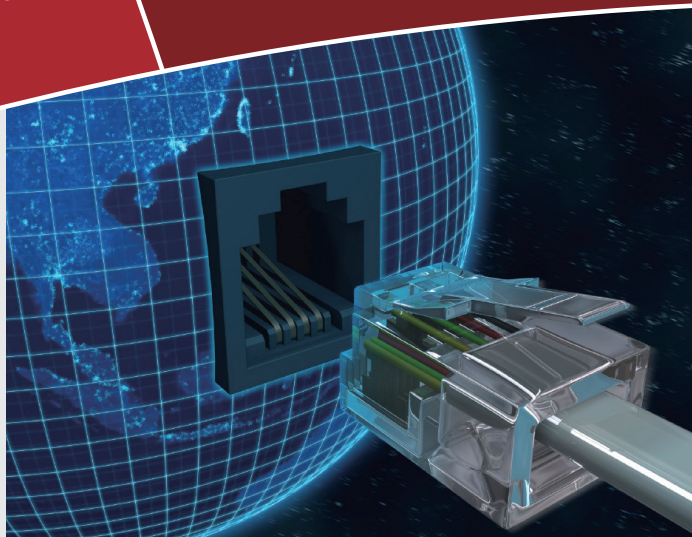


# Protection of Online IPR in China



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## Take-Away Message

### Overview: China and the Internet

Internet usage is booming in China. With more than 513 million 'netizens' (as of December 2011), China connects more people to the Internet than any other country. In fact, every fourth person on the Internet is from China. Although not quite as rapidly as in the last decade, the number of Chinese Internet users is still expected to grow continuously over the next decade, facilitated by the increasing availability of broadband technology and the growing trend towards online shopping and purchasing. The Internet, therefore, is an attractive business and marketing platform for many European SMEs working with or in China.

Although the Internet acts as a gateway for European SMEs, it is also an ideal platform for infringers to sell counterfeit products and commit fraud. The Internet provides a low cost method of reaching consumers around the world without revealing identity or origin of operation, meaning that infringers can operate anonymously.

### Why is domain name protection so important?

Companies operating in China face an increasing number of online threats such as fraud, counterfeit sales, false affiliation, phishing, slamming and traffic diversion.

These threats may at best lead to consumer confusion or lost web traffic but it could also result in lost E-mails, lost business, and in some cases, lawsuits from consumers against (genuine) IPR holders. In general, various online criminal activities may lead to brand dilution, increased risks, loss of business and an eventual loss of reputation (and ultimately profit). The omnipresent nature of the Internet means that even EU SMEs operating exclusively in their home markets cannot ignore the risks these activities may pose to their business, even if these activities originate in China.

### What are the risks of domain name infringement?

The classic form of domain name

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infringement is known as '**cybersquatting**', which is when a person or entity with no legal rights to a particular domain name consciously (in bad-faith) registers a domain name identical or similar to a third party company name, product name or trade mark. The cybersquatter is taking advantage of the **first-to-file principle that applies to domain name registrations** (i.e. the first person to file the domain name owns it, regardless of whether or not the brand belongs to them), and is seeking to sell the domain name to its rightful owner at a high price. While cybersquatting continues to be a frequent occurrence, this is no longer the main motivation for infringers who register domain names infringing on third parties.

In recent years, '**monetisation**' of domain names has become more common. Typically, this is registering domain names with misspellings, or typos of famous brands or company names. The registrant or the 'domainer' benefits from the traffic generated when people mistype a URL into a browser. If an Internet user mistypes the URL - e.g. [www.euroap.eu](http://www.euroap.eu) instead of [www.europa.eu](http://www.europa.eu) - the user reaches the website of [www.euroap.eu](http://www.euroap.eu), where the domainer can place a number of sponsored links. If the Internet user then clicks on one of those exposed links, the registrant of the domain name receives a portion of the advertising revenue paid by the advertiser. This practice of registering domain names with either legitimate attractive generic domains or infringing misspellings of brand names has increased to enormous proportions, and is a key factor in the growth of domain name registrations globally and in China. This is known as '**typosquatting**'.

Several factors used to make it easy and attractive for domainers to register domain names, both legitimate and illegal, in China:

- .cn domain names were very inexpensive compared to other top level domain (TLD) names. Prior to December 2009, .cn domain names were also relatively easy to register.
- .cn is divided into 34 regional TLDs such as bj.cn for Beijing and sh.cn for Shanghai and uses both Latin and Chinese Characters.
- The Internet is booming in China, and spending on online advertising is increasing annually.

In addition to the threat of typosquatting, domainers also use fraudulent, counterfeit websites that may be using .cn domain names, as well as websites and E-mail addresses containing someone else's brand name or variations of it. These registrations of infringing domain names occur in many forms: they may be *correctly* spelt under a *regional suffix*, misspelt, and/or in *Chinese characters*. These factors also make it somewhat more complicated for IPR owners to protect themselves online in China, compared to other countries and other top level domain names.

### How can I protect my IP assets online and mitigate these risks?

Domain name disputes and other IPR lawsuits in China can often be a costly, time-consuming and complicated process. Therefore, it is strongly recommended that companies proactively formulate a defensive domain name strategy to prevent problems from arising in the first place.

When creating and implementing an IPR protection strategy in China, online brand protection is just as important as protecting trade marks, patents, copyrights, etc. It is essential to protect company name, product names, services and trade marks through domain name registrations under the Chinese top level domain .cn. In addition, from the summer of 2010, China began to offer a new Chinese top level domain name '中国', which means 'china'.

Prior to December 2009, the .cn domain name had a fully automated registration process that barely required any validation of registration data. The Chinese domain name registry, China Internet Network Information Centre (CNNIC) recognised the resulting issues, and in an effort to curb the number of bad-faith



registrations, set stricter requirements for registering .cn domain names in order to ensure the authenticity, accuracy and integrity of the domain name registration information. It also introduced a number of control mechanisms for the .cn domain name space. It is now possible to file a complaint against an infringing domain name registrant by contacting CNNIC via online form (or by fax or a 24 hour hotline). These complaints can be against domain names that are older than two years, which is the time limit for filing a domain name dispute at one of the two appointed domain name arbitration centres (Beijing and Hong Kong).

### **New and less restricted domain name requirements**

Since Autumn 2011 any overseas (non-Chinese) company could again register .cn and .中国 domain names, without having a local business unit in China. It is now again possible to register .cn and .中国 domains names using local (i.e. European) company information as the registration data for domain names in China.

Furthermore, as of May 29th, 2012, .cn and .中国 domain name registrations now are again available for private individual registrations (both Chinese and overseas).

- The following documents are now required:
  - Application form with business seal of applicant company (to be provided by your registrar)
  - Copy of local business certificate in your home country (or copy of passport, driving licence or other official ID, if you apply as an individual). A 'Letter of Commitment' must be signed by the registrant (to be provided by your registrar)

Submitting originals is not required, nor are copies of trade mark certificates to prove a prior right to the requested domain name.

Unlike trade mark registrations where there is a period of three months when third parties may object to an application, .cn domain names can be registered

within a few weeks without any opposition period.



These new restrictions are both good news and bad news for European SMEs. The good news is that the removal of the local presence requirements enable European SMEs to register .cn and .中国 domain names, using their European company data and business certificates. This will enable European SMEs to register .cn and .中国 domain names, without needing to establish a local business unit within China. The flipside of the coin, however, is that the same removal of local presence requirements may again make the .cn and .中国 domain names an attractive space for cybersquatters and other online criminals, now that these domain names have become easier to register. Thus after an immense effort by Chinese authorities to make the .cn name space clean from fake registrants and websites containing illegitimate content (specifically porn content), CNNIC's increased controls and stricter requirements since 2009 and until May 2012 have resulted in the deletion and non-renewal of as many as 11 million .cn domain names. Whereas CNNIC reported 14 million active .cn domain names in the Autumn of 2009, in June 2012 this number had decreased to 3,3 million active domain names. With the removal of the local presence requirements, CNNIC (the Chinese registry operating the .cn domains) will again experience a growth in the registration of .cn and .中国 domain names.

By keeping the requirement of copies of business certificates and passports for private individual registrations, one can hope that the .cn domain space will not be as attractive to cybersquatters as other completely automated top level domain names such as .com and .net.



### How do I register a .cn domain name?

You must first check if the particular .cn domain name is available for registration. You can use the CNNIC domain name registry to search for the availability of your desired .cn domain name at:

- English – <http://www1.cnnic.cn/en/index/index.htm>
- Chinese – <http://www.cnnic.cn/html/Dir/2007/06/05/4635.htm>

(Enter the desired domain name in the search field at the upper left corner).



Domain name registration must be completed through an accredited .cn registrar. You must download an application form from the registrar website (or ask your registrar to prepare it for you), sign and seal the application form with your company stamp, and send it (via E-mail, fax or print) to your domain registrar, including a copy of your business certificate (signed and stamped). Your registrar is to send you the 'Letter of Commitment', asking you to verify that the copy business certificate and registration data provided are accurate and authentic, and that you accept the registration policy for .cn domain names. The Letter of Commitment is also to be signed, and it is recommended to add your official company stamp (seal).

The price of a .cn domain name is still quite affordable, ranging from EUR 50 and 100 per .cn domain name per year at European registrars. However, considering the increased workload for registrars due to the introduction of the Letter of Commitment, these prices may increase. Some registrars offer an option for registering domain names for five or ten years at a time, which may be a cheaper option.

1. Find a domain name registrar that offers .cn domain names (and .中国 domain names).
2. Have your registrar check for availability of .cn domain names.
3. Have your registrar prepare registration forms and Letter of Commitment.
4. Send signed and stamped registration forms and Letter of Commitment and provide your registrar with a stamped and signed copy of your business certificate.

### The new .中国 (.China) top level domain

In July 2010, CNNIC launched the .中国 domain name which was then officially ready for use. According to CNNIC more than 90% of Chinese ministries and provincial departments and more than 95% of news websites had already activated .中国 domain names. The domain name is available in both simplified (.中国) and traditional (.中國) characters, and allow Internet users to access websites and E-mail addresses in non-Latin local Chinese script.

CNNIC is confident that the new .中国 domain name will allow Chinese people who have not yet mastered the Latin characters to access the Internet more easily. The new .中国 top level domain name is also expected to further promote Chinese content on websites. The Chinese government is hopeful that this new top level domain will help to bridge the gap between the modern and industrialised Chinese cities, and rural China. Meanwhile, for European businesses, the new .中国 top level domain name (TLD) will provide an inexpensive and efficient way to reach Chinese consumers in their own language.

### What are the rules for registering .中国 domain names?

Registrants of existing .cn domain names with Chinese characters, such as for instance 中文.CN, will automatically be granted the same domain name using the .中国 TLD in both simplified and traditional Chinese.

The registration of a .中国 domain name in simplified Chinese will automatically give access to the same domain name in traditional Chinese and vice versa.

CNNIC has just published that the linkage between .cn and .中国 domain names as described above, will be removed on October 29th, 2012. Thus if you wish to register a domain name containing Chinese characters both under .cn (中文.CN ) and under .中国 (中文.中国) you will have to file to registration applications (until that date one application will cover both variants).

Furthermore, it will be possible from October 29th 2012 to combine Chinese scripts with Latin characters, Arabic numbers (0-9), and the hyphen, '-', when registering under .中国.

### How can I apply for a .中国 domain name?

Since CNNIC has now removed the barriers for overseas companies and individuals to register domain names in China, and since CNNIC is expected to continue to promote the .中国 domain extension in order to make it as popular as .cn, it is recommended for European SMEs planning on entering the Chinese market or already in China to take the following steps:

1. Find a domain name registrar that offers .cn and .中国 domain names.
2. Translate your domain names (company names, trade marks, product names etc.) into Chinese.
3. Have your registrar check for availability of .cn and .中国 domain names.
4. Have your registrar prepare registration forms and a Letter of Commitment.
5. Send signed and stamped registration forms and Letter of Commitment, and provide your registrar with a stamped and signed copy of your business certificate.

It is important also to continue to follow domain registrar newsletters to keep abreast of news about new regulations related to .cn and .中国 domain names.

### How do I choose a registrar?

A list of accredited international registrars can be found here:

[www.cnnic.cn/html/Dir/2007/06/25/4671.htm](http://www.cnnic.cn/html/Dir/2007/06/25/4671.htm)

A list of Chinese registrars can be found here:

[www.cnnic.cn/html/Dir/2007/06/05/4635.htm](http://www.cnnic.cn/html/Dir/2007/06/05/4635.htm)

While registrars may vary in cost, it is strongly recommended that you choose a registrar you know

and trust. Should you choose an unreliable registrar that suddenly ceases operation, your domain name could be lost and/or temporarily deactivated. However, you do not have to go directly to an accredited registrar. In most cases, your local domain name provider will have ties with accredited registrars and also offer .cn domain name registrations.



**Warning:** It is worth noting that a number of Chinese domain name providers, typically resellers of accredited registrars, are trying, in bad-faith, to encourage European companies to register a number of Asian domain name extensions. These providers typically claim that they have received a registration request from another company who wishes to register domain names that is identical to your company name. This is a well known fraud operation known as 'slamming'. The Chinese domain name provider is simply trying to persuade you to register a number of domain names in order to profit from such an order.

### What to do?

If you receive such an E-mail, you have four options:

1. Ignore the E-mail.
2. Reply saying that you will report this E-mail to CNNIC as 'slamming' and an attempt at fraudulent activity.
3. Forward the E-mail to CNNIC at [service@cnnic.cn](mailto:service@cnnic.cn) and [supervise@cnnic.net.cn](mailto:supervise@cnnic.net.cn).
4. Register some of those domain names you may have already considered registering through your local or usual registrar.

## Building your domain name strategy

The Helpdesk recommends formulating and implementing an online brand protection strategy that is aligned with your general IPR and business strategies. In building the best domain name strategy for your company, you may consider using the following questions as a guide and base for discussion with your lawyer:

## Domain Name Strategy

- What is the purpose of registering a domain name(s)?  
Reasons might include:  
Protection of IP  
Increasing visibility (online marketing)  
Infrastructure (E-mails, websites, intranet)

Security (risk mitigation – avoiding lost E-mails, lost traffic, etc.)

## Domain Name Audit

- Which domain names do we want to register?
- How are these domain names being used or how will they be used by our company? (Web content, E-mails).

## Domain Name Policy

- Which domain names and keywords should we register?

## Monitoring

- Which possibly infringing domain names are



registered by third parties?

- Which websites are selling our products or eroding our brand?

#### *Enforcement*

- Should we recover a third party domain name?
- Should we attempt to remove an infringing website?
- What kind of legal action should we take, if at all?

#### **How can one recover an infringing .cn domain name?**

The national domain name registry has implemented the CNNIC Domain Name Dispute Resolution Policy. The cost for a domain name dispute case involving one to two domain names is approximately RMB 8,000, exclusive of attorney fees.

It is recommended you seek assistance from IP law firms - either Chinese or international - with expertise in domain name disputes. The main criteria for proving a prior right to a domain name are:

- The disputed domain name is identical with, or confusingly similar to, the Complainant's name or mark in which the Complainant has civil rights or interests.
- The disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name.
- The disputed domain name holder has registered or has been using the domain name in bad-faith.

From CNNIC's newly published domain dispute resolution policies that will be in force from June 28, 2012

(<http://www1.cnnic.cn/html/Dir/2012/05/28/6044.htm>).

**Note:** A domain name dispute must be carried out within two years after the initial registration of the .cn domain name. After this period has lapsed, you

must go through the legal system, which can be a timely and costly affair. A new option is to make use of CNNIC's complaint service by filling in an online form (PDF, can be download bottom right of this page: <http://www.cnnic.cn/jczyfw/cnym/>) or by sending a complaint to [supervise@cnnic.cn](mailto:supervise@cnnic.cn). Such a complaint should be based on the same criteria that apply to a domain name dispute. Such complaints will also be dealt with by CNNIC, even if the .cn domain name has been registered for more than two years.

**Note:** The language of the domain name dispute resolution proceedings shall be Chinese, unless otherwise agreed by the parties or determined by the Panel.

#### **Take-Away Message**

It is recommended that foreign companies not only actively promote their business in China by using .cn domain names but also protect IPR by defensively registering domain names under .cn TLD and under the recently launched .中国 TLD. By defensively protecting domain names, monitoring for infringements and enforcing their rights, foreign companies can prevent a significant amount of criminal online activities in China at a reasonable cost. You are welcome to contact the Helpdesk, if you need assistance or have any questions.



*The China IPR SME Helpdesk provides free, confidential, business-focused advice relating to China IPR to European Small and Medium Enterprises (SMEs).*

**Helpdesk Enquiry Service:** Submit further questions to the Helpdesk via phone, email ([question@china-iprhelpdesk.eu](mailto:question@china-iprhelpdesk.eu)) or in person and receive free and confidential first-line advice within seven working days from a China IP expert.

**Training:** The Helpdesk arranges training on China IPR protection and enforcement across Europe and China, tailored to the needs of SMEs.

**Materials:** Helpdesk business-focused guides and training materials on China IPR issues are all downloadable from the online portal.

**Online Services:** Our multi-lingual online portal ([www.china-iprhelpdesk.eu](http://www.china-iprhelpdesk.eu)) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

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