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Belt and Road Initiative: An Overview of Intellectual Property Protection and Cooperation

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Abstract

One Belt One Road (OBOR) is currently known as Belt and Road Initiative (BRI) which was initiated by China and considered a game-changer mega project not only for the regions attached with but also for the whole world. BRI is going to connect the continent Asia, Middle East, Europe, and Africa through the different routes of roads, railway tracks, optic cable and gas pipelines fiber, and so on. The development of the routes has consisted on the land and sea routes. The land routes called the Silk Road Economic Belt, and the routes through the sea are called Maritime Silk Road. It is also levitating the many questions about the validity, influence at the vicinity, and its implementation. Legal rights of China should be protected in the BRI countries, and the element of IP violation also engaged with. This research study has an emphasis on the intellectual property protection, cooperation, promotion, and awareness regarding the BRI. Through the BRI, Chinese corporations and firms are spreading and establishing their commercial enterprises in all BRI countries. That's the way the highly belongings intellectual property rights protection, and concerned cooperation with BRI is essential to aware and enhance IP protection and cooperation between the BRI countries and China.

Keywords: Belt and Road Initiative, IP rights, IP Rights Cooperation, IP Rights Protection

THE BELT AND ROAD INITIATIVE

The idea of Belt and Road was suggested for the first time by the President of Peoples Republic of China Mr. Xi Jinping, during his visited to Kazakhstan 2013. In October 2013 at the informal meeting of APEC leaders "The 21st Century Maritime Silk Road" was put forward by Xi Jinping firstly for enhancing maritime cooperation with ASEAN countries. BRI is a compressed form of the Silk Road Economic Belt and the 21st Century Maritime Silk Road, and the Central Committee of CPC of the Communist Party of China and the State Council of China has made its great strategic decision accordance with worldwide fluctuating in command to head up the international and domestic complete situation. Cooperation between China and the BRI countries in every field is a necessity of the time to complete the initiative in its true nature. It is an important characteristic of the Chinese vision to wants to enhance the cooperation with the BRI countries on the equality basis as the, Asif & Ling (2018), described that the BRI is going to connect the many regions, and the Win-Win is a slogan of the mutual cooperation among the BRI countries also with the China.

INTELLECTUAL PROPERTY RIGHTS AND BELT AND ROAD INITIATIVE

Intellectual property rights are acknowledged everywhere in the global because of the significant reasons. Intellectual property law included the laws relating to the patents, copyrights, trademarks, utility models, industrial designs, geographical indications, trade secrets, and the laws relating to the internet (Information Technology), etc. IP rights basically recognize to offers an incentive to the creators or inventors of new creations and guarantee of the material reward for belonging. It ensures the supply of the original products. For financial growth and advancement in technology area safety of IP protection is essential. It does well for the growth of the business in the science and technology fieldⁱ. Wu (2017) concluded that the innovation is an important force which plays a vital role in the continuous development of the country as well as for the whole human being. He also expressed that the innovation is a soul of the nation and the formation of the whole social wealth. As the China joined the World Trade Organization (WTO) in 2001 become its 143rd memberⁱⁱ and the World Intellectual Property Organization (WIPO) in 1980ⁱⁱⁱ. Intellectual property (IP) is a priority of China regarding the implementation of the Belt and Road Initiative (BRI), and given its value in the cooperation among countries enroute^{iv}. According to the current statistics available (2018) on the website of WIPO in term of most applications filed by the Patent Cooperation Treaty (PCT) for international patent rights, China is just after the United States. Chinese based ZTE Corporation and Huawei Technologies among the corporate applicants, respectively at number 1st and 5th, having largest volumes of international patent applications. In the list of international trademarks applications under Madrid Agreement Concerning the International Registration of Marks and its related protocol, China also at ranked 3rd with an increase of 36.3%. At global innovation index ranking 2018, the China was at 17th position with scoring 53.06^v.

INFRINGEMENT OF CHINESE INTELLECTUAL PROPERTY

An IP protection in one country is not necessary to protect in the other region or country. Most of BRI countries are redeveloping countries have cultural, racial, and linguistic differences. BRI countries have no international IP cooperation mechanism, varied IP development, and protection level system. So that there could be a great risk for Chinese companies and enterprises regarding the technology lost and infringement in those countries due to their weaker IP protection system. There is an example of Chinese brands for example ["Wang Zhi He" in Germany, "Gui Fa Xiang 18th Street" and "Liu Bi Ju" in Canada, "Gou Bu Li," "Tong Ren Tang" and "Yi De Ge"] in Japan got registration by other entities. The cases like this also could be happened in the BRI countries^{vi}. Due to the violation of the IPs, companies lost their revenue, damage brand, IP costs as well as decrease the innovation incentives. It also effects the job creation, reduce the level of economic growth, and deteriorate the competitiveness in the nation^{vii}. According to the statistics related to Chinese overseas investment, there is another example which showed that the Chinese IP stolen by foreign companies abroad in the past, Due to that Chinese companies lost their hundreds of trademarks ownership rights because those trademark rights were snapped up first by foreign companies. There are also some examples of Chinese IP rights snapped up like The German company was bought up the "Hisens"; an Indonesian company was taken the "Flying Pigeon" bicycle trademark; "Lenovo" was elected because "Legend", was already registered in many number of countries was the favored name for the Chinese tech company^{viii}. From the Eastern China port cities to Madrid London and other European ports, a freight train already is carrying a wide range of goods containing specialized electronic goods and automobiles. So that the Chinese brand owners especially needed to make the cost-effective strategies regarding to protect their IPs and get the benefits of the initiative^{ix}.

IP RIGHTS PROTECTION & COOPERATION AND BRI

IP cooperation among the BRI countries is very important as the Yu (2019) said that the Belt and Road Initiative could play an essential role regarding IP rights cooperation matters at regional and international level. Deputy Director of the international cooperation department at China National Intellectual Property Administration (CNIPA) Mr. Liu Jian, said that the administration already established cooperation with forty BRI countries and concerned organizations. He also added that the administration also organized the series of intellectual property

training for the improvement of the patent examination capacity for the official of 30 BRI countries^x. Chinese government organized a High-Level Conference on Intellectual Property for BRI Countries in July 2016. The two-day conference was co-organized by the Chinese government and the World Intellectual Property Organization (WIPO). A jointly initiative was taken by the BRI countries for the IP cooperation strengthens and promotes the innovation, which got positive response and opened the new chapter of cooperation in the region regarding IP. At the conference State Councilor, Wang Yong said that the countries have to work together for the promotion and to share the benefits of the intellectual property. He also expressed the four IP related areas for BRI assistance could be available, "services regarding IP cooperation, IP rules harmonization, joint human resource (HR) and inter-operability of databases." Mr. Francis Gurry who is a Director-General of World Intellectual Property Organization (WIPO) said that the IP is an essential part of BRI and offering many chances to spread the ideas, cultural products and science and technology^{xi}. In May 2017, China also entered into the agreement with WIPO regarding Intellectual Property Cooperation enhancing through BRI^{xii}. China has signed a memorandum of understanding regarding IP cooperation with a large number of BRI countries and also cooperation IP education, information exchange, training, and publicity^{xiii}. In 2018 High-Level Conference on Intellectual Property for Countries along the BRI was held in Beijing in 2018. The Conference highlighted the cooperation; strengthen of IP mutual benefits, for industrial promotion, effective use of IP, global IP system development, discussion on IP problems and protection of the traditional knowledge effectively in the BRI countries^{xiv}. Mr. Francis Gurry who is a Director-General of the World Intellectual Property Organization (WIPO) said that the China had established a high-quality IP rights protection system which deals with the foreign and Chinese companies on equality basis^{xv}. Recently in 2019 the Second Belt and Road Forum (BRF) for International Cooperation which was attended by 90 international organizations, 150 countries and more than the 5000 participants, Chinese president XI Jinping said that the efforts for international cooperation regarding the intellectual property protection should be enhanced. He also said that China will also strengthen the IP cooperation and protection with the other countries, to create innovation environment for the promotion of technological exchange and cooperation according to rules of law with other countries^{xvi}. In the Forum the WIPO Director General Francis Gurry said that the BRI is an important initiative and will increase technological innovation and help to strengthen the world innovation network^{xvii}. Mr. Gurry also attended the National Publicity Week of China and highlighted the importance of intellectual property awareness to promote the creativity and innovation. Ali & Geng (2018) was conducted a study on "Legal Cooperation in Perspective of Belt and Road Initiative and China Pakistan Economic Corridor." It was concluded that to avoid the legal disputes arise in future, BRI countries and China have needed to develop the homogeneous commercial codes and legal cooperation mechanism to secure the initiative from legal disputes before to rise. To avoid the international forums, it has needed to make arbitration mechanism in case of disputes with BRI countries. The Beijing has also needed to open legal cooperation centers in the BRI countries, which will be helpful for mutual legal exchange programs.

Most of us whenever think about the intellectual property, we considered that its affect is technology-based only, and companies also have IP protection at some levels. It is not important that what is the size or the type of the company you have but it is important, is there any IP law part, phrase, and aspect which is related to your company. If there is any aspect of IP law that touches your company, those rights have need of protection^{xviii}. There are many ways by which IP rights have essentially needed to protect the business at national as well as international level, and the weak IP protection is also dangerous for the company and its business.as the Mansfield, Edwin, & Mundial (1994) was conducted a survey of one hundred U.S. firms, and he founded that the weak protection of intellectual property rights of a country discourage the foreign direct investment as well as joint ventures. Gould & Gruben (1996) concluded that the stronger IP rights protection links to higher economic growth rates in a cross-country sample. There is also seen in some evidences that the technologies producing foreigner firms decline to license of their latest innovations into firms in weak IP protection countries and it also have fear about the violation of the licensing contract which will ultimately not enforceable (Sherwood, 2019). A weak IP protection in the country can also affect the ability of the firms which purchase technology in the country. Hina et al. (2017) conducted a research study after the reviewing of collected data they were founded that the awareness about intellectual property is essentially required for the improvement of the protection of IPs. And an effective IP rights protection also enhances the innovation and novelty.

President of China Council for the Protection of International Trade (CCPIT) Mr. Ma Hao said in the Belt and Road Forum for International Cooperation that the office would continue to assist, provide efficient IP rights services and the IP professionals to the companies invest and trade in BRI countries. Ma said that that the office will also help the companies regarding the IP rights protection & management and increase the cooperation with the IP rights organizations in BRI countries. He also cited here an example of how the office help out the Chinese oil company Sinopec's in its illegal trademark registration in Africa, and now the African court has declared Sinopec trademark void and null^{xix}. Most of the BRI countries are developing countries and of their status regarding the IP protection is also weaker than the developed countries as the Chen & Puttitanun (2005) conducted a study on "Intellectual property rights and innovation in developing countries" they concluded that the weaker IP protection allowed copying the foreign technologies which also decrease the market power of the companies. They also determined that the increase in the protection of IP rights in the developing countries will increase the innovation and the developing countries also increase the level of protection of IP rights due to the pressure from the international organization and developed countries. Intellectual property rights violation made a great effect on the companies in the United States. Due to the violation and improper IP rights (patents, trademarks, and copyrights) protection measures in abroad, the companies suffer losses. According to the data collected from 244 firms in the United States by the International Trade Commission for the comparison of the IP violation. The analysis expressed that the losses are the greater than the profit due the violation of the IP in foreign countries^{xx}.

CONCLUSION

By law, we should encourage and support the creations and inventions; and IP is nothing other than the mechanism for the promotion and protection to support creation and innovation. So that it is required to enhance the efforts to strengthen the IP rights in the BRI countries. It will help to protect the Chinese IP, help in economic growth, and encourage the foreign direct investment in the BRI countries and China. Wu (2017) also concluded that the present stage, China must pay attention to the protection of intellectual property rights in this situation. The protection, promotion, and transformation of intellectual property rights are the need of enterprise innovation and an umbrella for the economic development of China. For IP strengthen, it is also required that to aware the public and related legal organizations or institutions in BRI countries to arrange the conferences and workshops to increase the awareness and importance of IP rights. So it is essential to meet IP challenges to promote the IP rights awareness among the public as well as in the concerned institutions in BRI countries regarding the IP rights. Social media and the government of the BRI countries should be play its role to promote the IP rights protection campaign. As the most of the BRI countries are developing countries but the awareness of the public regarding IP still limited. So it is essential to aware the public about the IP to secure the legitimate rights of the companies and enterprises by starting an IP awareness programs and campaign by the government, media, national and international law organizations. In the BRI countries also required to organize the IP awareness programs, conferences and workshops for student, faculty, lawyers, prosecutors, other stakeholders and also boost the IP protection; through the judicial system in BRI countries. In the current age of science and technologies development, like artificial intelligence and internet, is posing a new challenges and measures for the protection of Intellectual property rights protection. The most of the BRI countries are developing countries so that the awareness of the IP among the public is limited. To avoid from the IP disputes and violation in the BRI countries the cross-culture experienced legal advisers should be hire to investigate and assess the IP and other risks there but also to minimize the risk in the case of if dispute occurs negotiation, dispute settlement and enforcement mechanism in the BRI countries permitted by law, for example, the clause needed for international arbitration to disputes settlement. Lastly, in order to achieve the objectives of High-Level Conferences, it is essential to boost the IP rights services, perfecting the relevant rules and regulations, improve the IP dispute settlement mechanism, and enhance the IP rights related policies related to BRI.

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