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U.S. on verge of being passed up by Chinese on IP standards

Global IP

By [Doris Estelle Long](#)

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POSTED June 12, 2017 2:01 PM

To paraphrase Mark Twain, “The death of globalization has been greatly exaggerated.” In May, two events occurred that demonstrate that globalization is not only alive, it is moving forward, potentially without the participation of the United States.

In France, Emmanuel Macron took office as French president on a platform advocating greater integration with the European Union.

In China, a two-day forum brought together the leaders of 29, mostly developing countries, along with nonparticipating delegates from more than 100 additional countries, to put into high gear its One Belt, One Road initiative.

This initiative seeks to establish a regional trade, development and information zones among the countries that roughly line the ancient Silk Road and its maritime equivalent. Unless U.S. intellectual property owners act quickly, they may find themselves unfortunate bystanders, or worse, potential victims, of the new economic and legal order that arises from this massive undertaking.

According to Chinese President Xi Jinping, the goal of the One Belt initiative, established in 2013 by China, is to “focus on the fundamental issue of development ... and achieve economic integration” among participating countries. It is a regional globalization project in the purest sense of the word. One Belt has already resulted in massive infrastructure projects as diverse as port upgrades in Piraeus, Greece, a “dry port” in Khorgos, Kazakhstan, and the beginnings of a bullet train from Belgrade, Serbia, to Belgium.

Although the United States sent an observer delegation to the recent forum, it was not an invited member of the initiative. In short, the U.S. will play no role in establishing the terms of the cooperative agreements that will launch One Belt.



Belt projects, the strong emphasis on domestic development opportunities — a “my country first” policy — that underlies One Belt makes future participation of other U.S. companies uncertain at best.

During the symposium, the U.S. delegation reportedly insisted on “transparency.” But transparency, while helpful, is not the same as “participation.” It does not give the U.S. any voice in the new IP norms that will inevitably result from this massive cross-border project.

The lack of active participation by the U.S. in the One Belt initiative was unfortunately predictable given its precipitous withdrawal from several globalization-based trade efforts, including, most recently, the TransPacific Partnership.

I have already described the harmful effects U.S. withdrawal from the partnership will have on IP protections in Asia. (See my column on Dec. 5, 2016.) Those losses could well be magnified by subsequent One Belt cooperative arrangements.

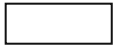
We do not yet know the precise scope or nature of One Belt’s “cooperative arrangements.” Yet the public elements of initiative implicate a wide array of intellectual property rights. Issues such as obligatory technology transfer, compulsory licenses, international exhaustion, free trade zones and cross-border transit rights lie at the heart of many of the economic trade and development goals of One Belt. Any cooperative agreement regarding those rights will not be IP-protectionist in nature.

The greatest threat to IP rights in One Belt countries may be the adoption of a national intellectual property strategy similar to China’s. In brief terms, China’s national strategy emphasizes, among other goals, the encouragement of self-sufficient, indigenous innovation and the strengthening of China’s capacity “to transform innovations into intellectual property through original innovation, joint innovation and secondary innovation based on imported technologies.”

The goal of creating a domestic culture of innovation is fully in accordance with international standards. China’s implementation, however, has resulted in significant disadvantages to U.S. IP owners. These disadvantages include conditioning market access on the disclosure or forced transfer of IP or other proprietary information and invoking “secure and controllable” standards for information and computer technology products and services that obligate purchase of only locally sourced items.

Wholesale adoption of similar strategies by One Belt participants could undo much of the international protection achieved for IP rights over the past 20 years.

Fortunately there are steps U.S. companies can take to mitigate this challenge. First, U.S. IP owners whose businesses include goods or services that could form part of the wide-ranging Chinese initiative should contact the U.S. Embassy in China and become part of a newly announced One Belt working group.



participate.

Second, companies should advise the U.S. Trade Representative's Office if they are already having problems enforcing their intellectual property rights in any of the countries engaged in One Belt. In the recently released 2017 Special 301 Report, China and Russia have been listed as "priority" countries while other One Belt participants, including Pakistan, Turkmenistan, Uzbekistan and Turkey have been listed as "watch" countries.

This means that the U.S. will be engaging in high-level discussions focusing on IP issues with these governments over the next year. By providing information on current IP protection problems, U.S. owners can ensure that such meetings focus on their particular issues.

Third, IP owners should be proactive in advising the appropriate U.S. government officials, including Congress, the trade representative's office and the Department of Commerce, about the adverse economic impact that the exclusion from any IP-standard-setting that arises from One Belt will have on their future business opportunities.

The more insistent the demand by U.S. businesses, the more likely the Trump administration will begin now to work toward a rational approach to this emerging challenge to global IP rights.

China is already using One Belt to create a network of product standards for items such as railways that are incompatible with U.S. standards. We need to engage now with China and other initiative participants to be certain One Belt does not also become the latest avenue for adopting intellectual property standards at variance with U.S. interests.

One Belt sends a clear signal that U.S. withdrawal from regional trade agreements has left a vacuum that countries who seek to profit from U.S. innovation free-of-charge are more than willing to fill.

If we do not move quickly, we may find global IP protections altered to the detriment of U.S. owners. Worse, the cost of such complacency could be irreversible.