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LEGAL FOUNDATIONS FOR COOPERATION IN THE INTELLECTUAL PROPERTY DOMAIN WITHIN THE BELT AND ROAD INITIATIVE

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Intellectual property is studied in relation to the Belt and road initiative. The legal procedures and arrangements that maximise the economic benefits of regional cooperation are defined. Diverse and complex interrelationships between national and international intellectual property law are explored using the comparative legal research method. Key attention is drawn to the different levels of protection and enforcement of intellectual property rights in the context of the development of intellectual property systems in the participating countries. It is concluded that national intellectual property regimes retain objective distinguishing qualities. Recommendations for intellectual property disputes settlement are offered to provide countries and firm with a more transparent and accessible infrastructure in the multi-jurisdictional environment of the Belt and road initiative.

Keywords: Belt and road initiative; intellectual property rights; international intellectual property protection; economic interests; regional cooperation; China; territoriality of intellectual property.

ПРАВОВЫЕ ОСНОВЫ СОТРУДНИЧЕСТВА ПО ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ В РАМКАХ ИНИЦИАТИВЫ «ОДИН ПОЯС, ОДИН ПУТЬ»

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Изучается проблема интеллектуальной собственности в рамках инициативы «Один пояс, один путь». Определены юридические процедуры и механизмы, которые повышают экономические выгоды регионального сотрудничества. Разнообразные и сложные взаимосвязи между национальным и международным правом интеллектуальной собственности исследованы посредством сравнительно-правового метода. Ключевым вопросом является различие уровней охраны и защиты прав интеллектуальной собственности в контексте развития систем интеллектуальной собственности в странах – участниках инициативы «Один пояс, один путь». Сделан вывод о том, что национальные режимы интеллектуальной собственности сохраняют объективные отличительные черты. Предлагаются рекомендации по урегулированию споров в области интеллектуальной собственности для обеспечения стран и организаций более прозрачной и доступной инфраструктурой в мультиюрисдикционном пространстве инициативы «Один пояс, один путь».

Ключевые слова: инициатива «Один пояс, один путь»; права интеллектуальной собственности; защита интеллектуальной собственности; экономические интересы; региональное сотрудничество; Китай; территориальность интеллектуальной собственности.

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Introduction

The Belt and road initiative (BRI) was launched by Chinese president Xi Jinping in 2013. The past nine years have seen remarkable achievements. 149 countries and 32 international organisations have joined as of March 2022¹. Today, within the framework of this cooperation programme, an effective basis for shared economic growth is being created for all partners. The specifics of the relationships emerging within the initiative have attracted scholarly interest. According to several scholars, the initiative has the potential to connect more than two-thirds of the world's population and put in place new infrastructure to revitalise global trade links between Asia and other regions [1]. As the trade and cooperative economies have grown, so has the turnover of intellectual property, which is inextricably linked to almost all products and services in the modern information society.

Increasingly, intellectual property plays a key role in economic and technological relationships and transactions as a competitive resource. According to statistics provided by the Chinese Patent Authority, 6198 patents were filed in 22 countries along the BRI in 2020, an increase of 17.1 % over the previous year. In 2020, 74 countries filed 23 000 invention patent applications in China, representing an increase of 3.9 %. By comparison, Singapore has recorded a 21 % increase in invention patent filings on a year-over-year basis².

The National Centre of Intellectual Property of the Republic of Belarus publishes annual statistics on Chinese entities' intellectual property protection activities in Belarus. As of December 2021, China ranked second in patent applications filed for the most traded intellectual property objects – inventions and trademarks – behind Russia, with which the Republic of Belarus has long-standing and well-established cooperation, and ahead of countries like Germany and the United States, which are traditional leaders in foreign patents³. It is important to note, however, that China's patenting activity in Belarus does not represent the trends in the registrations and filings of Chinese companies in China and other countries. The BRI appears to have a positive impact on the expansion of intellectual property activity, albeit within a specific legal context. According to the experts, a wide range of agreements that define the legal framework for the initiative, particularly the primary agreements, leave a wide margin for manoeuvre and flexibility since they do not constitute clear legal commitments and are like instruments of flexible law without specific strict obligations [2]. Because of this, it

is difficult to decide which legal mechanisms contribute to promoting successful and mutually beneficial technological and innovative development – as the main objective of the initiative – particularly in terms of creating, registering and utilising new inventions, trademarks, and industrial property models.

In 2018, China and the Eurasian Economic Union signed an Agreement on economic and trade cooperation (hereinafter – the EAEU – China agreement)⁴. The parties to the agreement recognised that the EAEU cooperation and the BRI must be linked.

Intellectual property is extensively covered in the document. The chapter on intellectual property (chapter 7) has 27 articles. It presents a fairly advanced and modern understanding of intellectual property. As an example, the EAEU – China agreement outlines measures to optimise the management of digital intellectual property rights, and the rules are quite precise and relevant to practice. A graphical user interface is protected as an industrial design under art. 7.17. Patent applications may be filed electronically in accordance with art. 7.18. However, there are no new standards for national legislators to incorporate into law or any other details in the agreement. It is possible that avoiding certainty in legal instruments is a part of the Chinese soft power policy to promote cooperation.

To succeed in the BRI, China must build on its experience with EAEU partners. The initiative is a completely new phenomenon. It is being implemented with tools rooted in new values, meanings, and understandings, as the literature rightly points out. These need to be crafted in the absence of any concrete norms on specific aspects of intellectual property, and in a landscape that resembles a blank slate [3, p. 290]. The article proposes legal mechanisms for avoiding and resolving intellectual property complications. It is hypothesised that intellectual property is a point of contention between a variety of stakeholders, including infringers and right holders, competitors protected under different jurisdictions, and between the frameworks for intellectual property protection in these jurisdictions and the legal specificities of the BRI.

In the Belarusian legal literature, there is little discussion of the issue of intellectual property in the context of the BRI. In the debate on the use of intellectual property in the BRI region, the main focus has been on the forms and methods by which the various actors involved will cooperate, rather than on the details of legal regulation [4, p. 35, 71, 85]. Economists and experts

¹Building “One belt, one road” together [Electronic resource]. URL: <http://fec.mofcom.gov.cn/article/fwydy/zgzx/202205/20220503310813.html> (date of access: 29.09.2022).

²Chinese total investment in countries along the B&R by 2020. A profitable layout shows momentum against the trend [Electronic resource]. URL: https://www.cnipa.gov.cn/module/download/down.jsp?i_ID=169839&colID=88 (date of access: 29.09.2022).

³NCIP. Annual report 2021 [Electronic resource]. URL: <https://ncip.by/upload/iblock/3fe/3fe6e1c68f770566a1fa280b5b03dae4.pdf> (date of access: 29.09.2022).

⁴Agreement on economic and trade cooperation [Electronic resource]. URL: https://docs.eaeunion.org/docs/en-us/01517817/iatc_21052018 (date of access: 29.09.2022).

from other fields have considered intellectual property in the BRI in terms of economic benefits and geopolitics. However, the use of intellectual property is relevant to practically every area of cooperation. For example, copyright issues will inevitably arise with the growing popularity of Belarusian musical culture in China in the context of the BRI [5].

Intellectual property and intangible assets cannot exist without a clear legal framework. There is thus a need to understand the legal specifics of the intellectual property issue in the context of the BRI to properly address it.

In the BRI, each country has distinctive characteristics, but general patterns can be identified. Numerous Chinese authors and international organisations have observed that Chinese cooperation goes far beyond the BRI. In many BRI countries, intellectual property and innovation are weak and uncompetitive, and intellectual property protection standards are low. As a whole, there is a significant variation in intellectual property protection along the BRI, with Central and Eastern Europe and Southeast Asia being the exceptions. According to the Global innovation ranking for the intellectual property and the Global innovation index 2019, only four countries of the BRI rank among the world's most advanced economies⁵: Singapore, South Korea, Israel, and Luxembourg [1]. Therefore, the evolution of the doctrine on intellectual property along the BRI consistently underlines a radical change in China's international image from a country that has traditionally been associated with large-scale piracy and counterfeiting to a country that promotes and develops innovative processes based on legitimate uses of intellectual property [6]. The legal foundations for Chinese cooperation with its partners and their expectations regarding intellectual property are greatly influenced by these circumstances. The founding acts of the BRI, for example, call for a common understanding of the need for more effective intellectual property protection and enforcement [2].

As far as intellectual property and its legal framework are concerned, Belarus and China have much in common with respect to their economic policy goals, objectives

and priorities⁶. World Trade Organisation (WTO) standards are guiding the commercial aspects of intellectual property in both countries. China and Belarus are fully committed to making sure the key international treaties on intellectual property are enforced as stipulated in art. 1–3 of the WTO Agreement on trade-related aspects of intellectual property rights (TRIPS) for China, and art. 90 of the EAEU Treaty for Belarus. Moreover, both countries participate in a wide variety of systems for cooperation on patent and industrial property registration to provide legal protection for intellectual property rights internationally. There is also a high level of development in national legal systems. The legal foundations are in place domestically and internationally enabling Belarusian and Chinese enterprises to use intellectual property rights safely and transparently.

The importance of analysing common problems based on previous experience cannot be overstated. It seems that one of the most problematic areas in the BRI is the transfer of intellectual property across its jurisdictions, as evidenced by the difficulties that many entrepreneurs face. In a variety of national legal systems, there is a wide range of interpretations of the origin of intellectual property, resulting in conflicts between competitors and partners from different countries and often causing problems in the normal flow of business activities. The way to resolve these problems is by addressing the territoriality of intellectual property.

Orienting themselves towards the standards of the industrialised countries, as defined in instruments of international law like TRIPS, China and Belarus have similar visions for their IP systems. Belarus might be interested in the Chinese experience of dealing with long-term pressure from developed nations over its alleged "intellectual property leakage", a problem that has been examined from three different perspectives: the state, the world market, and the socio-cultural dimension [7, p. 42]. For China, cooperation on intellectual property along the BRI is less about protecting intellectual property than it is about preventing conflict and disputes.

Theoretical foundations and research methods

In the context of the BRI, many Chinese authors discuss the controversies surrounding intellectual property protection, including the risks associated with doing business with intellectual property overseas. These authors include D. Fu [8], G. Wang [9], F. Yu [10], P. K. Yu [3; 6], A. Majid and L. Li [11], L. Zhang [12]. Authors from other countries are also exploring these issues. For example, B. Suprabha, R. Nadia, and R. Michele published a study on the topic, commissioned by an in-

ternational institution [13]. In the paper, comparative analysis is used as the main method of research due to the complexity of the legal systems, as well as the hierarchical nature of the sources of intellectual property law along the BRI. We are most interested in the empirical aspects of effective intellectual property uses.

All participants at all levels, including national, regional and global, are expected to benefit from the BRI, which fulfils the expectation of shared development

⁵Global innovation index 2019 [Electronic resource]. URL: https://www.wipo.int/global_innovation_index/zh/2019/index.html (date of access: 29.09.2022).

⁶Сопряжение стратегии развития ЕАЭС и китайской инициативы «Один пояс, один путь» [Электронный ресурс]. URL: https://eec.eaeunion.org/upload/medialibrary/822/Doklad_Kitay_short_17.08.pdf (дата обращения: 29.09.2022).

dividends. The states along the BRI are enhancing their intellectual property systems to attract investments and facilitate business projects with intellectual property components. In doing so, they must confront their particularistic approaches through regional cooperation. Foreign right-holders should be supported in their efforts to adapt to their new environment, consistent with the BRI principle of equal respect for all stakeholders. However, different players perform differently, and some advance more than others. In traditional intellectual property transfer between developed and developing countries, however, developed country rights holders are far more experienced in intellectual property use and protection, coming from countries that pioneered the concept of exclusive rights.

The BRI has no fixed geographic or national boundaries and is not a strategy. It is open to all, but also has its core regions, and most participants are developing nations. At present, 65 member countries, including China, are on board. They represent five global regions: Central and Eastern Europe, West Asia and North Africa, Central Asia and Mongolia, Southeast Asia, South Asia, and Northeast Asia. The diversity among the countries and regions, each with unique legal traditions, creates significant variations in intellectual property protection regimes and institutions⁷.

Intellectual property protection is territorial, and a thoughtful combination of a variety of legal regimes – national, regional and global – is essential. Cooperation under the BRI gives rise to specific standards and models of behaviour. Businesses with limited experience with intellectual property in international markets may have difficulty adapting and acting on these standards. Governments must respond by expanding their services, enhancing procedures and developing more tools for intellectual property protection and enforcement. Digitalisation and the rise of intellectual property ecosystems are illustrative of these trends. As an international authority in intellectual property protection, the World Intellectual Property Organisation commended the BRI on its contribution to fostering interactive links among patent services and strengthening global innovation networks⁸.

Belarus is situated in a region with a well-developed system for registering intellectual property rights and protecting them against infringements, and with a high overall standard of property protection. However, even countries with already good performance can benefit from membership in the BRI to advance further. Decreasing inequalities in the standards of intellectual property protection – coupled with the growth in international patents and registration – will benefit all parties by facilitating more effective management of

intellectual property, greater convenience of the infrastructure for protection and enforcement of intellectual property rights, and improvements in patent research. For the success of the international route, intellectual property rights should meet essential legal criteria, notably, be valid in different jurisdictions and not interfere with international trade in goods and services. With relevance to the BRI projects, intellectual property should not be evaluated exclusively within the scope of national jurisdictional determinants, Belarusian or Chinese. A partner's past or prospective behaviour in a project should rather be assessed from a multi-jurisdictional perspective.

Disparities in the development of patent systems and intellectual property services persist among the states of the BRI, and likewise, inequalities are observed in regional patent cooperation. West Asia and North Africa have divergent legal environments for intellectual property, with Israel being the most advanced. Overall, the infrastructure for patent documentation provides an insufficient degree of compatibility throughout the region.

Central Asia, where the influence of the European Union and the Eurasian patent systems is stronger, has been more successful at building interlinked connections for intellectual property networks. Kazakhstan and Kyrgyzstan that built comprehensive legal systems, are participating in Eurasian patent cooperation, these countries have adapted their standards of protection to the demands of the TRIPS. Elsewhere in the region, the situation is different. Turkmenistan and Uzbekistan are not WTO members, and Uzbekistan is not a party to any regional cooperation on patents. In Southeast Asia, Singapore, Thailand, Malaysia and the Philippines have modern and well-developed intellectual property systems, while Cambodia, Laos and Vietnam still have important gaps, and have not progressed beyond the initial stages in many areas. Also, they have very limited involvement in patent cooperation.

In South Asia, India is a clear leader. Well integrated into the Chinese market, it is an important jurisdiction for the protection of intellectual property of Chinese companies expanding overseas. Otherwise, the region as a whole is still relatively weak in terms of intellectual property utilisation and its legal and judicial protection.

In Northeast Asia, Japan and South Korea are highly competitive in the intellectual property market, with some of the most advanced intellectual property systems. The national patents issued by the national patent offices are valued objects of intellectual property. Japanese and Korean patent offices participate in patent cooperation with some of the most advanced patent cooperation networks, including the IP5, an association of the world's top five patent offices.

⁷Silk Road diplomacy [Electronic resource]. URL: <https://www.silkroadfutures.net/silk-road-diplomacy-index> (date of access: 29.09.2022).

⁸WIPO director general visits China for series of high level meetings and participates in Belt and road summit [Electronic resource]. URL: https://www.wipo.int/about-wipo/en/offices/china/news/2019/news_0002.html (date of access: 29.09.2022).

In a broad sense, China is a country in the Asia region. Chinese partners are likely to begin their international operations with intellectual property in Asia before expanding worldwide. Clearly, differences in the conditions for intellectual property protection and procedures such as substantive patent examination can lead to variations in the quality of the intellectual property objects, including their value and legal viability in the markets along the BRI. A review of the present systems of patent protection of China's partners would be useful at this point, including with regard to their ability to apply protection criteria such as novelty.

China has studied the intellectual property system in the United States, Japan and other developed economies since it launched the reform of its intellectual property system in 2008. The results informed its proactive effort to update its rules and strengthen the protection of intellectual property rights as a national policy objective, including in the context of the BRI. Despite recent improvements, some shortcomings remain, even at the government level. For example, several weaknesses have been identified in the Chinese intellectual property law of 2008: the law remains too basic, and lacks sufficient transparency and clarity; the quality and quantity of indigenous (Chinese) intellectual property are inadequate, e. g. many patents are for objects that have not been substantively researched. As a result, inventions represent 85.7 % of all patents obtained by foreign applicants and only 26.1 % by domestic ones. There is still too little familiarity with the intellectual property system, even among entrepreneurs: for example, about 60 % of companies have never applied for a patent and do not own a trademark. Enforcement systems are still weak, and opportunities for abuse of intellectual property rights (e. g. in the patenting of utility models) are still broad. Finally, patent attorneys and other intellectual property management professionals are still in short supply, and procuring professional assistance in filing for a foreign patent is still difficult in some remote provinces [12]. On the other hand, these issues are typical of many intellectual property systems, given their complexity. They are present in any jurisdiction. For example, in the United States, "patent trolling" is a relatively common abuse. The responses of the Chinese government to these problems also encompass the BRI, making it a convenient and flexible framework for identifying risks and elaborating advanced strategies for addressing them.

After more than a decade of intellectual property reform, the above shortcomings have largely been addressed, giving cause for China's partners along the BRI to revise their old approaches. Intellectual property rights have come to the top of the priority list, and Chinese companies in foreign markets will be less

complacent about protecting their intellectual property assets, even though they may not need to worry about patents and trademark registration when operating domestically.

Conversely, companies entering the Chinese market should take note of the impressive progress achieved in strengthening the system for enforcing intellectual property rights in China. It consists of three main actors: the judiciary, the executive and the police. China has established specialised intellectual property courts in its major cities (Beijing, Shanghai and Chongqing), as a policy to concentrate hearings of intellectual property cases in areas where such cases represent the highest proportions of the caseload. Recognising the need to build the relevant expertise and jurisprudence, the state has assigned intellectual property cases to regional intermediate people's courts in all remaining jurisdictions.

China's Patent office has expanded its geographic presence to maximise access to administrative adjudication of disputes arising from intellectual or industrial property procedures. The Chinese National Intellectual Property Administration operates from several locations, including Beijing, Shanghai and Shenzhen. It also considers petitions on matters related to intellectual property involving parties from Hong Kong, Macau and Taiwan through its department of international cooperation⁹.

Chinese customs is also active in the enforcement of intellectual property law. In 2021, it enhanced its systems for enforcement and took extensive practical steps that reflected positively on its performance statistics. Throughout 2021, the customs reported taking 84 000 administrative actions, delaying 79 000 shipments and seizing 71 828 mln items¹⁰. The customs services are building their digital capabilities to meet the challenges of growing e-trade. In 2021, customs seized nearly 2 mln suspicious items delivered internationally via e-commerce. For example, Suzhou Customs apprehended 120 items with the NBA logo while monitoring outgoing mail.

In its efforts to strengthen the components of its intellectual property protection system, China is motivated in large part by its international commitments. For example, the upgrading of the enforcement capabilities of its customs administration is consistent with China's obligations under section 4 of part III of TRIPS. Specifically, increased inspection by the customs of mail deliveries emulates the examples of developed countries, such as the EU member states and the United States.

Since the start of the reform, China has expanded its participation in international agreements on intellectual property rights. In addition to the main universal

⁹CNIPA. About us [Electronic resource]. URL: <http://english.cnipa.gov.cn/col/col2968/index.html> (date of access: 29.09.2022).

¹⁰China custom enforcement of intellectual property rights [Electronic resource]. URL: <http://english.customs.gov.cn/topic/customs12/Default.aspx.htm> (date of access: 29.09.2022).

international agreements (to which China acceded when it joined the WTO), China is a party to an increasing number of bilateral and regional agreements. In 2001, it concluded an intergovernmental agreement with Belarus on the protection of intellectual property rights, which laid the foundation for bilateral collaboration in this area. Under art. 2 of this agreement, each party undertakes to accord effective protection of the intellectual property of the other party, subject to the laws and regulations of their respective jurisdictions and the international agreements to which they are parties. After joining the WTO, China made several revisions to its copyright law, patent law and trademark law and promulgated multiple implementing regulations to comply with the TRIPS agreement.

In 2021, China rose to the 10th place in the Global innovation index ranking, from 12th place in 2020¹¹. By joining the Patent cooperation treaty, China reached the top of the ranking by the number of international proceedings and international registrations of trademarks on the basis of the Madrid system.

China is building an important intellectual property jurisdiction in terms of protection, means of enforcement, geographical coverage and scope of protected intellectual property. Internationally, trademarks and inventions are protected by the Madrid system and Patent cooperation treaty, respectively. Since so many intellectual property objects are protected, a closer assessment of their quality and competitiveness is necessary with relevance to the Chinese market. As a minimum, the tests of non-coincidence with analogous inventions and similar trademarks will need to be improved.

A new type of competition is beginning to emerge in the Chinese intellectual property market. It is already evident that in order to conduct a patent search and perform patent research, one has to deal with unprecedented amounts of information, even in the earliest stages of the process.

With different levels of economic development in the countries involved in the BRI, the same basic intellectual property agreements, and even the same international regimes would likely be effective in some isolated cases. For any specific project, national legislation will always prevail. A country-by-country strategy will be required to facilitate industrial property procedures under international universal and regional mechanisms. In this regard, a specific agreement on intellectual property in the BRI would not substantially add to the existing sources of law in any meaningful way.

On the other hand, the BRI can be an opportunity for creators, rightsholders, and user-producers to escape the win – lose scenario, as is often the case with the traditional distribution of the roles. It may provide

a common core of cooperation for partners with similar positions and experience [11, p. 674].

Legal research into intellectual property strategies across the BRI should consider the territorial dimension. No protection mechanisms provided by international or domestic law, or reciprocity regimes can guarantee an appropriate solution where all parties want intellectual property used and protected. Adjusting the quality of intellectual property objects according to the circumstances of the competition is fundamental, not just the level of protection or the set of measures needed to obtain it.

There is no better solution than joint scientific, technical, and experimental research since the parties alone cannot steer their project in a win – win direction, even when they have the necessary capabilities. By working together, they can achieve success and reduce the dependence on the party that transfers the technology, as is usually the case in the win – lose model. Therefore, many regional and bilateral agreements dealing with intellectual property in the BRI include joint research provisions and other details, such as confidentiality, as in the EAEU – China agreement or the Belarus – China agreement.

Perhaps the greatest challenge for the legal framework for cooperation within the BRI is the possibility of legal disputes over intellectual property. In some respects, it reflects the domestic situation [10, p. 6]. Specific dispute resolution mechanisms are addressed in the context of free trade agreements. Most free trade agreements include dispute settlement provisions, including those relating to intellectual property. In 2009 China and ASEAN concluded a Memorandum of understanding on intellectual property cooperation and in 2014 signed a Framework agreement on dispute settlement mechanism for comprehensive economic cooperation to clarify the issue¹². It was noted by the parties that there was a lack of regulation on the details of a dispute resolution system (only the principles of such a system have been outlined) or the mechanisms by which it would work. Private parties – such as businesses and individuals – did not have direct access to the arbitration process, possibly leading to a significant increase in the cost of enforcing intellectual property rights.

Typically, intellectual property disputes between private parties are settled under domestic jurisdiction or, if such parties wish to use alternative instruments, by special commitments. China and most other participating states are members of the WTO, which offers dispute settlement mechanisms that can be utilised in the BRI. Belarus is one of ten countries that are not WTO members or TRIPS parties out of 65 participating in the BRI.

¹¹GII 2021 results [Electronic resource]. URL: https://www.globalinnovationindex.org/userfiles/file/reportpdf/GII-2021/GII_2021_results.pdf (date of access: 29.09.2022).

¹²The China – ASEAN Memorandum of understanding on intellectual property cooperation and 2014 China – ASEAN Framework agreement on dispute settlement mechanism for comprehensive economic cooperation [Electronic resource]. URL: https://www.fmprc.gov.cn/web/wjbxw_673019/202201/t20220105_10479078.shtml (date of access: 22.09.2022). Chinese.

Although the WTO dispute resolution process is exclusively available to states, its transparent and flexible rules still allow private parties to represent their interests. This and other arrangements can compensate for the absence of a mechanism for resolving intellectual property disputes. As for the EAEU and Belarus in particular, these possibilities remain closed. Consultations are the only method of resolving disputes under the EAEU – China agreement. The BRI legal environment can be enhanced by improving dispute settlement arrangements in the EAEU. Ideally, a dispute adjudication body should operate at an intermediate level, separate from the Chinese authorities, those of the member states, or EAEU bodies (e. g. the Eurasian Economic Commission, Court of the EAEU). Possible formats include a commission of intellectual property experts. The EAEU – China agreement will need an addendum outlining procedures for forming the commission, referring disputes, and presenting basic principles for private parties to submit claims and interests to their states' competent authorities. When the parties to a project hold divergent positions on an intellectual property issue and their respective jurisdictions provide different remedies, the addendum will make it possible for these parties to access state support.

Using an intermediate-level dispute resolution body would provide the extra benefit of involving government bodies in enforcement and other tasks over which they have exclusive authority under domestic mandates and (or) at the stage of cross-border trade. Putting electronic platforms in place to connect national governments, international bodies, and individuals could facilitate and simplify communication at different stages of a dispute resolution process.

It has been discussed previously that digital capabilities are essential for the protection and enforcement of intellectual property rights by national and international bodies (e. g. National Centre for Intellectual Property, China National Intellectual Property Administration)

and international business organisations. China's ministry of commerce has set up a public service platform "Go global". Comparative analysis suggests that while the digital trading platforms of developed countries are advancing, Chinese platforms are lagging [8, p. 10]. Consequently, most Chinese enterprises are uncertain about what kinds of support they can expect from the state if they go global. Due to concerns about the time and financial costs of defending your rights in international intellectual property disputes, many Chinese businesses decide not to defend their rights. For example, when the big Chinese companies chose to litigate¹³ they discovered that this can be a lengthy process (up to eleven years in the latter instance). Smaller companies are intimidated by these experiences.

Litigation is generally viewed as detrimental to Chinese companies' international strategies due to significant time costs and significant risks. The pressure from their international counterparties may overwhelm them before they even begin to litigate, and they may interpret it as a means of gaining a competitive advantage rather than genuinely seeking to protect their intellectual property.

China's government has built an extensive infrastructure for the going global policy [3]. A 167 % increase over the previous year was recorded for the National intellectual property public service website in 2021, with an estimated 2.15 mln visitors¹⁴. The results to date indicate the issues needing to be addressed in pursuing a systematic state policy to encourage the globalisation of Chinese businesses and carry out the BRI.

Mediation and arbitration are alternative dispute resolution mechanisms that not only resolve disagreements but also increase responsibility for intellectual property as an innovative component of a business. Countries taking part in the BRI must provide realistic dispute resolution mechanisms, including as a means of enhancing the protection of international intellectual property.

Conclusion

Intellectual property rights are crucial to the BRI. The source of competitive advantage for practically any product and service today is innovation. Intellectual property is protected by appropriate international legal instruments and current national legislation. By addressing the same practical issues that industrialised countries face, regional and bilateral agreements already contribute to better protection and enforcement of intellectual property rights.

In the multijurisdictional environment of the BRI, the legal mechanisms for protecting and enforcing intellectual property rights are based on the Bern convention, Paris convention, Patent cooperation treaty, and Eurasian patent convention, as well as other international and regional instruments governing copyright, intellectual property, and industrial property rights. Several agreements are in place that lay the groundwork for cooperation among many of the participating countries

¹³Wang Zhihe Group's case to defend trademark rights and anti-unfair competition [Electronic resource]. URL: <https://china.findlaw.cn/chanquan/chanquananli/haiwaiweiquan/18014.html> (date of access: 29.09.2022) ; Inter Digital's Second 337 Investigation into China: "3G set-up for filing" [Electronic resource]. URL: <http://ip.people.com.cn/n/2013/0204/c136655-20423619.html> (date of access: 29.09.2022) ; Patent dispute between Honda Giken Co [Electronic resource]. URL: https://code.fabao365.com/law_46214.html (date of access: 29.09.2022). Chinese.

¹⁴CNIPA annual report 2021 [Electronic resource]. URL: <https://english.cnipa.gov.cn/col/col2936/index.html> (date of access: 29.09.2022).

within the framework of the BRI (e. g. the EAEU – China agreement). As a result, there seems to be no need for detailed agreements or legal solutions borrowed from other members of the BRI. Belarus and China, in particular, are developing their national intellectual property systems as part of their economic and social development strategies. At this point, it is too early to talk about transferring Chinese practices to Belarus and Belarusian practices to China.

In the BRI, businesses are taking well-planned, systematic and properly balanced steps to navigate the complexities of using intangible assets in a multi-jurisdictional setting, and their ability to do so constitutes the uniqueness of the intellectual property situation. Rather than new rules for protecting and enforcing intellectual property rights, there is a need for institutional improvements and better organisation. These should be achieved, inter alia, on the basis of public-private partnerships, in dialogue with the government and business.

As a means of resolving disputes and competing interests arising as a result of the international movement of intangible assets and intellectual property – including in the context of BRI and projects – it is best to

form specialist commissions and panels consisting of qualified representatives from relevant national bodies to achieve the most effective mediation. Private parties will be able to file their claims through electronic platforms and systems used by these panels in their operations.

Providing adequate protection of intellectual property rights requires neither special international agreements nor special national laws, but only a stronger infrastructure. As intellectual property in the BRI is subject to international protection and enforcement, adding new provisions (addendums, annexes, etc.) to the EAEU – China agreement will ensure its intellectual property institutional framework is safeguarded. In a similar manner to the dispute resolution panels of the WTO, this instrument should guide the consideration and resolution of intellectual property disputes by specialist commissions or panels composed of officials from the patent, customs, and other competent authorities. Using an appropriate electronic recourse algorithm would reduce the time and money costs of international intellectual property protection and the uncertainties of cross-border disputes.

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