RESEARCH PROJECT WITH IP AUSTRALIA

Study into the experience of Australian firms enforcing their intellectual property rights in Asia

Final Analysis Report, May 2020

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EXECUTIVE SUMMARY

The ensuing report seeks to answer the research questions about how Australian businesses protect their IP rights when exporting into China and ASEAN markets as well as the challenges they face in doing so. This report, conducted by the Export Council of Australia was done on behalf of IP Australia and the Department of Industry, Science, Energy and Resources (DISER).

The methodology for this report was designed to explore and explain the research questions above through a two-phase approach. The first was a survey instrument, distributed online that yielded 118 participants while the second was a case study approach with 16 case study interviews. The participants for both phases were mostly SME's however a robust display of industries saw a diverse range of goods and services exporters represented.

The findings from this report generated many interesting discoveries.

The first was that China is perceived as the most common jurisdiction for IP infringement. This has in part has prompted the expansion and generated further interest for SMEs expanding into ASEAN markets.

Second, being proactive in one's IP regime significantly reduced the onset of IP breaches, including through traditional IP registration routes but also considering other innovative commercial strategies. This also includes considering the value of business partners in foreign jurisdictions as a way to manage potential IP breaches.

Three, SMEs due to their smallness, lack the necessary resources to effectively manage their IP protection regimes, be that time and/or money. It is therefore essential to consider effective outreach for SMEs to make it easier for them.

Four, IP Australia's website is the most popular source of IP related information from the sample.

The report concludes that IP protection should have greater prominence in a firm's business plan, especially when exporting to China and ASEAN. Furthermore, greater information is required by SME's along the business lifecycle from the pre-IP registration stages and through ex-post, for maintenance and monitoring.

On the basis of the above, four recommendations have been selected, which include:

- Embedding IP protection early, as part of the commercialization strategy
- Assisting exporters to understand the role of partners in IP protection
- Creating an IP network with likeminded organisations
- Informative and Interactive IP information

These four recommendations provide practical guidance to remedy the issues uncovered from the research. Taken together, these proposals would seek to elevate the prominence of IP protection in the pre-planning stage for exporters. Furthermore, the prominence of IP Australia's website should be exploited, as it seeks to position itself as an axis of information leveraged from third parties.

Finally, the limitations in the report are not significant. The report was able to be completed with minimal disruption. This is considering the second phase, which was the case study interviews, analysis and write up had been conducted and completed during the Covid-19 pandemic.

INTRODUCTION

This document is the final report into the intellectual property (IP) process and issues Australian exporters face in China and the ASEAN region. Commissioned by IP Australia and the Department of Industry, Science, Energy and Resources (DISER), this report was set in two parts, first an online survey that was completed by 118 respondents followed by 16 case study interviews.

Though the nature of IP protection is bespoke for most organisations, they seek the equifinality of complete IP protection. Therefore, this report has brought together a diverse sample of survey respondents and case studies in order to investigate, analyse, discuss and report the findings which are to provide practical guidance for present and future exporters.

The first section describes the research method the report undertook. It will explain the survey approach used to gather the first-phase data. It will then proceed to describe the qualitative case study approach from the pre-interview stage through to the interviewing process up until its handling, analysis and presentation.

The second section displays and discusses the characteristics of the survey participants followed by the case studies. The details will include company sizes, their industries and with regards to the case studies, a summary of each case studies IP situation. The importance of such information in the beginning of the report is to provide background and context to the findings going forward.

The third section of the report displays and discusses the export markets and IP regimes of the survey participants and case studies. The findings will show China as the most popular export market in both the survey and case study samples. The IP regimes of the survey participants will show greater divergence of IP types while the case studies had a majority of trade marks and small number of patents. Additionally, unregistered IP for both the survey participants and case studies will show a high number.

The fourth section displays and discusses the strategies for IP protection. While the survey had participants choosing pre-selected answers, the case study data was completely divergent of the survey answers with the exception of trade secrets. These case study findings are both simplistic in nature but also practical commercially.

The fifth section displays and discusses the breaches and resolutions of the survey and case study samples. The findings will show China as the greatest locale of IP breaches for both the survey and case study samples. The data on IP breach resolutions will show a slight divergence, with the case studies opting for softer approaches to dispute resolutions.

The sixth section provides four recommendations that have been extrapolated from the findings and their analysis. These four will be centred around increasing the IP competencies of exporting firms along with reducing the burden of IP protection and enforcement.

SURVEY AND CASE STUDY METHODOLOGY

The following research project began with the objective of answering the following two research questions, those being:

1. How do Australian businesses protect their IP rights when exporting into China and ASEAN markets?
2. What are the challenges that Australian exporters have faced in protecting and/or enforcing their IP rights in China and ASEAN markets?

In order to answer the research question of what the experiences of Australian exporters regarding their IP journey into China and ASEAN are, a two-phase methodological approach was selected. The first phase was a survey and the second phase were qualitative case study interviews. Such an approach allowed the research team to explore and explain insights from these participants for greater understanding.

The survey was carefully constructed and put through several iterations of analysis and testing with relevant stakeholders for validity and rigour. The survey was hosted by the popular site Survey Monkey, which the researchers have experience using and has been found to be practical thereby increasing the participation rates. The survey was open for four weeks between 15 October to 12 November 2019 and was disseminated online by the ECA, IP Australia and DISER, returning 118 valid surveys.

Case studies were conducted between mid-April and mid-May 2020. Out of a sample of seventy, sixteen (16) case studies were conducted through this period. Following a purposeful sampling approach, selected companies were initially emailed inviting them to participate in the study with follow ups conducted. Companies were recruited mainly from the ECA database. The sample consisted of Australian based companies from a range of sizes, industry sectors, business models and different degrees of understanding and approaches to IP.

Case study interviews required a protocol of pre-interview desktop analysis for each case study through secondary sources. Such approach allowed the research team to assess the case study's contribution along with the interviewees fit. All interviews were conducted either through various online mediums or telephone due to the COVID-19 pandemic, rendering face-to-face interviews untenable. Such an approach had no bearing on the quality of the interviews.

Interviews conducted were between 30 to 75 minutes long with verbal consent given prior to formal proceedings. All interviewees gave consent with some requesting anonymity/confidentiality. The interviews followed a semi-structured questioning approach, with prepared open-ended questions along with the ability to follow an interviewee's cues and prompts for greater insights. The 16 interviews were conducted by ECA's research team with the project sponsors (IP Australia and DISER) informed and engaged along the whole process.

All interviews were recorded and transcribed, with the data displayed in grid formation. Data analysis was conducted in excel where such an approach allowed the researchers to uncover within-case and cross-case themes and patterns. The data was thematically coded with the key themes and their frequencies noted. Lastly, all companies and individuals are de-identified and coded to protect their identity as requested while keeping the integrity of the data collection process.

The report is written in a logical sequence beginning with the participant characteristics, participants export markets and IP regimes, strategies for protecting IP, IP breaches and resolutions, information sources and lastly recommendations. The report layout is the survey data first, then followed by the qualitative data with vignettes. Such an approach is in line with the objectives of the research to explore and explain the phenomenon researched.

PARTICIPANT CHARACTERISTICS

In this section of the report, the participant characteristics from the survey participants and the case studies is displayed and discussed. These participants characteristics are an important foundation for the ongoing analysis of the overall data and include the company sizes, industries and with the case studies, an overview of the business in relation to their IP.

SURVEY DATA

The surveys sent out yielded a total of 125 of which 118 were utilisable[1]. The company size of the participants showed a skewness towards small-to-medium sized entities (SME), with the bulk of the participants categorised as micro-organisations (000-004) as shown in Table 1 below.

Company Size	Count of Respondents
000-004	43
005-019	36
020-049	17
050-099	8
100-199	3
200-499	8
500 or more	10
Total	**125**

Table 1. Company sizes and numbers of participants

The industry configuration of the sample represents 26 sectors in the economy, providing a diverse range of goods and services exported. Such diversity helped to increase the robustness of the overall analysis. Of the 118 exporting organisations surveyed, 78 exported tangible goods whilst 47 exported services. Furthermore, the findings below showed a bias towards:

- Manufacturing (38)
- Wholesale trade (13) and
- Agriculture, forestry and fishing (13).

These three sectors are classified as tangible goods for which their constitution would require differing levels of IP protection. The largest cohort for service providers was Professional, Scientific and Technical Services with a frequency of 11 and ranking fourth overall. Table two below provides the full list of participant industries and their frequencies.

Industries	Count of Respondents
Agriculture, Forestry and Fishing	13
Arts and Recreation Services	7
Blockchain and technical brand protection services	1
Built Environment	1
Business Consulting	1
Construction	1
Education and Training	5
Electricity, Gas, Water and Waste Services	1
Energy, oil and gas. Utilities.	1
Financial and Insurance Services	1
Health Care and Social Assistance	4
Inbound Tourism	1
Information Media and Telecommunications	5
Manufacturing	38
Mining equipment, Technology and Services (METS)	1
Mining	3
Nursery & Garden industry	1
Online sales on marketplaces in Asia	1
Optical / Sunglass wholesale / export	1
Professional, Scientific and Technical Services	11
Public Administration and Safety	2
Rental, Hiring and Real Estate Services	1
Retail Trade	8
Skin care	1
Transport, Postal and Warehousing	2
Wholesale Trade	13
Total	**125**

Table 2. Main Industry and Number of Respondents

CASE STUDY DATA

Out of 70 invitations for interviews, 16 organisations accepted for which interviews were conducted. The company sizes of the sample showed 12 SME's and 4 large companies. While large companies are by their nature more resource rich, SME's are smaller and have less resources at their disposal, suffering a liability of smallness. This liability of smallness can also be seen in the case study summaries, with some SME's indicating cost of IP an issue. Table 3 below provides a snapshot of each case studies industry, size and a brief summary of the organisation with respect to its IP.

	Case study 1	Case study 2	Case study 3	Case study 4
Industry	IT Software	Beverages	Food	Food & IT Software
Company size	SME	Large	SME	SME
Case study summary	Financially constricted and arrested due to government bureaucracy in Australia to do with the nature of their technology patents being a new field.	Well-resourced and experienced at IP protection. Has significant global exposure outside China/ASEAN. Company has dedicated staff and external parties to monitor and execute IP needs	Small, narrow product range and not overall concerned/aware of IP and the implications of distributors to register and own company's IP (trade mark) in certain market.	Company's IP is skewed towards technology with patents pending. Company changes logo frequently and only file for trade marks in their food export business because it is a requirement of Chinese e-commerce platforms

	Case study 5	Case study 6	Case study 7	Case study 8
Industry	Personal care products	Animal products and services	Food & beverage	Manufacturing
Company size	SME	SME	SME	SME
Case study summary	Small company that is methodical, strategic and places IP as an important aspect to their overall business. Has dedicated staff to look at IP along with third parties to assist and execute IP needs	Medium sized company with incomplete information on IP and also a level of disregard for the importance of IP (trade marks)	Comprehensive approach to IP and proactive approach to avoid potential breaches. Strong reliance in external IP attorneys and lack of own knowledge. Cost of IP protection as a permanent issue.	Considers IP important but has financial constraints. Product is hard to reverse engineer making patents not a requirement.

	Case study 9	Case study 10	Case study 11	Case study 12
Industry	IT Software	Therapeutic goods	Medical services	Retail
Company size	SME	SME	Large	Large
Case study summary	Small software company under resourced and grappling with financial cost of IP and the opportunistic nature of Asia	Company has strong distributors which significantly lessons the chances of IP breaches. Financially secure and proactive on IP	Company well-structured and with resources to seek advice from external IP attorneys in key markets. Good understanding of importance of IP and need for protection. Company seeks to have a uniform approach to IP across jurisdictions with mixed results. Registering IP (trade marks) and paying external attorneys as a costly exercise	Very well resourced and proactive IP strategy. The most active and difficult IP (trade marks) regime amongst all participants.

	Case study 13	Case study 14	Case study 15	Case study 16
Industry	Animal products and services	FMCG	Manufacturer	Aquaculture
Company size	SME	Large	SME	SME
Case study summary	New management rethinking the importance of IP and building knowledge on implication of IP and trade mark registration for the business. IP not a critical issue in the past but with international expansion has forced the company to think and invest in protecting their IP, still in initial stages	Export arm of large FMCG. Due to range of products and export markets approach to IP registration and protection is pragmatic and based on a cost-benefit analysis. Internal IP team that works with local IP attorneys oversee IP strategy and trade mark registration for the business. Key emphasis on brand reputation and protection.	Reverse exporter who manufacturers in China for Australia. Instead of IP he uses fragmented supply chain to produce product	Narrow product range and financially secure. Increasingly more focused on protecting trade marks going forward

Table 3. Case study industries, size and summary

The case study data shows a diversity of industries with 12 tangible and 5 non-tangible exporters (case study 4 is one of both). The case studies most active regarding their IP protection from the data were:

- Case study 2 - Beverages
- Case study 5 - Personal care
- Case study 12 - Retail
- Case study 14 - FMCG

The commonality between the four examples above are they are tangible products and have a longer value chain as their strategy to market is a business-to-consumer model. Overall the majority of the case studies are a business-to business model which has a shorter value chain, and who's product offering compliments their buyer's final product. Overall, such a diverse data set from both the survey and case studies provided a multifaceted insight into different intellectual property regimes and their strategies.

PARTICIPANTS EXPORT MARKETS AND IP REGIMES

In this section of the report, an analysis of the export markets and the IP regimes is displayed and discussed. The data is presented first for the survey participants and then followed by the case studies. The survey will firstly show the breakdown of respondent's export markets, with China having the highest frequency. Secondly IP regimes show a large response to trade marks however other filings are also well accounted for. Lastly, unregistered IP numbers are significantly high making this finding of note.

The case study findings will show mainland China as the most popular export market with 12 out of 16 case studies having China as an export destination. If we include all special administrative regions, then 15 case studies exported to China. Furthermore, the IP regimes of the case studies will show 15 out of 16 have trade marks. Two case studies used confidentiality agreements. None of the participants had designs and/or plant breeder's rights registered. Examples of unregistered IP will be shown with supporting quotes. Lastly, strategies for protecting IP show a proactive IP approach, combining IP filings and lawyer selection.

SURVEY EXPORT MARKETS AND IP REGIMES

The export markets of the survey respondents are shown in Table 4 below. The survey results had a response rate of 113 showing China as the most popular export market from the sample. This is followed by Singapore, Malaysia, Indonesia, Vietnam, Thailand and Philippines[2].

Answer Choices	Responses	
China	79%	89
Singapore	55%	62
Malaysia	54%	61
Indonesia	53%	60
Vietnam	47%	53
Thailand	39%	44
Philippines	36%	41
Other countries in Asia (please specify)	45%	51
Total Respondents: 113		

Table 4. Respondents export markets

China Market Analysis

From the data in Table 4 above, Table 5 below provides a breakdown of the 89 respondents. Of these, 37 specified that they have IP. Within the 37 respondents who acknowledge the existence of IP in their business, 21 respondents (57%) have no formal registration. There were 40 non responders.

From those with registered IP, 9 respondents (24%) used the Madrid Protocol to register their trade marks, while a further 9 respondents preferred direct filing. 7 (19%) respondents indicated patent filings while 4 respondents (11%) indicated design filings.

Businesses with no registered IP numbered 12. When asked the reason 3 respondents (25%) for each indicated elevated costs, it was either too early or registering IP was not relevant for their business. 2 respondents (17%) respectively reported that they were not concerned, or they have never considered registering their IP.

China (n=89)		37	China (n=12)		12
TM Madrid	24%	9	Too Costly	25%	3
TM Direct	24%	9	Not concerned	25%	3
Patent	19%	7	Too Early	25%	3
Design	11%	4	Not Relevant	17%	2
Unregistered IP	57%	21	Never considered	17%	2

Table 5. China Market Analysis

Total ASEAN Market Analysis

Table 6 below shows the total ASEAN market had 93 respondents. Out of the 93, 38 indicated they have IP within their businesses while 27 respondents (71%) have unregistered IP. There were 44 non responders.

From the sample who indicated registered IP, 6 respondents (16%) employed the Madrid Protocol to register their trade marks, while 4 respondents (11%) each preferred direct filing as well as patent filing. Only 1 respondent (3%) conducted a design filing.

When asked the reason their business had not registered its IP, 3 respondents (27%) indicated that it was due to elevated costs, while 4 respondents (36%) indicated that it was either too early or registering IP was not relevant for their business. Only 1 respondent (9%) reported that they were not concerned, while 2 respondents (18%) have never considered registering their IP

ASEAN (n=93)		38	ASEAN (n=11)		11
TM Madrid	16%	6	Too Costly	36%	4
TM Direct	11%	4	Not concerned	27%	3
Patent	11%	4	Too Early	27%	3
Design	3%	1	Not Relevant	18%	3
Unregistered IP	71%	27	Never considered	9%	2

Table 6. ASEAN Market Analysis

CASE STUDY EXPORT MARKETS AND IP REGIMES

IP market analysis

Table 7 below provides a full breakdown of the export markets of each case study. Case study findings in relation to their export markets shows mainland China as the export destination of choice for 13 of the case studies (this does not include special administrative regions such as Hong Kong (China) and Macau which will make the total 15). As a single source destination, 3 case studies only export to China. No other country was a single source export destination. The three China-only exporters are in the technology industry (case study 1) food / technology industry (case studies 4) and manufacturing (case study 15). The frequency of the case studies that exported to ASEAN countries showed Singapore 7, Vietnam 6, Malaysia 6, Thailand 3 and Indonesia 3.

	Case study 1	Case study 2	Case study 3	Case study 4
Export countries	China only	China and ASEAN	China, Hong Kong (China), Malaysia, Singapore, Vietnam	China only

	Case study 5	Case study 6	Case study 7	Case study 8
Export countries	China and ASEAN	China and ASEAN	Hong Kong (China), Indonesia, Vietnam, Malaysia, Singapore	China, Thailand, Singapore, Hong Kong (China), Malaysia

	Case study 9	Case study 10	Case study 11	Case study 12
Export countries	Vietnam and Thailand	China, Vietnam & Indonesia	China, Indonesia, Singapore, Malaysia, Vietnam, Philippines, Myanmar	China and ASEAN

	Case study 13	Case study 14	Case study 15	Case study 16
Export countries	Singapore, HK, Malaysia, Philippines	China, Hong Kong (China), Malaysia, Thailand, Singapore,	China	Hong Kong (China) Vietnam, Singapore & China

Table 7 below provides a full breakdown of the export markets

Nonetheless, China is overwhelmingly the key destination and hence makes up the bulk of the findings. Nevertheless, two case studies did not export into China, the first being case study 13 who is waiting for its IP to be registered in China before it begins commercial engagement.

Though outside the scope of the research, approximately a quarter of the case studies exported outside the China/ASEAN region. Case study 5 and 10 have significant exposure in South Korea. The interviewee for case study 10 explains how a Korean agent was able to successfully register his trade mark in China after numerous unsuccessful attempts to do so directly, stating;

> *One of my brands is currently unregistered in China. It's been rejected and its back in progress again currently. Recently we had success registering it in China through our Korean agent that specialises into China. They seem to be a bit more successful than some of the direct China people we have used. To be honest it seems like black magic.*

Outside the discussion on China, Indonesia was mentioned as a jurisdiction which provides an IP protection regime beneficial to exporters. As the interviewee from case study 2 explains, they have a positive experience regarding IP registration in Indonesia:

> *It's very good economy, because their system is good as we not only trade mark into the country and get protection, but any product that goes into the country has to go through a stringent registration, which we have to provide for the registration, so many copies of our labels, the rights to use that label. When we sell our products into Indonesia, our registration is very extensive. It's painful at the time but you end up appreciating it.*

IP regimes

The IP regimes of all 16 case studies is shown in Table 8 below. The findings show all case studies have trade marks on names and logos with only case studies 4 and 11 indicating the addition of patents in their IP regimes. As the findings showed, China is the most popular export market, making the discussion on IP in China also the most cited. Nonetheless, the other markets, especially Vietnam, Malaysia, Thailand and Indonesia are also important. Indonesia is especially significant due to its large population, proximity to Australia, the recently signed free trade agreement and predictions of it being the 4th largest economy by 2050[3].

	Case study 1	Case study 2	Case study 3	Case study 4
IP regime	Patents on technological applications. Trade marks for name and logo's	Trade marks only	China trade mark	Patents and trade marks
Unregistered IP	Patents	No	No	Nothing of value

	Case study 5	Case study 6	Case study 7	Case study 8
IP regime	Trade marks	Trade marks	Trade marks	Trade marks
Unregistered IP	No	No	No	Patents on the product but due to difficulty in reverse engineering a cost/ benefit analysis rendered the patent not necessary.

	Case study 9	Case study 10	Case study 11	Case study 12
IP regime	Trade marks	Trade marks	Mostly trade marks but some patents	Many Trade marks and Copyrights
Unregistered IP	No	Yes, because it was not accepted in China. It is now been resubmitted	No	Nothing of value

	Case study 13	Case study 14	Case study 15	Case study 16
IP regime	Trade marks registered domestically and in NZ	Trade marks	Trade marks on in Australia	Trade marks
Unregistered IP	All products to the above are unregistered in export markets but working with lawyers to get registered	No	Yes, but the difficulty to reverse engineer made IP protection not necessary	Yes, but only IP to do with patents around business processes. No risk from overseas participants

Table 8. registered and unregistered IP for each case study

While the large companies in the sample are well resourced and can create and maintain IP regimes of fit, many of the SME's struggle with the financial costs. 12 of the 16 case studies mentioned the financial burden of IP protection, and this included two of the large companies. Case study 1, a technology start-up solely focussed on China, explains the burden of IP on firms such as theirs, stating:

> *(We) just have trade marks of names and company logos. This is domestic trade marking. We are a start-up and we don't have the funds like a publicly listed company.*

Case study 12, a large exporting retailer explains succinctly the importance as well as the financial burden that IP protection has to their business, stating:

> *It's a necessary spend to protect your brand globally, but the amount you spend exceeds the initial amount expected.*

Unregistered IP

In relation to unregistered IP, 8 case studies indicated they had no unregistered IP. The remaining 8 with unregistered IP saw 3 case studies indicating nothing of value to be registered, leaving 5 exceptions with valuable IP. These five case studies are shown below as examples of why IP can be left unregistered.

Case study 13 has had most of their IP unregistered in Asia. The interviewee expresses the past decisions and the confusion within the organisation about what to IP when stating:

> *In expanding our export markets, I identified the need for more protection for the business. This was not considered by management before, although they were operating internationally. Therefore, we engaged external lawyers to support our IP strategy. The difficulty is whether doing a blanket program or do it market by market?*

Case study 1, who is mentioned above regarding the financial burden of IP, indicated Australian government bureaucracy as the reason for its unregistered patent as the interviewee states:

> *I put in a patent application, and it went through the PCT and was recognised, then we went through the PCT. IP Australia then published us out of 11applicants and when we went through the full patent application we got rejected. It was a kick in the guts.*

Case studies 8, with a valuable product and no patent protection did not need to do so due to difficulty in reverse engineering their products. As the interviewee explains the decision was made due to a cost/benefit analysis, stating:

> *We don't have a patent registered. We discussed this when we first got going during the development stage. It was decided it takes too long, too costly for a small business to cope with. Right now, we have, like KFC, the secret herbs and spices.*

The last two cases saw case study 14, which has a product line of over 1000 products, leave much of their range unprotected due to the unviability of IP protecting all products. Lastly, case study 16 had unregistered patents on their business processes. These business processes are however geographically anchored due to the industry, making them unable to be exploited in their export markets.

STRATEGIES FOR PROTECTING IP

In this section of the report, the findings for strategies protecting IP is displayed and discussed. It first looks at the survey data showing a mix of responses from organisational initiatives to legal assistance. The case study data on strategies for protecting IP has three themes, proactive approach to IP protection, combined filing regimes and lastly lawyer selection. It also details some of the similarities between the survey and case studies.

SURVEY STRATEGIES FOR PROTECTING IP

Table 9 below asked respondents the measures they utilised to protect their IP rights in their export markets. With 40 respondents answering the question, over half of respondents (55%) had an IP strategy. 14 respondents (35%) had Australian IP attorneys while only 9 respondents (23%) had overseas IP attorneys, showing a domestic favouritism. Additionally, only 5 respondents (13%) used the services of a filing agent.

11 respondents (28%) monitored IP registries for potential infringements. Registration and use of web domains were employed by 13 respondents (33%). Only 1 respondent applied QR or similar technology. This form of protection is the domain of tangible exports and popular with the likes of fast-moving consumer goods.

8 respondents (20%) had trade secrets that warded against IP infringement. Only one participant answered other with a novel approach to IP protection. Their answer was the organisation builds bespoke products, so it is hard to copy. This is very similar to secrecy/ trade secret as mentioned above. 4 respondents (10%) used none of the above for IP protection.

Measures to protect IP	Responses	
An IP strategy (for protecting IP in the context of business goals)	55%	22
Australian IP attorney representation	35%	14
Registration and use of web domains in the export market	33%	13
Monitoring IP registries for potential infringement	28%	11
Overseas IP attorney representation	23%	9
Through secrecy or trade secret	20%	8
Local IP representation that isn't an attorney, such as filing agent (in Australia or in relevant jurisdiction)	13%	5
None of the above	10%	4
QR codes or similar technology to verify provenance	3%	1
Other (please specify)	3%	1
Total Respondents: 40		

Table 9. Measures participants used to protect IP in export markets

CASE STUDY STRATEGIES FOR PROTECTING IP

Three main themes for IP protection strategies came out of the case study interviews. The first is organisations are required to be proactive about IP protection. The second discusses filing regimes and the blend between the Madrid Protocol and direct filing while the third discusses lawyer selection. The last section looks at similarities between the survey and case studies.

Proactive attitude towards IP

Proactive IP filers were found among all the large companies (case studies 2,11,12 and 14) in addition to SME case studies 5, 7 and 10. Case study 14 is one example which has the necessary resources and pre-emptive strategy along with commercial mechanisms to ward against possible IP breaches:

> *We have a proactive strategy by preventively registering trade marks in different markets, even if not exporting to that market (E.g. India, Philippines) and also contractual protection with suppliers that protect us (even if product*

was jointly developed with supplier) particularly relevant for more innovative products. We feel a degree of protection by having our application in, even if the application is still in process.

Numerous interviewees discussed the legal regimes of China and some ASEAN markets whereby the first to file IP takes ownership of any trade mark as opposed to Australian IP laws which give ownership to entities that are first to use. In light of such legal regimes, numerous interviewees suggested that the preferred IP strategy would be for trade marking to be done directly and swiftly into China/ASEAN as protection is required immediately then followed by Australia, which one's IP is automatically protected due to the first to use rule.

Case study 4, a food and technology exporter to China understands the legal regime of China of first to file, hence their IP strategy is to register quickly into China first as the interviewee states:

> *Our IP strategy is to file first in China as their regime is first to file and not first to use. Then if it needs be filed in Australia then we do it.*

Case study 6 has had its IP registered by opportunistic parties in many of its export markets whose legal regimes are first to file. The interviewee provides the following advice from both a legal and commercial standpoint:

> *The lessons being learnt by the business, in the sense of the need to register our trade marks and protect our IP prior to products even being displayed in trade shows.*

Combined filing regimes

The issue of whether to direct file or apply for the Madrid Protocol was discussed. The evidence gathered from the case studies suggest that there is a general confusion relating to the process and benefits of using the Madrid Protocol versus direct filing. Moreover, the decision to use one mechanism or the other is many times a function of the (legal) advice firms receive and act upon. Case study 2 and case study 14, both large companies, see greater protection in direct filings than the Madrid Protocol. Case study 14 had legal advice to mainly follow direct filing over the Madrid Protocol, while the interviewee for case study 2 mentions the Madrid Protocol as a weak form of protection when stating:

> *I find Madrid out of all of them to be the weaker, because we register and start operating then we find out that we get a challenge and through the Madrid protocol you are only registered, so then we apply to that country separately to get that trade mark*

Case study 16 has used the WIPO for all their export markets but also done direct filing into China, courtesy of advice from their lawyers as the interviewee explains:

> *(Our lawyers) in China have people on the ground and also, it's of a greater risk. Overtime we have had both WIPO and direct filing in China, but it just depends on the class we were going for. There's the case of lumping all the other countries together and having specific filing for China. It's a bit of a blend*

Lawyer selection

From the findings, selecting the right legal representation overseas is an important factor for a firms strategy in protecting their IP. The proactive firm's all had legal representation both domestically and in their export markets. As case study 4 discusses, choosing the wrong lawyer has cost the firm significantly with regards to their patents:

> *(Choosing the wrong lawyer in China) was probably the biggest error. The first one was inherited from someone in the team that did some research and found someone that was pretty cost effective. That's where the downfall is. They were going for cheap and not experienced. They didn't come from a referral source. The second lawyers are a lot more expensive but a lot more reliable. We are now in the position where we are going down the route of the actual patents, having them formally recognised in China. That's six months away*

Case study 6 received advice from the NSW Business Chamber regarding legal representation for their IP in China. As the interviewee stated, this assistance has stretched from filing to dispute resolution:

> *(Assistance of our IP registration) in China was done through a body based in Australia, the NSW Business Chamber (Business Australia) who put us in contact with their Chinese counterpart/ lawyers who dealt with the registration process. This is also ongoing. They are also assisting with resolving the trade mark registration issue back in China.*

In addition to the above, trade secrets for case study 8 meant that it did not need to patent its products due to difficulty in reverse engineering, while case study 15 split their manufacturing across numerous unconnected parties as a way of maintaining trade secrets. Lastly, case study 9, a software exporter is able to protect its IP using embedded codes. While these are novel approaches, they nonetheless are not valid IP protection measures that can be applied generally.

IP BREACHES AND RESOLUTIONS

In this section of the report, the findings for IP breaches and resolutions are displayed and discussed. The survey data will show the breaches per country, breach encounters, dispute outcomes and their methods of resolution and the advice sought by the participants.

The case study data identifies the breached organisations with a summary of the breach and the jurisdiction. It is then followed by case studies highlighting their breach examples, breach notifications and examples of resolutions.

SURVEY BREACHES AND RESOLUTIONS

Table 10 below presents the data for organisations who have been involved in an IP related issue or dispute from 58 respondents. The table shows a higher number in the sample from China (14) who has more than twice the next country Vietnam (4). These were followed by Indonesia with 4 then 2 each for Malaysia, Philippines Singapore and Thailand. Respondents with no IP related issues or disputes tallied 37 (64%) and by far the largest cohort in the sample.

IP breaches per countries	Responses	
Haven't been involved in IP related issue/ dispute	64%	37
China	24%	14
Vietnam	8%	5
Indonesia	7%	4
Other (please specify)	7%	4
Malaysia	3%	2
Philippines	3%	2
Singapore	3%	2
Thailand	3%	2
Total Respondents: 58		

Table 10. IP breaches per countries

Table 11 below shows types of IP breaches from a sample size of 18 respondents. 8 respondents (44%) indicated infringement on registered IP while only 3 respondents (17%) indicated infringement of unregistered IP. This is less than half of the former. 4 respondents (22%) indicated rejection of IP registration in their export market.

4 respondents (22%) identified a partner/distributor/ other of infringement of unregistered IP while only 2 respondents (11%) who had registered IP, half the amount of its opposite above. This could suggest registering IP acts as a barrier towards venture partner opportunism. Accusations of reverse IP infringement from respondents is negligent with a total of 1 respondent. Lastly, rejection of IP registration is high with 4 respondents (22%) suggesting this is a common occurrence.

Types of IP breaches	Responses	
Someone infringed my registered IP	44%	8
My business partner/distributor/other infringed my unregistered IP	22%	4
My IP registration was rejected/denied in a foreign country	22%	4
Someone infringed my unregistered IP	17%	3
Other (please specify)	17%	3
My business partner/distributor/other infringed my registered IP	11%	2
Someone accused me of infringing their IP	6%	1
My business partner/distributor/other accused me of infringing their IP	0%	0
Total Respondents: 18		

Table 11. Types of IP breaches

Table 12 below are the figures from a total of 18 respondents who have IP issues/disputes in the past and present. Out of this sample, 8 respondents (44%) have pending IP issues numbering the largest amount. 3 respondents (17%) had resolved IP issues/disputes while 7 respondents (39%) did not resolve their IP issues/disputes. On the basis of these figures, more than twice the number of respondents had unresolved issues over resolved and if we apply this ratio to the pending sample, one can state 5 of these pending cases could turn into unresolved cases.

IP Issue/Dispute Resolution Outcome	Responses	
Still pending	44%	8
No	39%	7
Yes	17%	3
Total Respondents: 18		

Table 12. IP Issue/Dispute Resolution Outcomes

Table 13 below asked respondents how their issues were resolved. 2 respondents (67%) indicated cease & desist letters while 1 respondent (33%) each identified the court system and removal of infringement on e-commerce website. With such a small sample, the validity and robustness of the findings could be challenged.

Method for Dispute Resolution	Responses	
Letter of cease & desist	67%	2
Court system	33%	1
Removal of infringing listings on e-commerce website	33%	1
Alternative dispute resolution	0%	0
Administrative enforcement by local authorities	0%	0
Commercial arrangement reached	0%	0
Other (please specify)	0%	0
Total Respondents: 4		

Table 13. Method for Dispute Resolution

Table 14 below had 18 respondents give feedback on advice sought for IP infringements or disputes. The results showed half (9) of infringed exporters sought legal representation in the export market while only 3 respondents (16.67%) pursued Australian legal advice. This shows host country legal advice as three times more popular.

6 respondents (33%) consulted a business advisor. Conversely, 5 respondents (28%) sought no consultation. The 1 respondent for other indicated they had spoken to the Party leader in the city where their manufacturing is. Such references are attributed towards China, with the term 'Party' denoting the Chinese Communist Party however this is not certain from the statement.

Advise Sought for IP Infringements/ Disputes	Responses	
Legal representative in country where infringement took place	50%	9
Sought advice from business advisor	33%	6
Did not consult	28%	5
Australian legal representative	17%	3
Other (please specify)	6%	1
Total Respondents: 18		

Table 14. Advise Sought for IP Infringements/Disputes

CASE STUDY BREACHES AND RESOLUTIONS

Breaches

Table 15 below displays the IP breaches, its jurisdiction and summary for each case study. Much like the findings of the survey above, an over representation of China is observed. Seven case studies had no IP breaches which meant nine case studies had varying IP breaches of depth and breadth. Analysis of the IP breaches firstly indicated all were to do with trade marked IP, with no patent breaches. Out of the nine case studies which indicated IP breaches, five are from are from mainland China alone and including Hong Kong (China) and Macau, seven all together. Other countries where breaches occurred included one for both Thailand and Vietnam.

	Case study 1	Case study 2	Case study 3	Case study 4
Breaches	None	Partner in China trade marked the IP of five products. Firm has many other instances of breaches	None	None

	Case study 5	Case study 6	Case study 7	Case study 8
Breaches	1. Hong Kong (China) company registered the name in New Zealand. 2. In China. A breachee filed in the same class as the company	China where someone trade marked the company before the company could	None in Asia	China. Marketing counterfeit products

	Case study 9	Case study 10	Case study 11	Case study 12
Breaches	Vietnam, where one license is used multiple times, contravening the licensing terms	In Australia and Macau by the same company using a similar looking product to sell in tourist stores in Sydney and pharmacies in Macau	None	Too many to document. China is the most prolific and difficult.

	Case study 13	Case study 14	Case study 15	Case study 16
Breaches	None	Counterfeit packaging in Thailand. No other major incidents	China. One supplier copying manufacturer product	None

Table 15. Breach descriptions and country

Breach examples

Case study 12, is the largest recipient of IP breaches across the whole of China and ASEAN in comparison to the other case studies. The interviewee highlighted China as its most serious market regarding breaches of IP when stating:

> *In China we have spent 100's of 1000's of dollars, around half a million on legal fees and settlements to get bad faith actors sorted. In China it just never ends.*

Vietnam for case study 9 saw a license holder of its software breach their terms of use. Additionally, case study 14 has had its packaging used by local Thai manufacturers against their knowledge, as the interviewee explains:

> *We found our packaging in Thailand being used for products (local fruits) that were not ours.*

Case study 6 indicated a breach by a distributor in China who filed a trade mark before the company had the opportunity to do so. This case study has had to rebrand and trade mark their new IP before they can export any of their products. This has caused serious disruptions to the firm as the interviewee explains:

> *Main issues have occurred in China, where a small buyer with no permission/request from the business trade marked all our brands. This started a year or so ago. Subsequently they have attempted to stop all other retail and online stores from selling our products. Further they have approached other distributors selling the products with legal letters threatening legal action against them as they 'owned' the trade marks. Basically, they held the company to ransom.*

Breach notifications

Notification of breaches is an important aspect to the protection of IP. Having mechanisms in place including monitoring to assist firms in remedying breaches before they become problematic. For case studies 4 and 12, computer software is used to detect IP infringements. The former, a China only exporter, uses a modified version from a Chinese based system while the latter uses a global software company. Other well-resourced case studies had outsourced their breach notification strategy to lawyers such as case studies 5 and 16, however, this would be difficult for firm's that are resource constrained. Though many SME's are not in the position to procure software or retain legal services, a more cost-effective approach from the findings suggest leveraging off one's partners as a source of reconnaissance for IP breaches. Case studies 2, 8 and 10 apply this strategy. As case study 2 points out, keeping good relations is an effective strategy at detecting breaches:

> *when we have partners, we try and set up good relationships and they do a lot of scouting for us. At the moment that's* the approach we take.

Overall, most case studies use a combination of mechanisms to ensure they are notified of breaches to their IP, including leveraging on their business networks, monitoring and other ways to remain up to date on protection their IP in target markets.

Resolutions

Table 16 below displays the case study data on resolution methods and a brief description. As the findings show, none of the breached case studies went to court. The most serious of legal routes was letters of cease and desist, negotiations through distributors in their respective markets and negotiations between law firms representing each party. Some case studies with larger presences and product lines such as case studies 12 and 14 applied a cost/ benefit analysis and only pursued serious breaches of IP.

	Case study 1	Case study 2	Case study 3	Case study 4
Resolution	N/A	Through Australian lawyers who then remedy issues through overseas partners	Allowed to breach to happen	N/A

	Case study 5	Case study 6	Case study 7	Case study 8
Resolution	1. Resolved through Australian lawyer 2. Pending and being handled by Chinese lawyers	Rebranding and trade marking before selling. Additionally, pending negotiations with breacher	N/A	Difficult as done through Alibaba

	Case study 9	Case study 10	Case study 11	Case study 12
Resolution	Introducing software that limits licenses to be used illegally	Lawyer letters for the former and new distributor using market power to have the pharmacies stock on the right product	N/A	Done on a cost benefit analysis. Major breaches are taken up by external lawyers

	Case study 13	Case study 14	Case study 15	Case study 16
Resolution	N/A	Through negotiation and rarely use litigation. Overall works on a cost/ benefit perspective	Took business away and spread production to five different suppliers	Still pending

Table 16. Case study resolutions and descriptions

Table 16 above shows pending breaches for case studies 5, 6 and 16. Most serious of this sample was case study 6 who had their trade marks registered in China by a buyer before the firm was able to do so. As a consequence, case study 6 has had to rebrand their export products and file for IP protection before these products are exported. Furthermore, the firm is currently in negotiation to buy back the existing trade mark, the interviewee explains:

> *We explored various mechanisms to resolve the matter. We rebranded our product (specially a good selling product in China) and registered the trade mark in China before selling the product again. At the same time one of our wholesalers contacted the infringer and tried to get the trade mark back to us through negotiation. This is still ongoing.*

Case study 10, an exporter of therapeutic goods, had the same IP infringer in Australia and China counterfeit its products. After failed attempts legally to resolve the matter, the firm used a market mechanism of selecting a new distributor with market power to eliminate the ongoing breach of IP. The new distributor took decisive action as the interviewee stated:

> *(The previous IP infringement) ceased by us establishing a powerful distributor in Macau who has very good control over those pharmacies and he came along and just said, 'I am the official distributor and you buy from me. You don't buy that stuff anymore'. That was the kind of only way. We couldn't find out who the (other) distributor was, so I had to come into the market stronger and do it that way.*

Lastly, others used innovative ways such as case study 9, an IT company introducing software upgrades to eliminate the use of unlicensed infringers. Additionally, case study 15, a reverse exporter who manufacturers in China and exports to Australia has spread production to numerous unconnected manufacturers after a single manufacturer copied his product. Such a strategy to the interviewee is much more strategic than an IP registration as the interviewee explains:

> *From experience I saw working with one manufacturer they copy your ideas. The only way to avoid that is by splitting up the process and some of the assembly in Australia. Currently I am dealing with five different manufacturers separately and piecing it in Australia.*

IP INFORMATION SOURCES

In this section of the report, the information sources from the survey participants and the case studies is displayed and discussed. The survey data shows the findings into the use of Australian Government IP support services and additional government support requested. The case study data displays all the information sources from the 16 along with the qualitative findings regarding IP Australia website, the IP Counsellor and government assistance required.

SURVEY IP INFORMATION SOURCES

Table 17 below displays the results from respondents for use of Australian Government IP services, which produced a large sample of 98 out of 118 (78%). IP Australia's website was the most popular with 39 respondents (40%), followed by 20 respondents (20%) for both AusIndustry and Export support services. Only 9 respondents (9%) sort out the IP counsellor in China.

Of note is almost half of the respondents (48%) indicated none of the services above were accessed. This was a greater amount than the most popular government IP support service.

Use of Australian Government IP Support Services	Responses	
IP Australia's website	40%	39
Ausindustry (business.gov.au)	20%	20
Export support services (export grants, landing pads, Export Finance Australia (former EFIC), Austrade, State government)	20%	20
IP Counsellor to China	9%	9
None of the above	48%	47
Other (please specify)	3%	3
Total Respondents: 98		

Table 17. Use of Australian Government IP Support Services

Table 18 below shows the results from 94 respondents out of 118 (75%) on information or support from the Australian government on protecting their IP in foreign countries. 66 respondents (70%) flagged the need for selected country specific information on filing IP while 54 respondents (57%) requested industry and country specific information. 48 respondents (51%) indicated legal support for IP contracts while 36 respondents (38%) indicated information on border protection measures for free flow of goods. The latter respondents request can be mainly attributed to tangible goods, mostly in the manufacturing sectors.

Additional Government Support Requested by Respondents	Responses	
Country-specific information on filing IP	70%	66
Activity of industry focused information to protect your IP (e.g. manufacturing on China or South East Asia)	57%	54
Drafting contracts to protect IP	51%	48
Understanding border protection measures which allow goods to be seized at the border	38%	36
Other (please specify)	14%	13
Total Respondents: 94		

Table 18. Additional Government Support Requested by Respondents

CASE STUDY IP INFORMATION SOURCES

Sources of information regarding IP had IP Australia's website as the most popular destination especially amongst the SME's with 13 out of the 16 case studies. These findings are similar to the survey data. Many of these SME's indicated IP protection being a financial burden on the entity and use of IP Australia's website provided a free source of information that was helpful. Nonetheless, most interviewees did not know of IP Australia's IP counsellor in China, and those that did had not sought after for assistance with the exception of one case study which is detailed below.

The data indicates firm size, export product type and attitude towards IP are predictors towards the level of resources allocated for procuring sources of information. The outlier in the sample is case study 13, who is the sole example of having no formal information sources, relying only on the firm's past experience. Case study 13 also has no registered IP in China and ASEAN.

	Case study 1	Case study 2	Case study 3	Case study 4
Information sources	IP Australia, AusIndustry and business associations	IP Australia and IP Lawyers	IP Australia, google searches	IP Australia and Austrade

	Case study 5	Case study 6	Case study 7	Case study 8
Information sources	IP Australia, lawyers and internal human resources	IP Australia	IP Lawyer	IP Australia

	Case study 9	Case study 10	Case study 11	Case study 12
Information sources	Business coaches, lawyers in Australia and Singapore	IP Australia and google searches	IP Australia and lawyers	IP Australia only for the basics. Have significant legal resources at their disposal

	Case study 13	Case study 14	Case study 15	Case study 16
Information sources	Only past work experience	Some IP Australia but mainly in-house and external lawyers	IP Australia & business advisor	Lawyers mainly, sometimes IP Australia

Table 19. Sources of information

IP Australia website

The sample of large case studies all used IP Australia as a starting point for their own research gathering before approaching their legal representatives. Though these case studies have ample legal resources, the IP Australia website is held in high regard as the interviewee for case study 12 describes:

> *I think (IP Australia's website) is pretty good and gives you a lot of information on issues you might face when sourcing products from China. Overall, it's a great resource. If I need to go back to basics, I will often go to IP Australia's website rather than my legal textbooks. They explain things in simple terms as lawyers' complicate things.*

Case study 11, also a large company encourages staff to visit IP Australia's website for IP knowledge. Nonetheless, the interviewee suggests the UK government's intellectual property office's website resources would be beneficial to IP Australia to follow, stating:

> *Personally, I consult IP Australia website, (it has) useful guidance in patent and trade mark manuals..... IPO (Intellectual Property Office) in the UK has really fantastic resources, and IP Australia can have a look and see at their resources.*

The findings suggest the more proactive SME case studies followed similar patterns as the large companies above, with IP Australia a reference point for basic research. More intricate matters were outsourced to lawyers as mentioned by case studies 4 and 16. The most proactive SME towards IP protection, case study 4 with a dedicated staffer along with substantial legal representation to address their IP requirements, states:

> *In the early stages of the business we were on (IP Australia's) website seeking information on what to do. I was doing all the investigating and checking for names prior to the lawyer. There's a lot of information for businesses*

IP Counsellor in China

10 case studies had not engaged IP Australia's counsellor in China with two case studies not knowing of his existence (Case studies 5 & 6). Only case study 16 had engaged the IP counsellor, with positive results, stating:

> I've had a *couple of discussions with him..... He was pretty good, gave us some insights into getting our Chinese websites domain name registered, which was good adv*ice

Government assistance required

Case study interviewees were asked what kind of government assistance they would like. Such an open-ended question elicited a range of responses with the most relevant selected. Case study 5 explains the need for greater discussion around IP when stating:

> *There is no conversation around IP. It's mainly around doing business.*

Case study 1, a small blockchain company explains it's not just about IP but also having the support to keep start-ups developing:

> *Start-ups in Silicon Valley have IP lawyers on speed dial.....We've got to do better than we do. It's a strategic thing for Australia, biotech, fintech, blockchain we just need to do better to protect Australian ideas and commercialise them.*

Case study 7 details the importance of information on IP and the costs and effects of their decision in export markets:

> *SMEs need to understand how important IP protection is. In Australia is not that costly, but costs are higher abroad. Australian Government need to help SMEs in understanding these issues across borders, not only trade marks but also labelling issues that impact IP*

Case study 8 is an exporter of plastic ground covering to multiple countries. The interviewee explains the resource constraints the business has regarding education, time and money. The suggestion is to see IP Australia be more proactive and reach out to businesses such as hers:

> *More education is a good thing, access to information would be huge. Many of the small businesses exporting or gearing up for exports, it's just that we don't have enough time to reach out to IP Australia and often when you develop a new product that's novel, you want to protect it off course. Often (IP issues) get pushed aside because you can't afford it. You don't have the resources to go through it. If IP Australia would provide a more regular update, actively reach out to Australian businesses, that would be good*

Case study 10 seeks information about the filing regimes and the impact to their business as the interviewee states regarding the Madrid Protocol:

> *I would like to get advice on whether the Madrid protocol is worthwhile, if you're an exporter, even if you're not, how do you protect your brand from say someone in Bangladesh and selling it on T-Mall. That's something you need to think about. As an active exporter, what is the best way to genuinely protect your brand. Is the Madrid protocol advisable? I've never heard anybody come out and say you should get onto the Madrid Protocol..... At the end of the day $30800 isn't that much money to protect your brand or is it something that makes you feel good.*

Case study 13 is simple in their request for straight forward information regarding IP when stating:

> *Still think more education and knowledge is needed, specific to the needs of Australian exporters. While there are websites, there is not enough info for SMEs to do their checklist. There should be basic info in laymen terms for exporters to access along with more valuable and relevant resources. Overall government should provide more advice and relevant information.*

Lastly, case study 16 believes that exporters sharing their stories on IP would be a helpful resource in overcoming some of the issues around IP in Asia:

> *Hearing people's stories can help us be put on track and reduce the risk*

RECOMMENDATIONS

The four recommendations below have been carefully proposed after rigorous analysis from the findings above. These recommendations, though generic, are designed towards obtaining the right outcome at the organisational level. While advice is easily forthcoming regarding the protection of IP, each organisation has differing aspects to its business, which in turn requires a tailored strategy towards their IP. The measures below provide a holistic approach to IP protection for Australian exporters.

EMBEDDING IP PROTECTION AS PART OF THE COMMERCIALISATION STRATEGY

The first recommendation to come out of the findings showed case studies with successful IP protection regimes proactively integrated IP into their business strategy and registered early in their commercialisation stages. Furthermore, while great emphasis is placed on opportunity seeking for exporters, exposing their brands, logos, designs, patents and other sources of IP presents an opportunity for bad faith actors to acquire such IP.

The recommendation is to create a strong message around IP protection being an essential ingredient in the commercialisation of the firm and the whole business lifecycle. Being proactive IP protectors, as seen above provides a first step in taking the necessary preventative measures.

It is suggested a marketing campaign around risk management of a firms IP. The emphasis should be centred on the dangers surrounding 'first to file' regimes for Australian exporters, hence the emphasis on early registration. When coupled with the use of case studies from differing jurisdictions, the message should be on the need to file early. The overall goal would be to place IP front-of-brain for exporting businesses in Australia.

ASSISTING EXPORTERS TO UNDERSTAND THE ROLE OF PARTNERS IN IP PROTECTION

The second recommendation is educating exporters that IP protection is multifaceted, and a focal firm's network - including distributors, buyers and business partners among others- serves as either an enabler of disabler of IP protection. From the findings above, IP breaches as well as breach notifications frequently come through an exporters partner, making partner selection and maintenance a vital component to a firm's IP protection. This is more pronounced when dealing in China and ASEAN where cultural habits make the need for relational capital a success factor.

Additionally, IP Australia can provide links to online resources regarding the importance of relational capital in China and ASEAN, drawing from multiple sources such as academic, commercial, chambers of commerce to name a few. Furthermore, and in conjunction with experts in the field of internationalisation, IP Australia can produce resources that assist exporters in conducting due diligence, such as IP related checklists. These checklists could be a valuable resource, especially for inexperienced exporters. IP Australia is able to position itself as a thought leader in this area.

CREATING AN IP NETWORK WITH LIKEMINDED ORGANISATIONS

The third recommendation is IP Australia creating a network of partners for the promotion of IP protection. It is recommended IP Australia identify and engage with the relevant institutions, federal, state and local organisations, law firms specialising in IP, academics, chambers of commerce and other organisations to name a few. The information from such sources could be relevant, nuanced, practical, detail specific and geographically bespoke. In light of the findings, such sources would be invaluable to its consumers, whether a new or experienced exporter. The objective is for IP Australia to act as an axis for peripheral sources of IP related information.

The ability to capture fringe sources of knowledge on IP related issues has multiple benefits for IP Australia. It first increases the popularity of the IP Australia website as a primary source of IP related information, thereby increasing its authority. Second, it reduces the resources expended by the IP Australia by leveraging from third parties, with their content fed back into the IP Australia's website. Thirdly, it increases the awareness on the importance of IP protection, a significant factor as outlined in recommendation one.

INFORMATIVE AND INTERACTIVE IP INFORMATION

The fourth recommendation is increasing IP related resources available for businesses encompassing informative and innovative information to be hosted on IP Australia's website, with the potential to expand those information sources beyond. The need for tailored, interactive and easy to understand and act upon information was a key theme from the findings, especially from SME's who suffer from both smallness and newness. With the financial burden of IP protection high, a key theme above, leveraging on a well-resourced IP Australia website connected with further resources could assist in reducing the financial pressures for such firms.

Some suggestions for IP Australia consider the development of:

- Country fact sheets
- Interactive resources (short videos, case studies, etc.)
- Bespoke checklists
- List of chambers of commerce which in their directory will most likely have individuals/firms able to assist on IP matters.
- ontent from the network partners as detailed above.

The resources above can be hosted in IP Australia's website, but also alternative channels of information can be explored that will allow those resources.

CONCLUSION

The attached report is the culmination of a two-phase research project that aimed to investigate how Australian exporters protected their IP in China and ASEAN along with the challenges. In order to answer these questions, a two-phase research design was formulated whereby a survey instrument would explore the issues then selected case studies would provide deeper insight through an interview process.

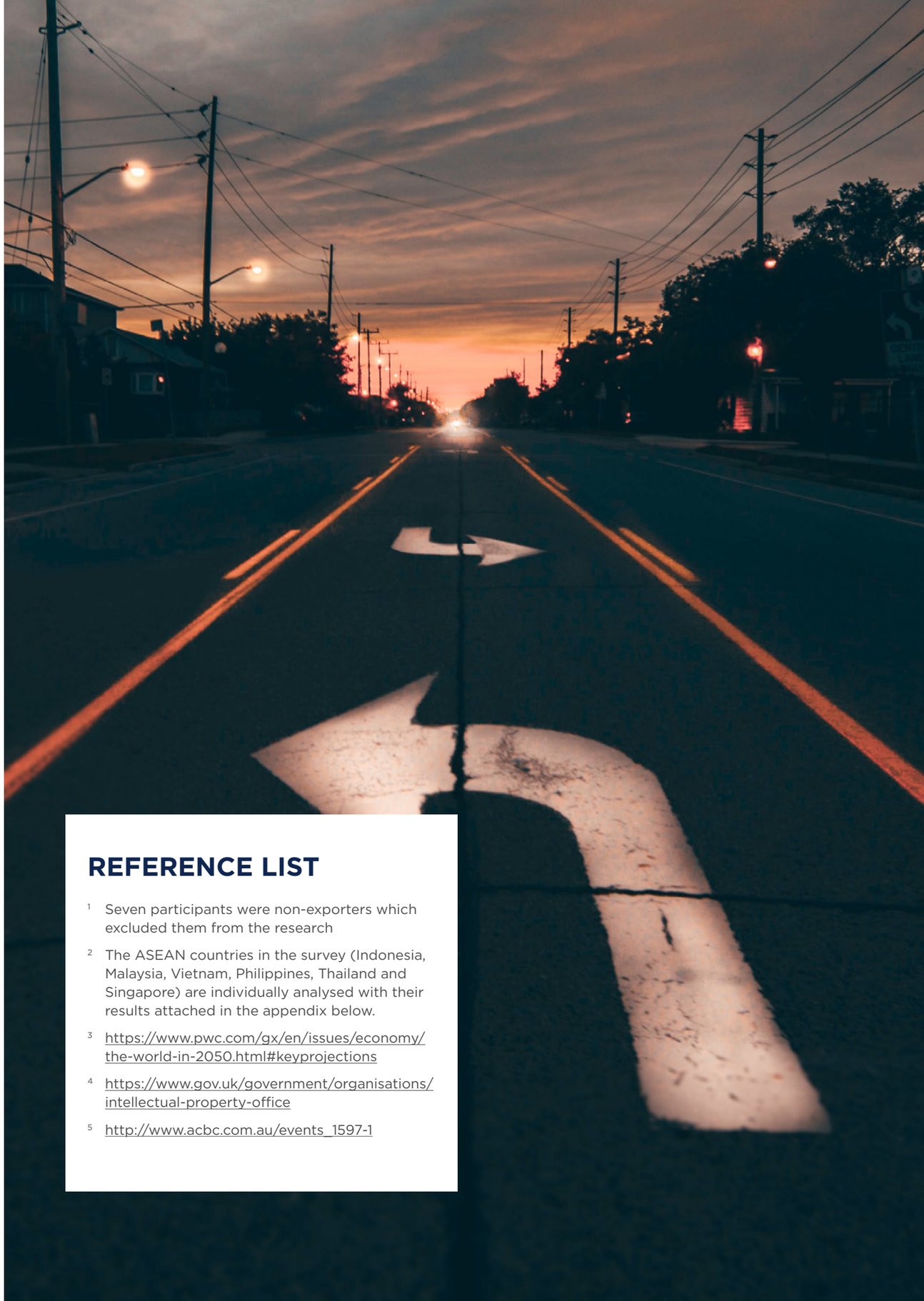
The participants, whose data is the primary source for this research project, numbered 118 for the survey and 16 for the case studies. Understanding that these organisations had forged an individual path towards their IP protection, their diversity in size, industry, business model, export markets along with idiosyncratic factors gave the researchers plenty of data from which to work with.

With both the survey participants and case studies, company size and export markets were in unison, with the bulk being SME's and exporting to China. With these two factors, the findings are heavily influenced by SME's exporting to China, especially for the case studies. Divergence was then seen in industry types with exporters of tangible goods outnumbering exporters of services.

The IP regimes of the survey participants saw a more even distribution of the four IP regimes for both China and ASEAN exporters. Nonetheless, the case studies were heavily skewed towards trade marks with only a few patents. Other forms of IP were not mentioned by the interviewees. Unregistered IP showed similar results for the survey participants and the case studies, however the ASEAN sample from the survey was higher by a factor of almost fifty percent against the case studies and the China survey results.

The strategies for protecting IP showed a slight divergence between the survey findings and case studies. The latter, with the ability to provide detailed answers, selected proactiveness as its most common theme. With IP breaches, the findings were influenced by the prominence of China as a destination market for both the survey and the case studies and were in relatively close proximity to each other. The IP resolution data for the survey was a single digit, thereby questioning the findings robustness. The case study findings however showed a mix of legal means and market mechanisms. Furthermore, pending cases had a small number still open.

IP Information sources for the survey participants and case studies were on similar lines, however the case studies were able to provide bespoke details especially around the government assistance required. With the conclusion of all the findings, four recommendations were deduced from the results. These sought to increase the IP capabilities of present and future exporters to China and ASEAN through organisational resource building and the access to knowledge through IP Australia and its networks.



REFERENCE LIST

1 Seven participants were non-exporters which excluded them from the research

2 The ASEAN countries in the survey (Indonesia, Malaysia, Vietnam, Philippines, Thailand and Singapore) are individually analysed with their results attached in the appendix below.

3 https://www.pwc.com/gx/en/issues/economy/the-world-in-2050.html#keyprojections

4 https://www.gov.uk/government/organisations/intellectual-property-office

5 http://www.acbc.com.au/events_1597-1

APPENDICES

APPENDIX 1. SURVEY DATA ANALYSIS FOR EACH ASEAN IP REGIME

Indonesia Market Analysis

There were 60 respondents who have operations in Indonesia as shown in Table 7 below. Of these 25 indicated that they have IP. Within the 25 responders who acknowledge the existence of IP in their business, 20 respondents (80%) have no formal registration. There were 29 non responders.

From those with registered IP, no respondents used either the Madrid Protocol or design filings to register their trade marks. Only 3 respondents (12%) preferred direct filing while 2 respondents (8%) indicated patent filing.

When asked the reason their business had not registered its IP, 1 respondent (17%) indicated non-filing was due to elevated costs. 2 respondents (33%) indicated that it was too early. Only 1 respondent (17%) indicating neither registering IP was relevant as well as of no concern. 2 respondents (33%) never considered registering their IP.

Indonesia (n=60)		25
TM Madrid	0%	0
TM Direct	12%	3
Patent	8%	2
Design	0%	0
Unregistered IP	80%	20

Indonesia (n=6)		6
Too Costly	17%	1
Not concerned	17%	1
Too Early	33%	2
Not Relevant	17%	1
Never considered	33%	2

Table 20. Indonesian Market Analysis

Malaysia Market Analysis

There were 61 respondents who have operations in Malaysia as shown in Table 8 below. Of these 26 believe that they have IP. Within the 26 responders who acknowledge the existence of IP in their business, 22 (85%) have no formal registration. There were 29 non responders.

From those with registered IP, 2 respondents (8%) used the Madrid Protocol to register their trade marks. There was only 1 respondent (4%) each for direct, patent or design filing.

When asked the reason their business had not registered its IP, 1 respondent (17%) indicated that it was due to elevated costs. 2 respondents (33%) indicated that it was either too early or not relevant for their business. 1 respondent (17%) indicated for each they were not concerned or never considered registering their IP.

Malaysia (n=61)		26
TM Madrid	8%	2
TM Direct	4%	1
Patent	4%	1
Design	4%	1
Unregistered IP	85%	22

Malaysia (n=6)		6
Too Costly	17%	1
Not concerned	17%	1
Too Early	33%	2
Not Relevant	33%	2
Never considered	17%	1

Table 21. Malaysia Market Analysis

Vietnam Market Analysis

There were 53 respondents who have operations in Vietnam as shown in Table 9 below. Of these 21 believe that they have IP. Within the 21 responders who acknowledge the existence of IP in their business 16 (76%) have no formal registration. There were 23 non responders.

From those with registered IP, 4 respondents (19%) used the Madrid Protocol to register their trade marks and only 1 respondent (5%) indicating a patent filing. No respondents indicated a use of direct or design filing.

When asked the reason their business had not registered its IP, 3 respondents (33%) indicated for each that it was due to elevated costs as well as it was either too early. 2 respondents (22%) indicated registering IP was not relevant for their business. 1 respondent (11%) reported that they were not concerned, while 2 respondents (22%) have never considered registering their IP.

Vietnam (n=53)		21
TM Madrid	19%	4
TM Direct	0%	0
Patent	5%	1
Design	0%	0
Unregistered IP	76%	16

Vietnam (n=9)		9
Too Costly	33%	3
Not concerned	11%	1
Too Early	33%	3
Not Relevant	22%	2
Never considered	22%	2

Table 22. Vietnam Market Analysis

Philippines Market Analysis

There were 41 respondents who have operations in Philippines as shown in Table 10 below. Of these 16 indicated that they have IP. Within the 16 responders who acknowledge the existence of IP in their business 13 (81%) have no formal registration. There were 20 non responders.

From those with registered IP, only 1 respondent (6%) used either the Madrid Protocol, a direct filing or a patent filing. No respondents indicated design filings.

When asked the reason their business had not registered its IP, 1 respondent (20%) indicated for each elevated costs, not relevant and never considered. 2 (40%) respondents indicated it was too early for filing while there were no respondents who had no concerns.

Philippines (n=5)		16
TM Madrid	6%	1
TM Direct	6%	1
Patent	6%	1
Design	0%	0
Unregistered IP	81%	13

Philippines (n=5)		5
Too Costly	20%	1
Not concerned	0%	0
Too Early	40%	2
Not Relevant	20%	1
Never considered	20%	1

Table 23. Philippines Market Analysis

Thailand Market Analysis

There were 44 respondents who have operations in Thailand as shown in Table 11 below. Of these 15 indicated that they have IP. Within the 15 responders who acknowledge the existence of IP in their business 13 (87%) have no formal registration. There were 24 non responders.

From those with registered IP, only 1 (6%) respondent for each used the Madrid Protocol or a direct filing while no respondents conducted a patent filing nor a design filing.

When asked the reason their business had not registered its IP, 1 respondent indicated for each elevated costs, too early and not relevant. 2 respondents indicated for each it was never considered. No respondents indicated not concerned.

Thailand (n=44)		15
TM Madrid	6%	1
TM Direct	6%	1
Patent	0%	0
Design	0%	0
Unregistered IP	87%	13

Thailand (n=5)		5
Too Costly	20%	1
Not concerned	0%	0
Too Early	20%	1
Not Relevant	20%	1
Never considered	40%	2

Table 24. Thailand Market Analysis

Singapore Market Analysis

There were 61 respondents who have operations in Singapore as shown in Table 12 below. Of these 26 indicated that they have IP. Within the 26 responders who acknowledge the existence of IP in their business 23 (89%) have no formal registration. There were 30 non responders.

From those with registered IP, 2 respondents (8%) used the Madrid Protocol to register their trade marks, whilst no respondents had direct or design filings. Only 1 respondent (4%) had a patent filing.

When asked the reason their business had not registered its IP, only 1 respondent (17%) indicated for each elevated costs and it was too early. 2 respondents (33%) indicated for each filing were not relevant or had never been considered. There were no respondents for not concerned.

Singapore (n=61)		26
TM Madrid	8%	2
TM Direct	0%	0
Patent	4%	1
Design	0%	0
Unregistered IP	89%	23

Singapore (n=6)		6
Too Costly	17%	1
Not concerned	0%	0
Too Early	17%	1
Not Relevant	33%	2
Never considered	33%	2

Table 25. Singapore Market Analysis

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