Smart Technologies to China
SMART TECHNOLOGIES TO CHINA: SPEAKERS

• Karen Surmon – Austrade, Trade Commissioner (Innovation & Advanced Manufacturing)

• Matthew Brent – Austrade, Trade Commissioner (Infrastructure and Energy)

• David Bennett – IP Australia & IP Counsellor at the Australian Embassy, Beijing

• He Wei – Partner, King & Wood Mallesons

• Brendan Mason, Group COO and China CEO, SmartTrans Holdings Limited
China Innovation and Advanced Manufacturing Team
CHINA INNOVATION STRATEGY

Austrade China Innovation Strategy

R&D Commercialisat'n
- Advanced Manufacturing, Advanced Materials
- Biotech/MedTech
- ICT/Digital

Tech-driven SMEs
- Big Data/Data Analytics
- Cloud Computing
- Cyber Security
- AM: auto/marine/aviation

Landing Pad
- Fintech, Creative, Edtech, Services, Health, Energy, eCommerce, marketing, data, software, transport, entertainment, sport-tech
Smart Health
- Digital devices
- Data Analytics & Diagnostics
  eg Data 61 (CSIRO)

Fintech
- Blockchain
- B2B services
- Online payments
- Robo advice for wealth management

Marketing & Media
- Digital media
- SaaS
- VR & 3D technology
  eg KAWO social media content & workflow management

Advanced Manufacturing
- Marine, Aviation, Auto eg autonomous vehicles
Why China?
• Government focus on innovation
• Availability of 3G and 4G network + public Wifi
• High Mobile and m-commerce user rates
• Fast pace of change, high user adoption for new tech
• E-commerce ecosystem
• Funding support – Australia and China

Not without Challenges:
• Regulatory settings
  - licence requirements for wifi providers
  - data storage must be in china
• Content & Publishing restrictions
  - website hosting and content management
• IP management & enforcement
• Competitive market - e.g. BAT dominance
AUSTRALIAN GOVERNMENT COMMITMENTS TO INNOVATION

- Entrepreneurs' Program
  - Accelerating Commercialisation
  - Business Management
  - Incubator Support
  - Innovation Connections

- Global Connections Fund
- Global Linkage Grants
  - Connecting research and industry
- Australia-China Joint Research Centres (JRCs)
- Export Market Development Grants
LANDING PADS – SUPPORTING GLOBAL OUTREACH

$11.2M to setup Landing Pads at 5 global inno hubs over 4 years

- SAN FRANCISCO @RocketSpace
- TEL AVIV @SOSA
- SHANGHAI @XNODE
- BERLIN @BETAHAUS
- SINGAPORE @BASH

Free services to Australian-founded, market-ready tech startups:

- 90-day Residency
  Connect w Community
- Dedicated Manager
  Connect w Local Eco
- Austrade Resources
  Connect w Networks
Recent visit by Premier Li to Australia reconfirming common interest to support innovation including:

- Announcement of a dialogue on innovation

A new round and priorities for the Australia-China Science and Research Fund:
- Advanced Manufacturing
- Medical Technologies and Pharmaceuticals
- Resources and Energy

A MOU on Intellectual Property
Startup & tech events: China and Australia

- **MAR**
  - Australian Fintech Roadshow to China (SZ/SH)
  - MYRIAD Startup Convention (Brisbane)
  - CAMP 2017 (Shanghai, Sydney)

- **APR**
  - China Tech Fair (Shanghai)
  - International Innovation Competition (SZ)

- **MAY**
  - Chengdu Global Innovation Fair
  - Beijing Tech Fair

- **JUNE**
  - Techcrunch (Sydney)
China Infrastructure and Energy Team
• Smart Cities
• Aviation Training
• Water and Environment
• Mining and Energy
• Construction and Engineering
Protecting Infrastructure: solutions to better plan, monitor, maintain and protect infrastructure assets

Transport: real-time monitoring and congestion reduction, planning and analysis, internet of vehicles

Water and Pollution: flood management, pollution treatment and remediation, testing and monitoring

Smart Energy: meter and remote monitoring, energy saving technologies, storage solutions
SMART CITIES IN CHINA

300 PILOT SMART CITIES IN 2015
ARE ALL SMART CITIES CREATED EQUAL?
NDRC - China National Development Reform Commission

MIIT - Ministry of Industry and Information Technology

MOHURD - Ministry of Housing and Urban-Rural Development

Ministry of Finance

Provincial and City governments
Market entry is a case by case consideration.

- IP considerations – and often a model that provides ongoing value add
- Effective localisation often key to success
- Demonstration projects can be effective as part of a longer term strategy
- In some industries a local partner may be optional, in others, advisable or necessary
- Consider the relative opportunity of being a Tier 1, 2 or 3 supplier
- Work with Chinese companies with a track record of success and identify factors which would lead them to value your product or service
- Your pitch may need significant adjustment in China
Smart Tech – IP protection in China

19 April 2017

David Bennett
Counsellor (Intellectual Property)
Australian Embassy, Beijing
IP Australia

• The Australian government agency responsible for patents, trade marks, designs and plant breeder’s rights.

IP Counsellor to China

• IP Australia’s first overseas position
• Objective: to help Australians to protect their IP in China.
• Time split between policy work and working directly with businesses to give guidance on China IP matters.
• Can give general information and guidance but not specific legal advice.

David Bennett
Counsellor (Intellectual Property)
Australian Embassy, Beijing
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IP Basics

• Intellectual property – intangible asset, almost everything of value in a business besides physical or financial assets.
• IP is protected by patents, designs, trade marks, copyright, and trade secrets.

Registered IP rights
• **Patents** protect inventions
• **Designs** protect the visual appearance of a product
• **Trade marks** protect a brand

Other IP rights
• **Copyright** protects literary and artistic works (including software source code)
• **Trade secrets** protect non-public information of commercial value
Register IP rights in China

- Identify key IP that you need to protect, plan market entry accordingly
- IP rights are territorial - need to register in China
  - a patent, trade mark or design registered in Australia provides no protection in China.
  - Hong Kong, Macau and Taiwan have their own legal systems – need to register separately in each.
- Register trade marks
  - First to file system – register ASAP or lose your brand
  - Register English name, Chinese name, logo
Register IP rights in China (cont)

- Register patents
  - Must be new - can’t register after patent or design has been disclosed
  - Invention patents (20 years)
  - Utility models and design patents (10 years) – granted quickly without substantive examination, but can be enforced just the same as an invention patent

- Don’t infringe others
  - 2 million patents and 10 million trade marks in force in China.
  - Do you have freedom to operate?
Register IP rights in China (cont)

• Register key copyright
  – Copyright applies worldwide automatically but in practice China requires registration to enforce
  – Product images, logos, brochures, source code, product designs
  – Can be a useful additional tool to fight infringers

• Protect trade secrets
  – Commercial secrets are protected under Chinese law
  – Protect by keeping secret - limit physical and IT access within company
  – Protect with strong contracts with employees and commercial partners
Protect IP from manufacturers, business partners and employees

• Some Chinese companies will try to acquire your trade secrets and know-how
• Before disclosing valuable information to a manufacturer or potential business partner:
  – Conduct due diligence. Are they a legitimate company? Could they compete with you?
  – Require them to enter into a non-disclosure, non-circumvention and non-use/non-competition agreement specifically designed for China
• Use strong contracts/agreements that are enforceable in China
  – Partnerships: set out IP licensing, IP ownership, and dispute resolution
  – Choice of law and jurisdiction are important
  – Foreign court judgements are not enforceable in China (Foreign arbitration awards are)

It’s complicated. Get expert legal advice
Understand the laws and regulations that apply to you

- Legal restrictions on technology transfer contracts, including:
  - requirement that the technology transferor takes liability for any infringement based on the licensed transferred technology;
  - any improvements on the technology are owned by the party who improves the technology – by law, can’t stop transferee from owning improvements to the transferred technology.

- New Cybersecurity law regulates network operators and critical infrastructure providers; regulates information collection and data storage localisation

It’s complicated. Get expert legal advice
Monitor and investigate IP infringement

- You need to monitor and enforce your IP rights – no one will do it for you
- Monitor online
  - ecommerce sites
  - File take-down actions to remove infringing sellers
  - Gather information and evidence to pursue offline
- Investigate offline
  - investigators can be engaged through law firms or directly
- Evidence requirements are very strict. Seek expert legal guidance
Enforce your IP

• Enforcement system isn’t perfect, but is reasonably effective
• **Administrative enforcement**
  – Conducted by local government authorities
  – IPR owner presents evidence of IP right and infringing activity
  – Local authorities conduct raids, seize infringing goods and issue fines
• **Civil litigation**
  – Can apply for injunctions and damages
  – Specialist IP courts in Beijing, Shanghai and Guangzhou since 2014
• **Customs enforcement**
  – Chinese customs can seize shipments entering or leaving the country – very powerful
  – Need to register IP with China customs
  – Most effective if IP owner provides information on shipments of infringing goods
  – Need to respond and post bond within 3 working days of a customs seizure
  – Most IP seizures are trade mark infringing goods being exported from China
More on software and business method patents...

• Copyright for software can be registered with the Chinese Software Registration Center.
  – Can be effective for protecting commercial software, somewhat effective for retail software
  – Disclosure of part of source code is required, but can take steps to minimise the disclosure
  – Some companies prefer to keep source code as a trade secret

• Software and business methods now appear more patentable in China than in Australia or the United States
  – Under new patent examination guidelines that took effect on 1 April 2017 it is now easier to obtain software and business method patents in China

• Why patent software or a business method?
  – Copyright only applies to software source code, doesn’t protect the idea or algorithms. Will only protect from identical copying, will not stop others developing similar software.
  – Patent protection gives an exclusive right to an invention that can be worth billions: eg. Google’s PageRank algorithm patent or Amazon’s 1-Click purchase patent
IP protection for Big Data?

- Raw data cannot be copyrighted or patented
- Raw data can be protected as a trade secret
  - limit access and take measures to keep the information secret
- Certain methods of data analytics may be protected as software, patent or trade secret (it depends)
- If using third-party data analytics or machine learning, check terms of contract or license
  - Many third party analytics services set out in terms of licence that they will own any intellectual property rights that the licensee generates
Take home messages

• Register your IP rights in China
• Use strong contracts designed specifically for China
• Monitor and enforce your IP rights

Consult a lawyer experienced with the Chinese legal system. Your Australian IP attorney can work with Chinese associates on your China IP strategy.

Further reading:

• IP Australia China content at https://www.ipaustralia.gov.au/china
• EU IPR SME helpdesk - an excellent EU resource for any company doing business with China. See http://www.china-iprhelpdesk.eu/ and particularly the topic guides at http://www.china-iprhelpdesk.eu/content/guides
Intellectual Property Rights Protection of Software, Model and Data
Legislative Development and Tendency

King & Wood Mallesons
HE WEI Partner | April 19, 2017
ABOUT

Ms. HE Wei

More than 2,000 lawyers, 27 cities around the world
Best Law Firm Award, 2017 - Australian Finance Report
Top of the list - Asia Pacific Law Firm Brand Index
Tier 1 Chinese firm in IP litigation, 2017 - Chambers Asia-Pacific
Asian Firm of the Decade/ Best Dispute Resolution PRC Law Firm - The Managing IP
IP Firm of the year - Asian Legal Business Award in China
Best Copyright Law Firm - Asia IP

Partner, IP litigation
Deputy director of China Health Information Society Health Medical Big Data Industry Development and Information Security Professional Committee
Deputy director of Arbitration Professional Committee of China Lawyers' Association
Arbitrator at CIETAC and SCIA
Elite "Leading lawyers" of dispute resolution - The Legal 500, 2015
Top ten intellectual property lawyers - Beijing Lawyers Association, 2013
Copyright Protection for Australian Software in China

Laws and Rules

- Berne Convention for the Protection of Literary and Artistic Works
- Copyright Law & Implementation Regulations for the Copyright Law
- Regulations on the Protection of Computer Software
- Regulations on Protection of Information Network Transmission Right
- Interpretation of the Supreme People's Court on Issues Relating to Application of Law to Adjudication of Cases of Copyright Disputes
- Provisions of the Supreme People’s Court on Several Issues Concerning the Application of Law to Trial of Civil Dispute Cases of Infringement of Information Network Transmission Rights
Infringement Cases

Jul. 2016

In SAP Corporation v. Langze Enterprise Management Consulting (Shanghai) Co., Ltd, the Shanghai Intellectual Property Court ruled that the defendant shall pay the damages of CNY 1.18 million;

Aug. 2016

In Blizzard Entertainment Limited v. Shanghai Net Easy Network Technology Development Co., Ltd, Guangzhou Intellectual Property Court ruled that the infringer shall pay CNY 4 million to the Plaintiff;

Sep. 2017

In Guangzhou Net Easy Computer Co., Ltd. v. Guangzhou Duoyi Internet Co., Ltd., on copyright infringement and unfair competition, in the first instance, Guangzhou Intellectual Property Court ruled that the Defendant shall pay CNY 15 million to the Plaintiff, which is the highest amount of compensation among present copyright infringement cases.

➢ In Chinese legal practice, damages for computer software copyright infringement case awarded by courts are CONTINUOUSLY RISING.
Legislation Tendency

Strengthening the punishment on intellectual property infringement. Raising the upper limit of the statutory compensation for intellectual property infringements, and imposing punitive damages for malicious infringement acts with serious circumstances, for which the infringer shall bear reasonable expenditures.

Beijing, Shanghai, Guangzhou Intellectual Property Court are exploring the application of punitive damages, solving the problem of “low cost for infringement” and “high cost for defending rights”.

the Several Opinions of the State Council on Building a Powerful Intellectual Property Nation under New Conditions

Report on the Work of the Supreme People’s Court, March 2017
Common Means for Right Reservation

Certificate of Copyright Registration

No more service fee since April 1st 2017

Valid Timestamp

Convenient and Timesaving
Protection for Australian Modeling in China

Common Means

- Business Secret (Anti-unfair Competition Law);
- Computer software/written/graphic/model works (Copyright Law);
- Process patent claim/function claims of module (Patent Law)

Latest Means

According to Newly Amended Guidelines for Patent Examination (effective on April 1st, 2017). It is allowed to adopt claims of “Medium+Process of Computer Program” and “Device Claims Comprising Program” in patent drafting which presented new approach for protections of computer software, arithmetic or modeling.
Regulations on Australian Data Analysis Service in China

- Strictly Protection on Individual Information and Privacy

**General Rules of the Civil Law**
Effective on Oct 1st, 2017

*Article 110: Natural persons enjoy the right to [...] privacy [...]*

*Article 111: Natural persons’ personal information shall be protected by law. Any organizations and individuals who need to obtain personal information of others shall obtain the information according to law and shall ensure the information safety. It is NOT allowed to illegally collect, use, process or transfer the personal information of others. It is illegal to buy and sell, supply or publish the personal information of others.*

**Cybersecurity Law**
Effective on Jun 1st, 2017

*Article 41: Network operators shall abide by the “lawful, justifiable and necessary” principles to collect and use personal information by announcing rules for collection and use, expressly notifying the purpose, methods and scope of such collection and use, and obtain the consent of the person whose personal information is to be collected.*
Regulations on Australian Data Analysis Service in China

- Strictly Protection on Individual Information and Privacy

**Amendment (IX) to the Criminal Law**

New Article 286 (a): *a crime of NOT to perform their duties of safety management on information network by network service providers*

**Other relevant laws and regulations**

- *the Protection of Rights and Interests of Consumers Law*
- *Administration of Embarkation and Disembarkation Law*
- *Resident Identity Cards Law*
- *Social Security Law*
- *Passport Law*
- *Tourism Law*
- *Statistics Law*...
Key Data Should be Stored within China

Article 37: The operator of a key information infrastructure shall store personal information and important data, which collected and generated in People's Republic of China during its operation, within the territory of the People's Republic of China. Where such information and data have to be provided abroad for business purpose, security assessment shall be conducted pursuant to the measures developed by the CAC together with competent departments of the State Council, unless otherwise provided for in laws and administrative regulations, in which such laws and administrative regulations shall prevail.

Cybersecurity Law
Effective on June 1, 2017

Article 10(b): No population health information is stored in an offshore server and can not be hosted and leased outside the server.

the Measures for the Administration of Population Health Information (for Trial Implementation)
Qualifications for Enterprise of “Public Cloud” service

Foreign enterprises cannot independently provide “Public Cloud” service in China

Classified Catalogue of Telecommunications Services (2015)

- Public Cloud Service falls into category B11, Internet Data Center ("IDC"), which is a value-added services.

Protocol for China’s Entry into the WTO Annex 9

- Chinese government only allows 7 types of telecommunications services which could be provided by foreign providers. B11, IDC service is not included.

IDC / ISP Affair Application Q&A
Telecommunication Research Institute
Telecommunication and Information Consulting Center

- Only capital from Hong Kong and Macao could be involved in IDC service. Meanwhile the capital from Hong Kong and Macao cannot exceed 50%.
Legislations on Smart Cities

Creative Administrative Legislation
*Regulations on promoting smart city of Yinchuan City*

- The very first local legislation on promoting Smart City, effective on Oct. 1, 2016.
- Article 23: *No individual or organization may steal or otherwise unlawfully obtain any personal information, or sell or unlawfully provide any personal information to others.*

*Network service providers and other enterprises and public institutions that collect citizens' personal electronic information in the their business activities shall not disclose, tamper with, destroy, sell or unlawfully provide such information and privacy to others.*
Administration of Government Information

National Regulations

Circular of the State Council on Issuing the Interim Measures for the Management of Government Information Resources Sharing (Guo Fa [2016]No51)

Article 2 For the purpose of the Measures, "government information resources" mean various information resources recorded and reserved in certain forms, such as documents, materials, diagrams and data, which are made or acquired when government departments are performing their duties and obligations, including those legally collected, those managed as authorized by law and those developed by relying on the government information system as required for duty performance by government departments directly or by any third party.

For the purpose of the Measures, "government departments" shall be departments of government, and public institutions and social organization, which have been authorized to serve the administrative functions by laws.

Local Regulations

- Shanghai Management of Government Information Resources Sharing (2016.03.01)
- Fujian Province Management of Government Information Resources Sharing (2016.10.15)
Possible Legal Consequence

- 2014, Shanghai DZH Limited has involved in data divulgence. The damage claimed by the users were up to CNY 35,000,000.

Civil Liability
Possibility for huge amount of damage
Amazon was ordered to suspend AWS service and rectification, which gave it no choice but to collaborate with a domestically-funded enterprise on Cloud service.

Possible Legal Consequence

Administrative Responsibility
suspend production, suspension of license etc.
Possible Legal Consequence

- In the case of Ai Li Qin Commercial Consulting (Shanghai) Co., Ltd infringing citizen private information, the principle was sentenced to 6 month serve.

Criminal Liability
The principal might face criminal liability
Legislation Tendency

Possible Progress on Promoting Big Data Industry

Circular of the State Council on Issuing the Outline for Improving the Development of Big Data (Guo Fa [2015] No.50)

- As one of the new power for economic restructure, Big Data industry is growing into a new source of economic growth.
Legislation Tendency

Possible Further Legislation on Data Security

Guiding Opinions of the General Office of the State Council on Promoting and Regulating the Application and Development of Big Data on Health and Medical Treatment

Explanation on Several Issues Concerning the Application of Law to the Handling of Criminal Cases Involving Infringing Citizens' Personal Information -- Adopted in principle by the Supreme People's Court on March 21, 2017

Notice on Issuing Guidance on the Healthy Development of Smart City

Measures for the Administration of Big Data Security for Healthcare (Draft for Comments) ......
Thank You!

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Smart Technologies to China: IP Webinar

“They’re better at the D and we’re better at the R”

19 April 2017

Brendan Mason 梅森
SmartTrans Holdings Limited (ASX:SMA)
Group COO and China CEO, 全球COO 兼中国区CEO
Discussion

- Case Study – Protecting our Brands in a largely unregulated eCommerce market
- Case Study – We were knocked off
- When the D catches the R - strategies to ensure it doesn’t
- Case Study - Connecting innovation to revenue
Case: Protecting our brands, less regulated market

Source: iResearch Research Institute
Case: We were knocked off

- Highly regulated medical market
- Highly patented and trademark protected
- Key Opinion Leaders (KOLs)
- Indigenous innovation policy
- 10 year program funded by VC
- Clear breach with national exposure
- Market response
When the D catches the R

• 2015 – China Patents 1.1 million. Australia Patents: 23,912*
• But we frequently hear from Chinese officials that they need our help in bringing forward innovation
• Australia seems to have a invention reputation
• What strategies can we employ to ensure we always have a position in the China market?
• What about royalties and license fees?
Case: Connecting innovation to revenue

• Imagine selling something that wasn’t invented
• Imagine putting the commitment to deliver the invention in a contract
• That’s what we used to do
• My job was to negotiate back the contract when we fell short
• ... but it was the best innovation to revenue program I’ve ever seen
THANK YOU

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