

Intellectual Property & Education in China

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Rising spending on education in China is creating opportunities for British companies offering a range of products and services. Managing intellectual property (IP) risks can help position UK businesses to meet the booming demand for international-standard academic, vocational and English-language education.

British education initiatives in China include:

- Academic education provision for all age groups, ranging from pre-school to universities;
- Vocational training and assessment, including “train-the-trainers” initiatives;
- English-language teaching;
- Publishing and distribution of education materials, including physical publications and online/mobile publishing;
- Examination and assessments;
- Education technology, including software, apps and classroom tools; and
- Consulting and other services.

Participation in the Chinese education sector can sometimes be implemented directly through offshore exports or a Chinese subsidiary (a “Wholly Foreign-Owned Enterprise”, WFOE). However, many parts of the Chinese education system remain closed to or difficult to access for foreign companies. A more common business model is cooperation with a Chinese joint venture partner, distributor, licensee or manufacturer. Chinese business partners in the education sector can range from government agencies and state-owned enterprises, to private companies and entrepreneurial start-ups.

Intellectual property risks

Like in many countries, businesses operating in China face a number of risks, including risks associated with IP.

The business model chosen for China market entry – and the products or services offered – will determine the specific risks for any individual UK business in China. A common concern is that successful products or services will be copied by domestic competitors in a way that infringes IP rights. This can include unauthorised activity by business partners which violates IP or other provisions in contractual agreements.

For many UK companies, China presents an unfamiliar business, legal and administrative environment. However, the Chinese IP and legal systems have developed significantly and provide increasingly effective mechanisms for companies to mitigate IP risks. By applying for IP rights in China, and following prudent advice on contracts and business relationships, British businesses can seek to mitigate IP risks to acceptable levels.

Applying for IP rights in China

There is no single IP right that provides full coverage for education sector products and services. It is important to consider which IP rights apply to elements of your business and secure protection for these in China. Most IP rights are territorial. Your UK, European, Hong Kong or other international IP rights will not usually provide protection in mainland China.

Trade marks

Apply for trade mark protection for the names of your company and key product lines. Protect words and stylised logos, and both English- and Chinese-language marks.

Apply for your trade marks in China as early as possible. China has a large and systemic problem with [bad-faith trade mark applications](#). If you don't apply for your mark, someone else will. If you are targeted by bad-faith applications the process to reclaim ownership of your brand can be long and expensive, with no guarantee of success.

British companies can apply for trade marks in China through the [Madrid system](#) for the international protection of trade marks, or file directly with the China Trademark Office (CTMO). Although it is possible to use the Madrid system to make a Chinese trade mark application [without attorney representation](#), in most cases it is better to seek expert advice from a trade mark attorney. Most communications with the CTMO are undertaken by Chinese trade mark agents. British companies typically access these services via one of two channels:

- 1) **They use a UK trade mark attorney as an intermediary.** Many British IP attorneys have established relationships with Chinese agents. This makes communication more straightforward and reduces the need for applicants to undertake separate due diligence, but using an extra intermediary can add to the cost of the applications. If your usual attorney cannot help with international applications, the Institute of Trade Mark Attorneys (ITMA) has a trade mark expert search function on its [website](#).

- 2) **They directly instruct a Chinese trade mark attorney.** The [China-Britain Business Council](#) (CBBC) helps connect UK companies with suitable IP service providers, including both UK firms with China experience and domestic Chinese companies with international clients.

Copyright

As in other countries, in China copyright arises automatically on the creation of works, including software and written works such as education materials. Registration of copyright is not mandatory. However, Chinese government, legal and business culture strongly emphasises official certifications, so recordal of copyright should be considered to demonstrate ownership.

Applications for the registration of copyright can be made to the [Copyright Protection Centre of China](#) (CPCC). Applications are usually handled by an attorney. An application should be supported by documentary evidence of authorship, originality, chain of title and first publication. It is generally possible to achieve registration within approximately two or three months. Software registrations will require partial disclosure of source and/or object code.

Other registered IP rights

Other types of IP protection for education sector companies may include **patents** (for technological inventions) and **designs** (for aesthetic elements of physical products). For more information on protecting and enforcing IP rights in China see our business factsheets on [Intellectual Property in China](#) and [Intellectual Property & 3D Product Design in China](#).

Intellectual Property & Education in China: Top Tips

Understand the risks. Risks can usually be mitigated to acceptable levels. Sources of IP risk can include business partners and unfamiliar business, legal and administrative environments in China.

Apply for IP rights in China. Including trade marks, copyright and any new IP created for the China market. Apply for both English- and Chinese-language rights where possible.

Contracts. Contracts should clearly specify IP provisions and penalties for breach. Consider language and jurisdiction. Use Non-Disclosure Agreements (NDAs) in early stage negotiations with partners.

Relationships. Get to know your partner. Consider due diligence.

Innovate. Adding value over the longer-term incentivises successful partnerships. Try to structure your relationship so products and services are regularly updated, and your offer improves over time.

Contracts & relationships with business partners

Working with Chinese business partners can be an effective way to develop and deliver education products and services in China. However, partners can also be a source of IP risk. This risk can be managed by ensuring contracts are clear and legally binding, and structuring relationships to be sustainable over the longer term.

Know-how & Non-Disclosure Agreements (NDAs)

Your Chinese IP portfolio will likely form part of your contribution to any joint venture with a Chinese business partner. Education projects also frequently include sharing of know-how such as teaching techniques, manuals or product specifications. Chinese law provides protection for trade secrets. However, in practice know-how is difficult to protect, and enforcement against misappropriation can be difficult.

Make sure that sensitive material is marked “confidential” or “business secret”. Take steps to protect confidential information, for example using Non-Disclosure Agreements (NDAs) during negotiations with Chinese partners. Make sure employees are informed of the risks of know-how disclosure. For more information see our factsheet on [Trade Secrets in China](#).

Contracts

Chinese contracts are usually simpler and shorter than contracts in the UK. In China, a contract is less likely to be regarded as a complete statement of a commercial relationship and more likely to be perceived as a starting point for the further negotiations when circumstances change. Nevertheless, contracts are important in defining and guiding business relationships.

Particular points to consider when preparing contracts and other formal agreements in China include:

- **Legal advice.** Take advice from experienced China lawyers on how to structure contracts. This includes any NDAs, Memorandum of

Understanding (MOU) or other high-level agreement signed with a Chinese partner.

- **Language and jurisdiction.** Make sure contracts and other legal documents are in both Chinese and English. Chinese law does not require that contracts be drafted in Chinese, but in practice this can be beneficial as it will be more straightforward to enforce against counterparties in China.

Similarly, Chinese law and jurisdiction are often more appropriate than foreign law and jurisdiction, especially since Chinese courts do not generally enforce foreign judgments. In the event of a dispute, Chinese courts may well be preferable to an international arbitration commission.

- **Due diligence.** Commission due diligence on business partners before signing a contract. Ensure that your Chinese partner actually exists and has the permits or licences required to do what they have promised to do. Make sure the Chinese party is controlled by the person or people you are dealing with, and they have the authority to sign and/or apply the company chop.

Relationships & innovation

Building interpersonal trust with Chinese partners is vitally important. In addition to commissioning formal due diligence, take time to get to know your business partners. Ask industry counterparts about any prior business experience.

Longer-term, sustainable business relationships in China are often supported by innovation. China has a fast-developing, dynamic business environment. Business partners will be incentivised to respect IP and the terms of contractual agreements if a relationship helps maintain their competitive edge. To achieve this, successful business structures may incorporate regular product or service updates, or bespoke offers that are responsive to changing circumstances.

To arrange a discussion of particular IP cases with the British Embassy Beijing IP Attaché team – based on our experience working with other companies in China – please contact Commercialmail.beijing@fcdo.gov.uk. For more information on IP in China can be found on our [China IP Webpage](#).