



## CRACKING THE CODE: EFFECTIVE STRATEGIES TO TACKLE CHINESE INTELLECTUAL PROPERTY THEFT AND SAFEGUARD INNOVATION

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### ABSTRACT

*Intellectual Property (IP) theft is an escalating issue in the global economy, and Chinese companies and the country itself have been identified as major perpetrators. This illegal activity poses a significant threat to the Intellectual Property system, which is designed to encourage innovation and creativity. This research paper delves into the methods used by China to conceal Intellectual Property theft and shield their actions from the scrutiny of international law. By employing scientific and comparative analysis, the paper sheds light on real-life instances of Intellectual Property theft and the underlying reasons why companies engage in these illicit practices. The paper also investigates the use of joint ventures and various platforms by China to facilitate the theft of Intellectual Property. The paper provides a comprehensive examination of the impact of Intellectual Property theft on innovation and creativity. It reveals how China has become a hub for Intellectual Property theft and has effectively utilized strategies to succeed in this illegal business. This research paper also examines the various strategies that have been proposed to combat Chinese theft of intellectual property. Through a review of relevant literature and case studies, the study identifies the most effective strategies and provides recommendations for businesses and governments. The findings suggest that a combination of legal action, diplomatic pressure, and technology-based solutions can help to reduce the prevalence of intellectual property theft in China. The research concludes with a call to action, outlining the measures that must be taken by countries to combat IP theft and protect the rights of innovators and creators. With its well-researched, comprehensive analysis and thoughtful recommendations, this paper provides a powerful call-to-action for addressing this crucial issue with an urge of protecting intellectual property rights, and fostering innovation and creativity.*

**Keywords:** Intellectual property theft, China, Human right, Privacy, Legal action.

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## Introduction

Intellectual property rights (IPR) play a pivotal role in promoting and protecting innovation. These rights grant legal protection to creators and owners of original works, including patents for inventions, trademarks protection for logo, copyright for literary, dramatic, musical and artistic works, and ambit of trade secrets for preservation of confidential information. The purpose of Intellectual Property Rights is to incentivize creativity and innovation by providing its creators and owners with economic rights and exclusive rights for their skill and hard work.

Robusting the protection of intellectual property rights (IPR) has been proven to stimulate economic growth and encourage innovation. Research by the Organization for Economic Cooperation and Development (OECD) has established a positive correlation between strong patent protections and increased spending on research and development, as well as the import of high- tech products.<sup>3</sup> The World Intellectual Property Organization (WIPO) assesses a nation's level of innovation by examining the number of patent applications filed. IPR is an important factor in the development of a state, and the absence of effective machinery for the protection of these *intangible* rights can definitely hinder the growth and progress of society. Intellectual property has now become a crucial part of the societal development in any state, i.e., without these standard regulations that safeguard these intangible rights, our society would unavoidably suffer from suboptimal innovation.

From being the country with the highest number of patent applications to the country involved in stealing Intellectual Property. According to a 2021 report by the U.S. Chamber of Commerce, China is responsible for over 70% of global counterfeiting and piracy. China is the main perpetrator when it comes to intellectual property infringement. The United State government and firms have shifted their focus from *Chinese Intellectual Property protection and enforcement* (for example, to counter piracy and counterfeiting) to *cyber incursions and strategic acquisitions*.<sup>4</sup> Recently, CrowdStrike, a California-based cyber security company, revealed that China violated its cyber agreement soon after executing a pact between himself and in 2015. Ex U.S. President Donald Trump has imposed tariffs of US \$550 billion worth

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<sup>3</sup> Park, W. G. and D. C. Lippoldt (2008), "Technology Transfer and the Economic Implications of the Strengthening of Intellectual Property Rights in Developing Countries", *OECD Trade Policy Working Papers*, No. 62, OECD Publishing. 4- 26 (2008).

<sup>4</sup> President XI at the 20th national congress of the CPC: Strengthen legal protection of intellectual property rights, The National Law Review. Available at: <https://www.natlawreview.com/article/president-xi-20th-national-congress-cpc-strengthen-legal-protection-intellectual> (Accessed: February 02, 2023).

of U.S. imports from China to penalize it for the crime it has committed.

A 2022 survey by the American Chamber of Commerce in China found that 22% of U.S. companies in China had experienced intellectual property infringement in the past year. This is a significant increase from the 16% of companies that reported infringement in 2021.<sup>5</sup> How to combat these Intellectual Property Violation is the real question. Are these fines/penalties sufficient enough to refrain China from stealing the Intellectual Property Rights of its lawful owner? Certainly not. We can derive that all these hefty fines have not affected China and its role in stealing Intellectual Property will not stop or come to an end.

China has adopted a type of à la carte globalization meaning it makes rules and standards it finds convenient in a particular situation. China has taken a selective approach to globalization, adopting only those norms and standards that align with its interests and disregarding those that challenge its unique political and economic system. This approach has allowed China to take advantage of opportunities to develop its businesses and investments overseas while maintaining control over its domestic affairs.<sup>6</sup> However, it is also evident that China's government is more involved in shaping economic and security policies than those of other countries. This greater level of government involvement may help China to achieve its goals more effectively, but it also raises concerns about the extent of state control over the economy and society.<sup>7</sup> Also, it raises questions on the relationship between the government and the private sector, as well as the balance between economic growth and individual freedoms.

To achieve its goal of becoming more effectively, China sometimes obtains trade secrets maliciously (which is an old practice adapted by it). One such instance is of 2011, where American Superconductor Corporation filed the largest suit ever for Intellectual Property theft in Chinese court, asking for \$1.5 million as compensation. In return a Chinese company Sinovel laid-off its 600 workers and refused to \$800 million it owned to American Superconductor Corporation. This Chinese company uses American Superconductor Corporation software to power up the turbine which makes itself the world's second largest company in this field. The Chinese used illegally American Superconductor Corporation's software, without its lawful owner's permission which is indeed in it an act of theft of

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<sup>5</sup> Eric Rosenbaum Published Fri, Mar 1 2021 5:00 PM EST. from <https://www.cnbc.com/2019/02/28/1-in-5-companies-say-china-stole-their-s-ip-within-the-last-year-cnbc.html>.

<sup>6</sup> Lipton, G. 2018. *The elusive 'better deal' with China*. In *The Atlantic*. Retrieved Aug 19, 2021, from <https://www.theatlantic.com/international/archive/2018/08/china-trumptrade-united-states/567526/>

<sup>7</sup> *The White House*. 2019. *Accelerating America's Leadership in Artificial Intelligence*. *The White House*, Feb 11. available at, <https://www.whitehouse.gov/articles/accelerating-americas-leadership-in-artificial-intelligence> (last accessed May 21, 2021).

intellectual property.<sup>8</sup>

On February 28, 2007, a Chinese woman named Hanjuan Jin<sup>9</sup> was detained by customs department at O'Hare Airport in Chicago. She was found in possession of \$30,000 in cash and certain confidential documents from Motorola, the former wireless division of Motorola Solutions, in her luggage. Jin was a former Motorola employee who had been on medical leave before traveling to Beijing in 2006. She had previously worked as an engineer and was responsible for supplying phones to the Pentagon. During investigation, authorities discovered that Jin had resumed her job at Motorola in 2007 and began gathering confidential information for a Chinese telecom company called Sun Kaisens, which was known to work for the Chinese military. In 2012, Jin was convicted of stealing trade secrets and sentenced to four years in prison, as well as a \$20,000 fine. During her trial, the Hon'ble judge said: *"The most important thing this country can do is protect its trade secrets" & emphasized the importance of protecting trade secrets in the United States. The case highlighted the ongoing threat of economic espionage and the need for companies to take measures to safeguard their intellectual property.*<sup>10</sup>

The *Oreo cookie brand* has been the subject of intellectual property disputes in the past as well.<sup>11</sup> In 2014, a former employee of Mondelez International, which owns the Oreo brand, named *Qinghai Zhao*, was charged with stealing a trade secret related to the white cream filling used in Oreo cookies. Zhao was accused of sharing the stolen recipe with a Chinese company, leading to concerns about economic espionage and theft of trade secrets by foreign entities. In 2016, Zhao pleaded guilty to one count of stealing trade secrets and was sentenced to five years in prison. While it is not clear exactly how Zhao obtained the recipe, the case was seen as an example of the U.S. government's efforts to crack down on economic espionage and trade secret theft, particularly by Chinese companies and individuals.

In 2014, *Huawei*, a Chinese multinational technology company, was accused of infringing on patents owned by *Inter Digital*, a US-based wireless technology company. The patents in question related to 3G and 4G wireless technology, which are essential to the functioning of

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<sup>8</sup> *Court imposes maximum fine on Sinovel Wind Group for theft of Trade Secrets (2019) The United States Department of Justice. Available at: <https://www.justice.gov/opa/pr/court-imposes-maximum-fine-sinovel-wind-group-theft-trade-secrets> (Accessed: March 23, 2023).*

<sup>9</sup> UNITED STATES V. HANJUAN JIN, (FEB 8, 2012), 833 F. SUPP. 2D 977 (N.D. ILL. 2012)

<sup>10</sup> U.S. Department of Justice United States Attorney Northern District of ... (2012) U.S. Department of Justice. U.S. Department of Justice. Available at: [https://www.justice.gov/archive/usao/iln/chicago/2012/pr0829\\_01.pdf](https://www.justice.gov/archive/usao/iln/chicago/2012/pr0829_01.pdf) (Accessed: March 24, 2023).

<sup>11</sup> Kester, W.C. (1984) E.I. du Pont de Nemours & Co.: Titanium dioxide, E.I. du Pont de Nemours & Co.: TitaniumDioxide - Case - Faculty & Research - Harvard Business School. Harvard Business School. Available at: <https://www.hbs.edu/faculty/Pages/item.aspx?num=6119> (Accessed: June 28, 2022).

mobile devices. The Justice Department of United States charges Huawei<sup>12</sup> with racketeering and theft of trade secrets. Late in 2014, two of the engineers of Huawei Company visited T-Mobile's labs. They used to visit the lab to steal the information and took finger prints of *Tappy the robot*, which they used for fast finger touch sensor. When T-Mobile labs got to know about the theft, it was too late for them to handle the situation. Huawei apologized for the misconduct and fired both the employees. By using this technology, Huawei earned a growth of \$95 Billion making it second largest company in the world. This is again questionable whether China had a direct hand in this mischief caused or Huawei has been portrayed as the main perpetrator in the offence committed by shifting the burden on the Chinese Worker for the said theft of Intellectual Property? This is the reason why the U.S. Justice department banned Huawei to sell its product in U.S.

Intellectual Property Right (IPR) theft is a major challenge faced by the creators and owners in today's globalized economy. Some prominent examples of this challenge can be seen in the cases of Huawei & Oreo (hereinbefore discussed). Huawei, a multinational tech giant based in China, has been accused of widespread IPR theft, including the theft of patented technology from companies like T-Mobile and Cisco. Despite attempting to protect its own IPR, Huawei faced significant roadblocks due to resistance from governments and international organizations that viewed its technology as a threat to national security. This case underscores the complex interplay between IPR protection and political and geopolitical considerations that creators and owners must navigate in order to safeguard their intellectual property.

In a similar vein, the Oreo case vividly illustrates the daunting obstacles that creators and owners face in safeguarding their IPR in a competitive marketplace. Despite being a beloved and widely recognized cookie brand, Oreo struggled to protect its trademark in China, where it faced fierce competition from numerous copycat brands. Despite its best efforts, Oreo found it difficult to enforce its trademark in China's legal system, which was perceived as biased in favor of domestic companies. This case serves as a poignant reminder of the challenges creators and owners face in countries where the enforcement of IPR laws is weak or ineffective, and the critical importance of global cooperation and stronger IP protections.

The high-profile Huawei and Oreo cases serve as stark reminders of the formidable challenges that creators and owners face in safeguarding their intellectual property rights (IPR) and the difficulties of enforcing these rights. Both these cases highlight the difficulties faced by

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<sup>12</sup> UNITED STATES OF AMERICA V. HUAWEI TECHNOLOGIES CO., LTD, JAN 24, (2019) ·Cr. No. 18-457 (S-2) (AMD).

creators and owners in protecting their Intellectual Property Rights and the difficulties in enforcing these rights in the face of widespread IPR theft. These cases underscore the need for a stronger and more effective IPR system, one that offers robust protection for innovators and proprietors, and ensures that these rights are enforced vigorously both domestically and internationally. Such a system is essential for promoting innovation, driving economic growth, and safeguarding the interests of creators and owners, enabling them to reap the benefits of their intellectual capital.

### **Primary Drivers behind Intellectual Property Theft:**

Generally, Intellectual Property theft occurs when there are loop holes in the internal security or control systems are insufficient. Intellectual Property theft may involve equipment, drawings, software, trade secrets, or client and vendor lists. Intellectual Property theft is often motivated by the desire to gain an economic advantage by copying or stealing the products, technology, or ideas of others. In some countries, weak Intellectual Property protection laws and ineffective enforcement make it easier for Intellectual Property theft to occur. Intellectual Property theft can sometimes be motivated by competition, where companies or individuals seek to gain an advantage over their rivals by copying their products, technology, or ideas. Intellectual Property theft is prevented and detected through simple tools.<sup>13</sup>

At present, it can be asserted that China's intellectual property laws largely fulfill its obligations under the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), a process that was accelerated by China's admission to the WTO. Despite this, difficulties persist in terms of actual implementation of these regulations.<sup>14</sup> The problem is pervasive and affects all types of Intellectual property rights. In addition, the problem is not confined to underground counterfeiting networks, legitimate companies regularly engage in I.P. infringement with impunity and frequently target senior or knowledgeable personnel of competitors in order to acquire trade secrets and confidential information. Foreign competitors frequently accuse Chinese firms of flagrant patent infringement.<sup>15</sup>

Protection of such counterfeiting at National level appears to be at the heart of massive piracy

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<sup>13</sup> Jeffrey M. Klink, "Take these counter-measures to prevent China IP thefts", January 25, 2021 1:08 pm, <https://fcablog.com/2021/01/25/take-these-counter-measures-to-prevent-china-ip-thefts/>

<sup>14</sup> Bryan Mercurio, "The Protection and Enforcement of Intellectual Property in China since Accession to the WTO: Progress and Retreat", *China Perspectives* [Online], 2012/1 | 2012, Online since 30 March 2015, connection on 24 March 2023. URL: <http://journals.openedition.org/chinaperspectives/5795>; DOI: <https://doi.org/10.4000/chinaperspectives.5795> (Accessed: February 24, 2023).

<sup>15</sup> Robertson, J. (2022) Startup searches China's internet for signs of intellectual property theft, Bloomberg.com.Bloomberg. Available at: <https://www.bloomberg.com/news/articles/2022-07-12/startup-searches-china-s-internet-for-signs-of-intellectual-property-theft> (Accessed: February 27, 2023).

in China, which often involves and the entire community (including criminal elements) profiting from the infringing operations.

According to numerous reports, one of the primary reasons for the prevalence of intellectual property theft is the involvement of local government officials who are often directly or indirectly linked to companies that profit from counterfeit and pirated goods.<sup>16</sup> In addition, the Chinese community as a whole benefits from the increased employment opportunities and economic growth associated with the production and distribution of these goods.<sup>17</sup> This creates a situation where geo-politics will become a crucial factor in the enforcement of intellectual property laws, as the interests of both government officials and citizens must be considered. The fundamental issue is not the lack of written laws for Intellectual Property protection, but rather the government is above the rule of law and its use of law for achieving its objectives. Thus, despite the existence of administrative and legal hurdles to effective enforcement of Intellectual Property rights, the lack of political will power remains the most significant obstacle to combating Intellectual Property theft in China. China's President Xi Jinping has pledged to take necessary steps to safeguard the lawful rights and benefits of foreign intellectual property rights (IPR) owners and prohibit the coercion of technology transfer.<sup>18</sup>

The Chinese Constitution guarantees freedom of expression and the right to vote, but these provisions are widely recognized as being unenforceable. Similarly, it is generally accepted that the Chinese system does not inflict punishments severe enough to serve as a deterrent, even when the infringers were effectively identified.<sup>19</sup> The Chinese State Administration of Industry and Commerce reported that, out of 22,001 cases reported in 2000, only 45 were forwarded to the Public Security Bureau for criminal prosecution. The typical punishment for those who found guilty was a US 794 dollar fine, and the typical compensation given by administrative authorities to a brand owner was around US 19 dollar fine.<sup>20</sup>

### **Long Term Effect of Intellectual Property Theft on Society:**

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<sup>16</sup> Massey, Joseph A. (2006) *"The Emperor Is Far Away: China's Enforcement of Intellectual Property Rights Protection, 1986-2006," Chicago Journal of International Law: Vol. 7: No. 1, Article 10.*

<sup>17</sup> Li, Y. (1996) *Evaluation of the Sino-American intellectual property agreements: A judicial approach to solving the local protectionism problem, Columbia Journal of Asian Law.* Available at: [https://journals.library.columbia.edu/index.php/cjal/user/setLocale/en\\_US?source=%2Findex.php%2Fcjal%2Farticle%2Fview%2F3164](https://journals.library.columbia.edu/index.php/cjal/user/setLocale/en_US?source=%2Findex.php%2Fcjal%2Farticle%2Fview%2F3164) (Accessed: February 03, 2023).

<sup>18</sup> Calls for Chinese crackdowns on piracy (2005) UPI. UPI. Available at: <https://www.upi.com/Defense-News/2005/05/17/Calls-for-Chinese-crackdown-on-piracy/44181116369129/> (Accessed: September 12, 2022).

<sup>19</sup> Id.

<sup>20</sup> Daniel C.K. Chow (2006), "Why China Does Not Take Commercial Piracy Seriously," *Chio Northern University Law Review* 203, 203–5. Volume 9 Number 2 (Accessed: Feb 27, 2023)

The issue of Intellectual Property Right (IPR) theft has become very prevalent in today's society, which has with serious long-term consequences for individuals, businesses, and society as a whole.

Intellectual Property theft constitutes a violation of fundamental human rights, and has a detrimental impact on the economy and innovation. There are several reasons why IPR theft is crucial. It constitutes a direct infringement on the rights of inventors and proprietors. The Intellectual Property Rights regime has built upon patents, trademarks, copyrights, and trade secrets, which offer a way for individuals and corporations to defend and benefit from their innovations. When these rights are disregarded, it is equivalent to stealing valuable assets, and hampers the capacity of creators and owners to earn profits from their investments.

From a legal perspective, IPR theft has significant implications for the economy. The World Intellectual Property Organization (WIPO) acknowledges the crucial role of robust IPR protection in encouraging investment in research and development. When IPR theft occurs, it can result in diminished competitiveness, grown inflation, also a tragic decrease in innovation, hindering economic growth and impeding overall economic progress, which are all violations of economic rights and obligations.

IPR theft also has a negative impact on public trust in the legal system. When the rights of creators and owners are not adequately protected, it undermines the overall effectiveness of the IPR system and creates a sense of cynicism and mistrust in the institutions that are supposed to protect these rights. This can have far-reaching consequences for the rule of law, and for the ability of society to rely on the legal system to resolve disputes and protect fundamental rights.

It is also a serious issue that demands the attention of lawmakers and legal professionals. It is essential to take effective measures to prevent and combat IPR theft, in order to protect the rights of creators and owners, foster economic growth, and preserve public trust in the legal system.

### **IPR Theft Inconsistent with Human Rights and Right to Privacy:**

Intellectual property rights (IPR) theft is considered to be inconsistent with human rights and the right to privacy. IPR infringement involves the unauthorized use or exploitation of someone else's intellectual property, such as trademarks, patents, copyrights, or trade secrets, without their permission or compensation.

This type of theft can harm the creators or owners of intellectual property, as it can lead to a loss of revenue or competitive advantage. Which infringes the fundamental right to practice any



profession or to carry on any occupation, trade or business to all citizens enshrined Article 19(1)(g) in the Indian Constitution. Infringement of intellectual property rights can also violate an individual's right to privacy. For example, pirating copyrighted material can involve accessing and copying private or sensitive information from a computer without permission. This type of unauthorized access to someone's data can breach their right to privacy and may even violate laws protecting against computer hacking and data breaches.

Additionally, IPR theft can harm the consumers who rely on the safety and quality of the products or services that the intellectual property protects. Also, the consumers right to ownership, possession and enjoyment of a good whether movable or immovable gets affected. In international scenario according to Article 12 of the Universal Declaration of Human Rights Act of 1948, the entitlement to privacy is acknowledged as a fundamental human right. The article declares that individuals should not face unwarranted intrusion into their personal lives, families, homes, or communications, nor should they be subjected to assaults on their dignity or reputation. In conformity with the Articles of UDHR the Supreme Court of India in 2017 in the case of *Justice K.S Puttaswamy (Retd.) v. Union of India and Ors.*, which made Right to Privacy is part of Right to Life, giving it the apex platform and due importance in consonance with the growth and development in the country.

The International Court of Justice is majorly involved in the resolving the disputes between the states and providing advisory opinions on legal questions alarmed/raised to it by authorized United Nations organs and specialized agencies. The ICJ does not have a specific position on intellectual property rights (IPR) or infringement of privacy. These issues are usually addressed through national laws and regulations, as well as international treaties and agreements.

The ICJ has issued advisory opinions on related legal issues. For example, in 2014, the ICJ provided an advisory opinion on the legality of the use of nuclear weapons in self-defense, which touched on the issue of the protection of fundamental human rights, including the right to life and the right to privacy.

Both human rights and IPR are equally important striking a balance between the two is equally essential for the welfare of human rights. Theft of IPR would not only impact the human rights of creator but the users too. So, IPR theft rises alarm about the upcoming future cyber wars.

### **International Stance on China'S Intellectual Property Theft:**

The international community, including many countries and international organizations, has expressed concerns about intellectual property theft by China. It has been a significant issue in trade relations between China and the United States, as well as other countries. Despite

ongoing efforts to resolve the issue through negotiations and trade agreements, a definitive solution has yet to be reached.

The western governments have prioritized the protection of their commercial interests both inside and outside of their borders. Several nations have brought up China's massive IP loot in international forums, including the United States, Australia, Canada, and the European Union.<sup>21</sup>

The consequences of hacking corporations are detrimental. It's interesting to note that many Chinese businesses keep such information secret for years. Many of them are afraid of suffering enormous financial losses and are also legally obligated to uphold the contracts for a set period. This is certainly because of the lucrative nature of the Chinese economy and the market it offers. China's transformation is among the fastest and largest of any nation in human history. Powered by rapid urbanization, the country has quickly evolved from a rural, traditionalist culture to a modern, consumerist one.<sup>22</sup>

Many rural Chinese have relocated to metropolitan areas in response to the growth of China's manufacturing sector. As a result, there is now a huge demand for automobiles, high-end items, seafood, mobile phones, etc. This evolution is still critically in progress. Since Chinese customers are eager to learn about and try out new products and services that focus on technology, businesses can take advantage of the country's burgeoning technological sector. Further, its 31<sup>st</sup> rank<sup>23</sup> in ease of doing business is another factor attracting many MNCs to stay despite the looming threat of IPR breach over them.<sup>24</sup>

Moreover, due to global commitments, these companies cannot simply withdraw from China. The process of relocating a base, especially a manufacturing hub, is not simple, and can take anywhere from one night to several months. In addition, businesses seek low-cost production and labor to keep costs low and revenue high. As a result, despite losing billions of dollars due to Intellectual Property theft over the course of years, many trading companies remain active in China. In addition, domestic Chinese businesses and conglomerates are reaping huge

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<sup>21</sup> Rozen, M. (2020) *EU chides China and others for IP breaches - again*, *Financial Times*. *Financial Times*. Available at: <https://www.ft.com/content/0d48a5dc-9362-11ea-899a-f62a20d54625> (Accessed: February 27, 2023).

<sup>22</sup> Doland, A. (2020) *Doing business in china just got harder*, *Ad Age*. Available at: <https://adage.com/article/news/china-marketing-brand-business-culture/2210006> (Accessed: February 27, 2023).

<sup>23</sup> *World Bank Group (2019) Doing business 2020: China's strong reform agenda places it in the top 10 Improverlist for the second consecutive year*, *World Bank*. *World Bank Group*. Available at: <https://www.worldbank.org/en/news/press-release/2019/10/24/doing-business-2020-chinas-strong-reform-agenda-places-it-in-the-top-10-improver-list-for-the-second-consecutive-year> (Accessed: February 27, 2023).

<sup>24</sup> *Doing business in China: Advantages and disadvantages, back to top*, <https://www.wolterskluwer.com/en/expert-insights/doing-business-in-china> (Accessed: Feb 27, 2023).

financial benefits from riding on the bandwagon of their foreign counterparts.

On the other hand, many people claim they have had a positive experience doing business in China, with few obstacles and substantial gains. One can reasonably take into account China's dynamic economy, full potential for development, massive and stable market, global business network, most populous nation, superior infrastructure, wise regulatory framework, and unbelievable cheap labor market when making a decision to set up shop in China. Most importantly, unlike any other country in Asia, China's political system has been relatively stable since October 1949, when the Communist Party of China assumed power.<sup>25</sup>

### **European Union'S Stand on Theft of Intellectual Property by China:**

The European Union (EU) and China have been at odds over the issue of intellectual property (IP) theft. The European Union has expressed concern about the rampant theft of Intellectual Property by China, to address this issue, the European Union has taken a strong stance on Intellectual Property protection and has implemented several measures to promote IP protection and combat Intellectual Property theft which has had a detrimental impact on the rights of European Union companies and individuals.

The European Union has negotiated stronger Intellectual Property protection provisions in trade agreements with China and other countries. This has involved ensuring that Intellectual Property rights are respected and protected in accordance with international law and agreements, such as the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The European Union has also supported legal actions against Intellectual Property theft and counterfeiting through its judicial system and the World Trade Organization.

The European Union (EU) has implemented various measures to address the issue of intellectual property theft effectively. Some of these actions include:

**Enhancing Trade Agreements:** The EU has proactively negotiated more robust intellectual property protection provisions in trade agreements, both with China and other nations. These efforts aim to establish stringent safeguards for European companies' intellectual property rights when conducting business in international markets.

**Supporting European Companies:** Recognizing the significance of intellectual property for businesses, the EU has dedicated resources and support to assist European companies in

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<sup>25</sup> Angela Doland, doing business in China just got harder Ad Age (2020), <https://adage.com/article/news/china-marketing-brand-business-culture/2210006> (last visited Feb 7, 2023)

safeguarding their intellectual property. This includes providing guidance, legal assistance, and educational resources to help companies protect their innovations, patents, trademarks, and copyrights.

**Raising Awareness:** The EU has launched awareness campaigns to emphasize the importance of intellectual property protection among businesses and citizens. These initiatives are aimed at educating the public about the economic benefits of respecting intellectual property rights and the potential consequences of intellectual property theft.

In addition to the above initiatives, the European Union has extended support and resources to European companies to secure their intellectual property when conducting business in China and other countries. This includes providing hands-on advice on Intellectual Property protection and supporting the enforcement of Intellectual Property rights. The European Union has also increased awareness among its companies and individuals about the significance of Intellectual Property protection and the hazards posed by IPR theft.

The European Union takes a resolute stance on IPR theft by China and is dedicated to safeguarding the rights of its companies and citizens. The European Union continues to take action to address the issue of IPR theft by China and to advance strong Intellectual Property protection for European businesses operating in China and other countries.

### **Current State of Intellectual Property Rights Protection**

The current state of IPR protection is a mixed bag. On one hand, there have been significant advancements in IPR protection in recent years, particularly in the area of digital content. Countries around the world have implemented new laws and regulations to protect copyrighted works and combat piracy. For example, the Digital Millennium Copyright Act (DMCA) in the United States and the Copyright Directive in the European Union are just two examples of new laws designed to protect intellectual property in the digital age.

However, there are still significant challenges facing IPR protection. One of the biggest challenges is the issue of enforcement. Even with new laws and regulations in place, it can be difficult to enforce IPR protections, particularly in countries with weak legal systems or lax attitudes towards piracy. In addition, the rise of new technologies like 3D printing and artificial intelligence (AI) is creating new challenges for IPR protection, as it becomes easier to create and distribute infringing copies of protected works.

### **Combating the Theft of Intellectual Property**

Combating the theft of intellectual property (IP) requires a multi-faceted approach that includes both legal and practical measures. From a legal standpoint, it is important to enforce existing Intellectual Property laws and agreements, such as the World Trade Organization's

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), to hold those who engage in Intellectual Property theft accountable. This can be done through international trade agreements, legal action in national courts, and other legal mechanisms.

In addition to legal measures, there are also practical steps that companies and individuals can take to protect their Intellectual Property. These may include:

- (a) Conducting regular security audits to identify and address vulnerabilities in their systems and
- (b) Networks implementing strong data protection measures, such as encryption and access controls, to secure sensitive information.
- (c) Keeping Intellectual Property documentation up to date and filed with the relevant government agencies.
- (d) Monitoring and acting against counterfeit products and unauthorized use of Intellectual Property raising awareness among employees, partners, and the public about the importance of Intellectual Property protection.

In the whole elaborated scenario, general action against China has been sanctions and tariffs, but what cannot be ignored is that China can quickly pay off its tariffs, paying such tariffs is not a permanent solution to the recurring problem of theft of intellectual property rights. Many objections have been raised in WIPO regarding gross violation of intellectual property rights, but unfortunately, this could not refrain China from stealing trade secrets. How does China make the theft of I.P.R. practically possible in today's time at a global level is not hidden from developed countries.

China sets up Joint ventures with a particular company and keeps track of all the data, messages, and e-mails related information of that company from which it wants to steal the secrets. Another thing which China is doing that applying for the patent considering itself the true owner of the new technology possessed by theft. Moreover, it finally claims to be the true owner.

To stop it from doing all these malicious acts, *Dupont's example* can be a perfect method to understand the problem and the solutions thereof. Keeping track of retired employees not only the current employees because the retired employees need to be humbly reminded of the consequences of non-disclosure agreement. The need of the hour is that the governments should adopt deterrent approach while punishing the offender entities. Also, in order to

prevent Beijing from utilizing Chinese equipment to steal U.S. intellectual property, the U.S. government has severely discouraged American telcos from employing Chinese technology.<sup>26</sup>

One positive indicator of China's likely adherence to the rule of law is the country's heavy reliance on international trade and the necessity of conducting business in other nations. By applying its own laws against lawbreakers, including those from China, a country can effectively pressurize China to adhere to the rule of law. Multinational corporations such as Apple, Facebook, Google, HSBC, Samsung, and Uber have been the targets of successful legal action in European Union and United States courts. If a country's government is complicit in the theft of intellectual property rights from another country, the victim country may consider using trade-related sanctions in accordance with the rule of law to put pressure on the offending government to stop the theft.

Addressing intellectual property theft requires a comprehensive and exhaustive approach to combat the alleged issues qua the same, which involves various stakeholders, including governments and companies. To effectively combat this issue, political will and subsequent actions taken are essential at the federal, provincial, and local levels of governance, which can be asserted as follows:

Political Will and Action: The union and state governments play a pivotal role in combating intellectual property theft. They need to show strong determination (political will) to tackle and resolve the issues and take concrete actions to enforce the existing laws. This can include allocating (a) resources to law enforcement agencies, (b) establishing specialized organizations to handle intellectual property crimes, and (d) strengthening more severe punishments for offenders.

Collaboration among Governments: Intellectual property theft is not limited to a single country's jurisdiction. Rather, continuous support and cooperation among governments is very much essential to create a cohesive and efficient response to the problem. Besides that, sharing information and the best practices adopted will lead to better coordination in tackling intellectual property theft.

Efforts to be taken on behalf of companies: It is essential for companies to proactively identify the visiting vulnerabilities in their intellectual property rights (IPRs) domain and understand the potential risks which they may face from the theft of such rights. Conducting regular

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<sup>26</sup> JON BATEMAN, Carnegie Endowment for International peace U.S.-CHINA TECHNOLOGICAL "DECOUPLING" A STRATEGY AND POLICY FRAMEWORK, [https://carnegieendowment.org/files/Bateman\\_US-China\\_Decoupling\\_final.pdf](https://carnegieendowment.org/files/Bateman_US-China_Decoupling_final.pdf) (last visited Feb 27, 2023).

assessments of their IP assets, implementing strong security measures, and monitoring potential threats can be certain measures in implementing the same. Additionally, companies can develop savvy strategies, such as investing in innovative technologies to safeguard their intellectual property, employing legal measures to enforce their rights, and actively engaging in public awareness campaigns against piracy and counterfeiting of the intellectual properties.

Addressing Root Causes: It is essential to understand the underlying factors contributing to intellectual property theft, which may include analyzing economic, social, and technological aspects that facilitate piracy and counterfeiting. By addressing the actual root causes, policymakers can create more effective and targeted solutions to mitigate the said problem.

International Cooperation: It is now an undisputed fact that Intellectual property theft is a global issue, and it requires a global solution implementable for every country concerned. The different governments and companies have to work together to strengthen intellectual property protection and the different enforcing mechanisms.

Proactive Measures to be taken by Companies: Companies need to be proactive in protecting their intellectual properties. This may include taking steps to secure their intellectual properties, such as implementing strong cybersecurity measures, and being aware of the risks of intellectual property theft. Companies should also conduct due diligence on their suppliers and partners to ensure that they are not taking steps that could compromise their intellectual property.

Raising Awareness: The general public needs to be aware of the risks of intellectual properties' theft and how to protect the same. Governments and companies should raise awareness through different educational campaigns and public outreach programs.

Another effective measure could be diverse and secure data establishment. Separate networks need to be made and cutting the existing network which can be easily track able and traceable. Technology constraints can reduce China's ability for unfair behavior.

The first step in combating Intellectual Property theft is to strengthen domestic Intellectual Property laws and enforcement mechanisms. This includes revising existing Intellectual Property laws to better reflect current realities, as well as ensuring that these laws are being effectively enforced. Such a framework would establish a clear legal framework to secure the rights of intellectual property creators and owners and act as a deterrent against IPR theft.

Trade agreements also play a critical role in Intellectual Property protection by establishing strong Intellectual Property protection provisions in international trade agreements. This can

help to ensure that companies' Intellectual Property rights are protected when they do business in other countries and can serve as a deterrent to Intellectual Property theft.

Public-private partnerships are also essential to the effective protection of Intellectual Property rights. Governments and private companies can work together to raise awareness about the importance of Intellectual Property protection and to develop strategies to combat IP theft. This can include joint efforts to improve Intellectual Property laws and enforcement mechanisms, as well as the sharing of information and best practices.

Finally, companies can take a proactive approach to Intellectual Property protection by implementing strong cybersecurity measures and regularly monitoring their systems for vulnerabilities. This can help to prevent Intellectual Property theft by cyberattacks and ensure that companies' Intellectual Property rights are protected in the digital age.

### **Journey Ahead:**

Undoubtedly, the theft of intellectual property by Chinese entities is a complex and growing problem that requires a comprehensive, multi-faceted response. By strengthening domestic Intellectual Property laws and enforcement mechanisms, cooperating with other countries and organizations, negotiating strong Intellectual Property protection provisions in trade agreements, implementing technology transfer controls, and taking proactive cybersecurity measures, companies and governments can help to protect Intellectual Property rights and foster a more innovative and sustainable global innovation ecosystem. Also, it is important for the international community to work together to address the problem of Intellectual Property theft and promote the protection of Intellectual Property rights.

An effective IPR protection is critical for promoting innovation and growth. Without strong IPR protections, businesses and individuals may be less likely to invest in research and development or bring new products and services to market. Conversely, effective IPR protection can help incentivize innovation and encourage businesses to take risks and pursue new ideas.<sup>27</sup>

However, there are also risks associated with overly strict IPR protections. In some cases, strict IPR protections can stifle innovation and limit competition, particularly in industries where there are only a few dominant players. This can lead to a lack of diversity in the marketplace and higher prices for consumers.

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<sup>27</sup> For background on the importance of the unconditional MFN principle, see Daniel Griswold, "Mirror, Mirror, on the Wall: The Danger of Imposing 'Reciprocal' Tariff Rates" (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, January 2019).



Overall, the future of IPR protection is likely to be shaped by a complex interplay of technological, economic, and legal factors. While there are certainly challenges associated with effective IPR protection, the potential benefits for innovation and growth make it an issue that will continue to be important for policymakers and businesses around the world.

## **Conclusion**

Theft of Intellectual Property which infringes the human rights of the owners and users is a clear violation of international law and must be taken seriously. Along with violating legally recognized the right to privacy & rights to property. Intellectual Property theft can deprive the rightful owners of significant potential revenue, and, more broadly, it can blunt incentives for innovation by depriving successful creators of their economic rewards. Some countries have engaged themselves in activities that amount to theft of intellectual property (IP). This theft has taken place through various means, including cyber-attacks and hacking, the forced transfer of technology through joint ventures, and the production and sale of counterfeit goods.

These actions by the different government and companies operating in international or foreign countries are in violation of international laws and agreements, including the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The theft of Intellectual Property all over the world has caused significant harm to the companies and individuals who hold the Intellectual Property rights, as it has resulted in the unauthorized use and misappropriation of their proprietary information and products.

Given the gravity of the issue and the harm caused, it is imperative that appropriate legal remedies be pursued to hold the appropriate government and companies accountable for their actions and to protect the rights of Intellectual Property holders. The international community must also work together to address the problem of Intellectual Property theft and ensure that Intellectual Property rights are respected and protected.

Intellectual Property theft is illegal and can have serious consequences for both the individuals and companies involved, as well as for the economy. It is crucial to take steps to protect Intellectual Property rights and to hold those who engage in Intellectual Property theft accountable for their actions. The Governments should strengthen their legal frameworks to provide a more robust system of protection for intellectual property rights. This could include the introduction of stronger penalties for infringers, greater collaboration between law enforcement agencies and the private sector, and the introduction of civil remedies for rights holders.

When Intellectual Property Theft and breach of right to privacy is a global problem then one country should collaborate with other countries for making stringent laws and sharing of technology. Intellectual property theft is a global problem, and international cooperation is essential to tackle it effectively. Governments should collaborate with other countries to share information and intelligence and coordinate efforts to combat counterfeiting. Technology solutions, such as blockchain and digital watermarking, can be used to help protect intellectual property rights. These technologies can be used to verify the authenticity of products and track their distribution, making it more difficult for counterfeiters to operate.

Intellectual property benefits drive a company's effectiveness and progress, so a trademark, patent, trade secret and copyright protection should be an integral part of every security strategy. Building a strong line of defense requires country-wide involvement nationally and internationally. Knowing that threats of theft are rising, countries should ensure they have stringent security policies revolving around sensitive data protection.

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