term of protection in China (non-renewable): 20 yrs (invention), 10 yrs (design), 10 yrs (utility model) patents. Utility models and design patents are NOT substantively examined before issuance and are quick and cheap to obtain. Associated issues for pharma: genetic resource disclosure, no patent term extension, “junk” patenting surrounds, claims translation, patentable subject matter
- **TRADEMARK:** A word, phrase, symbol, or design, or combination identifying the source of goods or services. Term of protection in China (renewable): 10 yrs. (The term “counterfeiting” often is used with trademark issues.) Associated issues: trademark squatting
- **COPYRIGHT:** Protects an original work in a (fixed) medium of expression (books, music, sculpture, movies, software). Term of protection in China (non-renewable): For individual authors, life of the author plus 50 years. For foreign entities: 50 years. (The term “piracy” is used with copyright issues.)



- **TRADE SECRET:** Confidential economic information that gives its owner a competitive advantage by reason of its secrecy, such as a formulary, business plan, or manufacturing technique. In China, unfair competition laws are used to protect and litigate trade secret cases. Overlap in China between *state* secrets and *commercial or trade* secrets is not always clear, particularly when a State-Owned Enterprise is involved.
- **OTHER:** Regulatory data protection issues (critical issue)



Territoriality

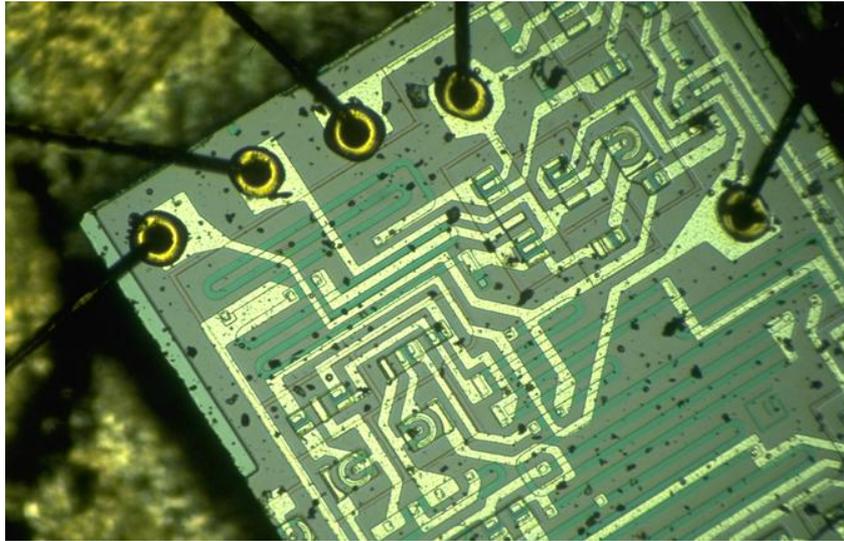
- Registrations of patents, trademarks, and copyrights are good only in the country in which they are registered. Rights stop at the border.
- This means that these rights must be secured on a country-by-country basis.
 - U.S: First to *USE* or *INVENT*
 - China: First to *FILE*
- U.S. Patents and Trademarks: www.uspto.gov
- U.S. Copyrights: www.copyright.gov
- Chinese Patents: http://www.sipo.gov.cn/sipo_English/
- Chinese Trademarks:
http://sbj.saic.gov.cn/english/index_e.asp
- Chinese Copyrights: <http://www.ncac.gov.cn>

The Enforcement System in China

Administrative
Enforcement

Civil Enforcement

Criminal Enforcement



Border Enforcement

U.S. and Chinese IPR Enforcement Resources

- U.S. Immigration and Customs Enforcement's (ICE) National IPR Coordination Center
- U.S. Department of Justice's Computer Crime and Intellectual Property Section (CCIPS)
- U.S. www.stopfakes.gov
- U.S. Embassy in Beijing, China – IPR information toolkit
- U.S. Customs and Border Protection e-Recordation website for recording registered trademarks and copyrights
- China's Economic Crimes Investigation Division (ECID) of the Public Security Bureau (PSB)

U.S. Immigration and Customs Enforcement National IPR Coordination Center

<http://www.ice.gov/iprcenter/>

National Intellectual Property Rights Coordination Center - Windows Internet Explorer

http://www.ice.gov/iprcenter/

U.S. Immigration and Customs Enforcement

Report suspicious activity
1-866-DHS-2-ICE

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Quick Links

- Detention & Removal
- IMAGE
- Office of Intelligence
- International Affairs
- Office of Investigations
- National Intellectual Property Rights Coordination Center
- About National IPR

National Intellectual Property Rights Coordination Center

February 3, 2010

What is the National IPR Coordination Center?

[About the National IPR Coordination Center](#)

What We Do

- [Fact Sheet](#)
- [Report an IPR Violation](#)

Headline News

9/2/2010 Washington, DC
Federal investigation of illegal heavy imports from China

[Sign up to receive IPR email updates](#)

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U.S. Department of Justice Computer Crime and Intellectual Property Section (CCIPS)

<http://www.justice.gov/criminal/cybercrime/>

The screenshot shows a Windows Internet Explorer browser window displaying the website for the Computer Crime & Intellectual Property Section (CCIPS) of the United States Department of Justice. The browser's address bar shows the URL <http://www.justice.gov/criminal/cybercrime/>. The website features the Department of Justice seal on the left and the title "Computer Crime & Intellectual Property Section" followed by "United States Department of Justice". Below the title is a navigation menu with tabs for "Home", "Computer Crime", "Intellectual Property", "Electronic Evidence", "Other High Tech Legal Issues", and "About CCIPS". A search bar is located below the navigation menu. The main content area is divided into two columns: "Latest Press Releases" and "Hot Documents".

Computer Crime & Intellectual Property Section
United States Department of Justice

Home Computer Crime Intellectual Property Electronic Evidence Other High Tech Legal Issues About CCIPS

News Site Index Search

Latest Press Releases

- Former Paint Manufacturing Chemist Pleads Guilty to Stealing Trade Secrets Valued up to \$20 Million (September 1, 2010)
- Miami Man Pleads Guilty to Purchasing, Selling and Using Stolen Credit Card Information (September 1, 2010)
- Chinese National Charged with Economic Espionage Involving Theft of Trade Secrets from Leading Agricultural Company Based in Indianapolis (August 31, 2010)
- Chico Man Sentenced for Embezzling \$693,000 from Charity (August 27, 2010)
- Iowa City Woman Convicted of Accessing President's Student Loan Records (August 27, 2010)

Hot Documents

- **How to Report Cyber and IP Crime**
 - How to Report Computer- and Internet-Related Crime
 - How to Report Intellectual Property Crime
- 2010 Joint Strategic Plan on Intellectual Property Enforcement(PDF) (June 2010)
- Testimony of Deputy Assistant Attorney General Jason M. Weinstein on Combating IP Crime (PDF) (December 2009)
- USA Bulletin on Economic Espionage and Trade Secrets (PDF) (November 2009)

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www.stopfakes.gov

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STOPFAKES.GOV

Protecting Intellectual Property Rights

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Initiatives

- ▶ **SME IPR Training Tutorial**
 - English
 - Français
 - Español
- ▶ International IP Advisory Program
- ▶ DHS-Customs Recordation Tool
- ▶ USPTO Small Business Page

Toolkits

- ▶ Brazil Toolkit
- ▶ Brunei Toolkit
- ▶ China Toolkit
- ▶ Croatia Toolkit
- ▶ Egypt Toolkit
- ▶ European Union Toolkit
- ▶ India Toolkit
- ▶ Italy Toolkit
- ▶ Korea Toolkit
- ▶ Malaysia Toolkit
- ▶ Mexico Toolkit
- ▶ Paraguay Toolkit
- ▶ Peru Toolkit
- ▶ Russia Toolkit
- ▶ Taiwan Toolkit
- ▶ Thailand Toolkit
- ▶ Vietnam Toolkit

[File an IPR Complaint](#)

What's New in StopFakes



Our SME IPR Training Tutorial has been translated into French and Spanish!

Now available in three languages (English, French and Spanish), our online IPR training tutorial, Understanding Intellectual Property Rights, helps you to assess your intellectual property assets, protect them in the United States, and enforce them worldwide. Learn more by clicking on the links to the left!

The U.S.-EU Intellectual Property Rights (IPR) Working Group Meets in Brussels

On June 7, a session of the U.S.-EU Intellectual Property Rights (IPR) Working Group was held in Brussels. The meeting was co-chaired by the European Commission Directorate General (DG) for External Trade for the European Union and

Programs

- ▶ [China IPR Webinar](#)

Publications

- ▶ [ACTA Fact Sheet](#)
- ▶ [IP Quarterly Update](#)
- ▶ [STOP! Accomplishments and Initiatives](#)
- ▶ [2008 NIPLECC Report](#)
- ▶ [STOP! Brochure link](#)
- ▶ [Top 10 Ways to Protect Yourself](#)



[China IPR Resources](#)

FAQs

- ▶ [Frequently Asked Questions](#)

Independent Organizations

- ▶ [Coalition Against Counterfeiting and Piracy](#)
- ▶ [WTO](#)
- ▶ [WCO](#)
- ▶ [WIPO](#)

U.S. Embassy, Beijing, China: IPR Information Toolkit

<http://beijing.usembassy-china.org.cn/ipr.html>

The screenshot displays a Windows Internet Explorer browser window. The address bar shows the URL <http://beijing.usembassy-china.org.cn/ipr.html>. The browser's title bar reads "Embassy of the United States Beijing, China - Intellectual Property Rights". The website header features the U.S. Embassy logo, the text "EMBASSY OF THE UNITED STATES BEIJING • CHINA", and a search bar. A navigation menu includes links for Home, About Us, Visas, News, U.S. Citizen Services, Issues in Focus, and Culture & Education. The main content area is titled "Intellectual Property Rights" and includes a sidebar with "Issues in Focus" categories such as Environment & Climate Change, Trade and Economy, Regional Security, Health, Human Rights, Intellectual Property Rights (highlighted), and U.S.-China Strategic. The main text area contains the following sections:

- INTELLECTUAL PROPERTY RIGHTS** (with Email and Print icons)
- Intellectual Property Rights in China**
 - [Introduction](#)
Introduction by U.S. Embassy, Beijing, China
 - [Protecting your Intellectual Property Rights \(IPR\) in China](#)
Provides information on China's current IPR environment, protection through prevention, China's IPR enforcement system, how the US government can help in IPR infringement cases, and information resources.
 - [Copyright](#)
Provides information on legislation, what copyrighting exactly protects, registering, market entry planning, enforcement approaches and how to address infringement (including administrative adjudication, civil litigation, customs, other sources of protection), "Ask the Experts", FAQs, and a collection of copyright-related legislation.
 - [Patent](#)

The browser's status bar at the bottom indicates "Done" and "Internet | Protected Mode: On".

U.S. Customs and Border Protection e-Recordation website for recording registered trademarks and copyrights

<https://apps.cbp.gov/e-recordations/>

Customs and Border Protection (CBP) - Intellectual Property Rights e-Recordation (IPRR) - Windows Internet Explorer

https://apps.cbp.gov/e-recordations/

File Edit View Favorites Tools Help

U.S. Customs and Border Protection
Securing America's Borders
DHS.gov

IPRR INTELLECTUAL PROPERTY RIGHTS e-RECORDATION

Welcome to the Intellectual Property Rights e-Recordation (IPRR) application.

CBP IPR Enforcement
Copyright Registered Trademark

This new method for filing initial trademark and copyright registration applications will greatly decrease the amount of time and paperwork normally required, thus providing more timely enforcement of your intellectual property rights. (* Please note: An electronic application for trademark and copyright "renewals" and "tradename" recordations is not yet available. For additional information, please review the "Renewals" and "Tradename" sections at the bottom of this page.)

The filing of this electronic application will begin the administrative recordation process with CBP. A separate application is required for each recordation sought. Applications will be processed in the order in which they are received. The recordation fee for copyrights is \$190. The recordation fee for trademarks is \$190 per International Class of goods. By submitting this application on-line, you agree to supply the documents specified in [19 CFR 133.3](#) for trademarks, and [19 CFR 133.33](#) for copyrights, upon request by CBP. Failure to do so will result in your recordation being suspended pending receipt of the documents.

We recommend that you have the following materials and information readily available before you begin the application process:

- ✓ U.S. Patent & Trademark Office Registration Number or the U.S. Copyright Office Registration Number
- ✓ Digital images of the protected mark/work in ".jpg" or ".gif" format that accurately depict the right to be protected. Individual image files are limited to 2MB.
- ✓ Familiarization with the applicable regulations

- ▶ [Trademarks: 19 CFR 133.1 et seq.](#)
- ▶ [Copyrights: 19 CFR 133.31 et seq.](#)

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Intellectual Property is Private Property

- Intellectual property rights are private rights. The owner of a patent, trademark, or copyright who finds it being infringed or illegally copied must commence action to stop it. The U.S. Government cannot do this for you.
- The U.S. Government cannot serve as a rights-holder's attorney. Individuals and businesses should protect their rights using the services of COMBINED advice from qualified US AND local INTELLECTUAL PROPERTY counsel. Discussions with Embassy and Consulate officials are not a substitute for hiring counsel to protect your rights. Selection of counsel is a personal choice based on numerous factors.
- Some factors to consider in hiring legal counsel:
 - IP qualifications (you may need more than one lawyer if more than 1 type of IP)
 - Experience with YOUR technology sector (i.e., biotech/pharma)
 - Experience with China's business and its regulatory climate
 - Established relationships with local Chinese counsel/US IP counsel
 - Sources: US bar associations & legal directories, trade associations, your competitors!

Common sense: The first line of defense

- Register your patents, trademarks, and copyrights in the U.S., China, and wherever you do business, or THINK you will do business. You cannot protect it unless it is registered.
- BEFORE you go into a foreign country to talk about a potential business relationship or attend a trade show, work with IP counsel to develop an overall intellectual property rights protection strategy. Do not disclose any IP to anyone until it is registered in China. Do not depend on confidentiality, noncompetition, or nonsolicitation contracts to protect you against loss of IP or key employees in China---BE SURE your potential partner, partners and employees enter into such contracts with you, but do not assume these contracts will protect you effectively. DO be prepared to take action (and spend money) to enforce them, however.

Common sense: The first line of defense

- Conduct due diligence of potential foreign partners. Vet them thoroughly, and continue to monitor them, even after a relationship has been established. The U.S. Foreign Commercial Service can help: www.export.gov and www.buyusa.com.
- Budget for active protection (including litigation) of your IP in China. Determine which parts of your IP you CANNOT afford to lose, perhaps within a very short time; consider maintaining such IP elsewhere.
- Record U.S.-registered trademarks and copyrights with U.S. Customs and Border Protection: <https://apps.cbp.gov/e-recordations/>. Record Chinese registrations with China Customs.

Thinking strategically

- Strictly limit availability of information at trade shows (e.g., limit number of samples displayed; no photos allowed).
- Register patents, trademarks, and copyrights in key foreign markets where IPR violations are common. Consider defensive registration of house marks and key brands as trademarks and domain names in China (.CN). Prevent trademark and domain-name squatting. Remember that China is a “first-to-file” jurisdiction.
- Register the copyright in catalogs, packaging, and promotional materials. Be prepared to be persistent, and, sometimes, disappointed. You must think strategically, and be in for the long haul.