



Protecting COVID IP from Cyber-Spies

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The scientific community has been invaluable in the fight against COVID-19. Companies, universities, hospitals and research institutes worldwide have increased their research efforts to try to find effective diagnostic assays and treatments for this virus. Governments have also stepped up and provided increased funding for COVID-19 related R&D. Unfortunately, these noble research efforts are at an increased risk for cybersecurity breaches according to central intelligence agencies in many countries including the FBI in the United States as well as both of Canada's central intelligence agencies. The Canadian Security Intelligence Service (CSIS) and the Communications Security Establishment (CSE) have reported that the pandemic "presents an elevated level of risk to the cyber security of Canadian health organizations involved in the national response to the COVID-19 pandemic." In a joint statement earlier this month, the two agencies warned that the Intellectual Property (IP) and confidential information of entities involved in COVID-19 research is at an increased risk for espionage and the IP in particular "represents a valuable target".

Recently, CSIS has reached out to many academic institutions in Canada to provide guidance on how to protect their research from the "threat of foreign interference and espionage"¹. The guidance highlights that work on matters related to COVID-19 may make researchers a target for "hostile foreign state actors", noting that sensitive and propriety technology, know-how and assets can be accessed by attacks on knowledge, investments, imports/exports and licenses. CSIS cautions that researchers may unknowingly engage hostile parties through activities common in research environments such as research and development collaborations, investment partnerships and licensing arrangements. CSIS stresses that when entering into partnerships, it is critical that researchers understand who controls any potential partners and the goods and technology created, and who will benefit from the research activities.

The increased security risk to COVID-19 research makes it more important than ever for research entities to ensure that key innovations, know-how and related information are protected. As described in a recent Bereskin & Parr LLP article², trade secrets can offer protection for various aspects of COVID-19 research. No application or registration is required to obtain trade secret protection but reasonable steps must be taken to establish and maintain secrecy. Methods of maintaining the secrecy of a trade secret can include physical and digital means such as firewalls, encryption, authentication requirements, password protections and restriction of download, printing and/or copying capabilities.

For innovations which are potentially patentable, it is important to file for patent protection as soon as possible. In almost all countries of the world, the first entity to file an application is the entity entitled to the patent. Prior to filing a patent application, all information related to the innovation should be maintained as a trade secret and non-disclosure agreements should be in place to minimize the risk of public disclosure of the invention. It is important to ensure during the patent drafting process, all information, data and application drafts are only shared with trusted parties, ideally in encrypted and/or password protected documents.

While potential foreign espionage is not normally top of mind for most biomedical researchers, the unprecedented worldwide health threat posed by COVID-19 means that it cannot be ignored. CSIS has emphasized that even small entities are at risk of being targeted and that one individual's work could be "a critical piece of a larger puzzle"³. As more researchers pivot their work to focus on COVID-19 related innovations, awareness of the risk of foreign interference and implementation of best practices to maintain the confidentiality of COVID-19 related research is critical.

¹ May 13, 2020; *Academic Outreach and Stakeholder Engagement Guidance for Entities Responding to COVID-19*



² <https://www.bereskinparr.com/doc/intellectual-property-ip-best-practices-in-the-time-of-covid-19#2>

³ May 13, 2020; *Academic Outreach and Stakeholder Engagement Guidance for Entities Responding to COVID-19*, page 6.

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