

IP PROTECTION IN CHINA'S DIGITAL ECONOMY

- Matias Zubimendi 19 November 2021

CHINA
IP SME HELPDESK

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IP Factsheet: Mainland China



1. THE FACTS: Business in Mainland China for EU Companies
(Source: DG Trade)



SIZE of Market:

- EU exports to Mainland China: EUR 173.5 billion
- EU imports from Mainland China: EUR 299.9 billion
- Total trade in goods: EUR 473.4 billion

> Mainland China is the EU's second largest trading partner, after the USA.
 > The EU is China's largest trading partner.

Key INDUSTRY SECTORS:

- > EU exports to Mainland China are dominated by machinery and equipment, motor vehicles, aircraft, and chemicals.
- > Mainland China's key export items to the EU include machinery and equipment, footwear and clothing, furniture and lamps, and toys.

1 THE FACTS: Business in Mainland China for EU Companies
Key INDUSTRY SECTORS

2 IPR in Mainland China for SMEs: BACKGROUND
Intellectual Property Rights for SMEs: Why is this RELEVANT to you?
How does Mainland China's IP legal framework compare to INTERNATIONAL STANDARDS?

3 IP Rights in Mainland China THE BASICS
A. Copyright
B. Patents
C. Trade Marks
D. Geographical Indications (GIs)
E. Trade Secrets

4 Using CUSTOMS to block counterfeits

5 Enforcing your IP
Administrative actions
Civil Litigation
Criminal Prosecution

6 RELATED LINKS and Additional Information

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Protecting Your Trade Secrets in China

Prevention is the key to protection.



WHAT EXACTLY CAN BE A TRADE SECRET

SOMETHING THAT

- 1 is not publicly known
- 2 has commercial value
- 3 you took measures to keep secret

expressions of ideas

know-hows, manufacturing or design techniques

status of products or services under development

valuable business information, lists, cost and price information

TRADE SECRETS

KEEP IT SECRET, KEEP IT SAFE

It is important to remember that once trade secrets become publicly known, they can no longer be protected as trade secrets.

CONFIDENTIAL

DON'T FORGET YOUR EMPLOYEES

- Limit access and copying rights to the personnel who actually need it.
- Require all employees to sign an employment agreement with strict confidentiality provisions.
- Be sure to hold exit-interviews and have them return documents, materials, computers, and files.
- Establish an internal management system for trade secrets. Training and clear written guidelines are essential.

DEALING WITH THIRD PARTIES

Business dealings or negotiations with third parties, potential partners, suppliers, contractors, licensees, or customers

monitor your partners, suppliers or licensees to make sure they are complying with your trade secrets protection policy

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Speaker's Bio



| | |
|----------------|---|
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Mr. Matias Zubimendi is the IP Business Advisor at China IP SME Helpdesk, where he advises European SMEs on intellectual property rights matters. Mr. Zubimendi holds a Master's degree in Chinese Civil and Commercial Law from Peking University as well as a Master's degree in Intellectual Property Law from Austral University in cooperation with the World Intellectual Property Organisation. Mr. Zubimendi has a strong background in both business development and intellectual property rights protection, having previously worked as a China Business and Legal Consultant at Terragene, where he focused on business development and as a Director of Legal Affairs at Conquer Europe. Previously, he has also worked as a Patent and Trademark Attorney at Phoebus Abogados and Mazzeo & Canet, where he represented SMEs as well as Fortune 500 companies.

Mr. Zubimendi has given lectures at various conferences including the Ibero-American Conference on Chinese Studies and published several articles including *The legal protection of intangibles in the video games industry*. As a Professor Assistant, he has also given lectures on Commercial Law and Procedural law, while focusing on Copyright and AI in his research. Mr. Zubimendi is a native Spanish speaker fluent in English.



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10. Other Courts
11. Copyright

01

What IPRs are Relevant in E-commerce

- For SMEs



1.1

Trade mark

- Company
- Products

1.3

Industrial designs

- Products

1.2

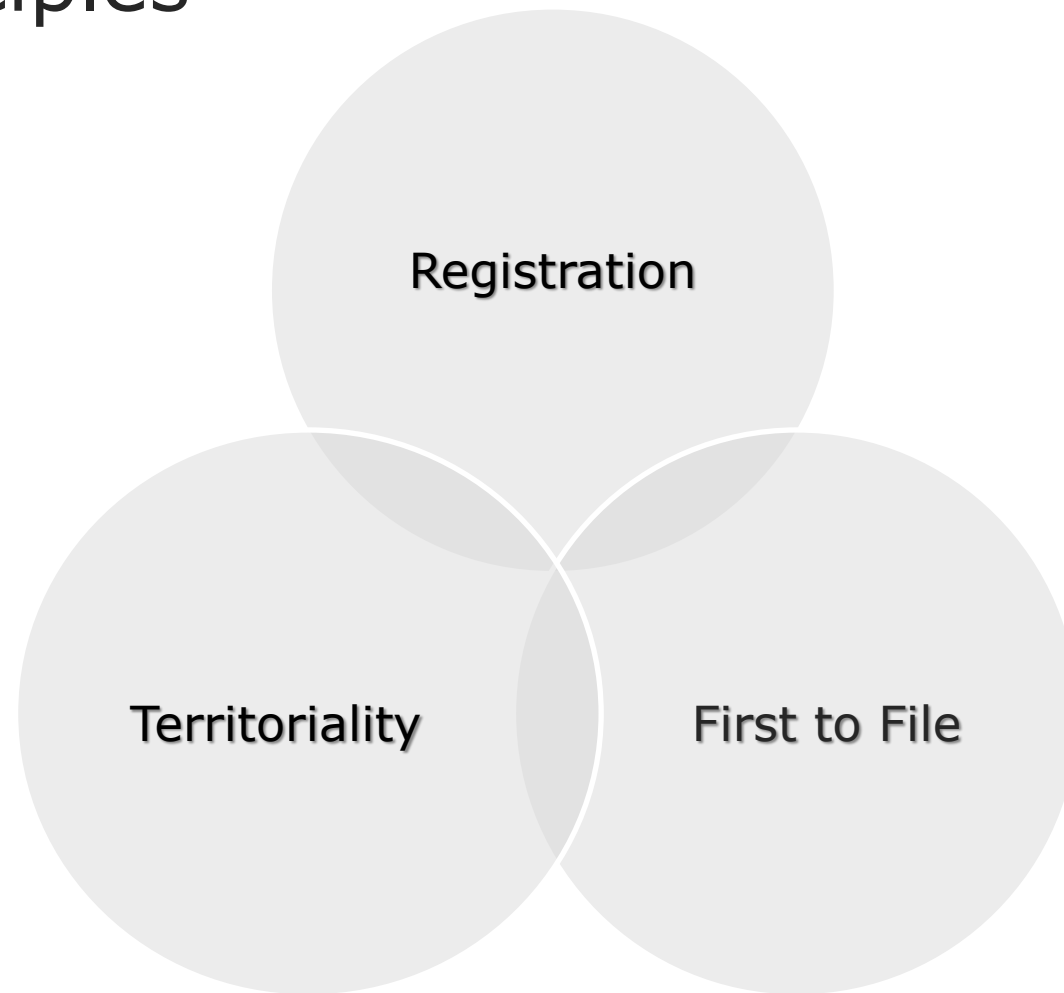
Copyright

- Brands
- Pictures - Photos
- Texts - Descriptions

1.4

Trade secrets

02 | Main Principles



03

Digital Economy

Basics and challenges



3.1

What is digital economy?

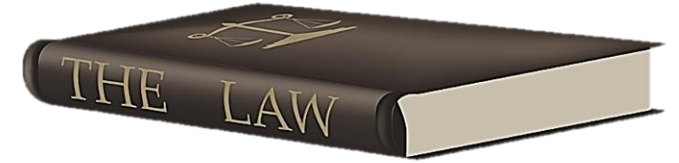
- Economy based on electronic goods & services
- Produced by electronic businesses
- Traded through electronic commerce platforms

3.2

Challenges

- E-commerce
- Artificial Intelligence
- Blockchain
- Internet Courts

04 | E-Commerce Law (2019)



4.1

Joint Liability (*art. 45*)

- Seller
- E-Commerce platform

4.2

The “necessary measures” for IPRs protection

- IPRs own protection rules (*art. 41*)
- Notice & take down as a dispute resolution method (*art 42*)
- Times to response (*art. 44*)

4.3

Penalties

- Fines up to RMB 2 million

04 | New Amendments to the E-Commerce Law

4.4

Future reforms

- Draft open for comments
- 2 amendments

4.5

The guarantee system for in-platform operators

- The problem with 11/11 or 618

4.6

Fake evidence

- Penalties
- Solutions suggested



05 | Profile Creation

5.1

Type of profile

- Personal
- Corporate

5.2

Necessary documents

- Identity
- IPR certificates
- Licenses?

5.3

Times

- 1 up to 3 months

5.4

Common issues

- Language barriers
- Legalisation
- Contact with the platform



06

Enforcement

Basics

6.1

Surveillance

- Regular control
- Evidence collection

6.3

Tips for enforcement

- Register your trade marks in advance
- Register your logos as copyright
- Use blockchain for saving evidence
- Use technology for trade mark protection

6.2

Enforcement

- Dispute resolution methods (notice and take down)
- Regular courts
- Internet courts

07

Surveillance

Check the market

7.1

Conducting surveillance

- Sellers
- Products
- Images

7.2

Platform programs

- AI surveillance
- How to have access to the programs



08

Evidence

Think before acting



8.1

How to react if you spot an infringement?

- Collect information about the seller
- Collect evidence

8.2

Digital evidence

- Blockchain

8.3

Platform programs

- Purchase samples
- Notaries

09

Notice & Take-down

The first attempt



9.1

How to start a notice & take-down procedure?

- Profile must be created
- IPRs have to be uploaded
- Identify the sale

9.3

What can I obtain through this process?

- Removal of the sale
- Closing of the store
- Compensation for damages?

9.2

Process

- Start of the notice & take-down
- Notification to the seller
- Defense by the seller
- Notification to the IPR holder
- Decision or further actions

10

Other courts

Different jurisdictions



10.1

Regular courts

- Long process
- No specialisation

10.3

Internet courts

- Short process
- High specialisation
- Reduced jurisdiction

10.2

IP Courts

- Long process
- High specialisation

10.4

How do internet courts work?

- Online process
- Digital evidence
- Digital documents
- Times

11

Copyright

An option for unregistered IPRs



11.1

The Berne Convention

- Beginning of protection
- Why to register then?

11.3

Strategy

- Overcoming the problem of unregistered IPRs

11.2

What can I protect?

- Photos
- Written documents
- Drawings
- Trade mark logos

11.4

What can I achieve?

- Taking down the sale
- Being compensated?

Questions?

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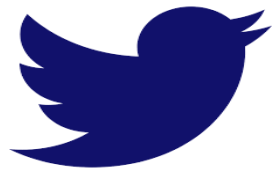
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