

## China's National People's Congress Releases Translation of Criminal Law Including IP Provisions

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China's National People's Congress has recently released a translation of China's Criminal Law, which includes many Intellectual Property provisions. The Criminal Law was most recently amended at 24th Meeting of the Standing Committee of the Thirteenth National People's Congress on December 26, 2020 and went into force on March 1, 2021. The amendments increase the maximum sentencing term for IP crimes and also add a new article somewhat similar to the US' Economic Espionage Act potentially in effect if not in wording. For ease of reference, a translation of the IP provisions follow. The full translation is available [here](#).

### Section 7

#### Crimes of Infringing on Intellectual Property Rights

Article 213 Whoever, without permission of the right holder of a registered trademark, uses a trademark representation which is identical with the registered trademark on the same kind of commodities or services, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than 3 years, and concurrently, a fine, or shall be sentenced to a fine only. If the circumstances are especially serious, the offender shall be sentenced to fixed-term imprisonment of not less than 3 years but not more than 10 years, and concurrently, a fine.

Article 214 Whoever knowingly sells counterfeit commodities bearing

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another's registered trademark, if the amount of illegal gains is relatively large or there are other serious circumstances, shall be sentenced to fixed-term imprisonment of not more than 3 years, and concurrently, a fine, or shall be sentenced to a fine only. If the amount of illegal gains is large, or there are other especially serious circumstances, the offender shall be sentenced to fixed-term imprisonment of not less than 3 years but not more than 10 years, and concurrently, a fine.

Article 215 Whoever forges, or makes without authorization of the right holder, representations of a registered trademark, or sells such representations, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than 3 years, and concurrently, a fine, or shall be sentenced to a fine only. If the circumstances are especially serious, the offender shall be sentenced to fixed-term imprisonment of not less than 3 years but not more than 10 years, and concurrently, a fine.

Article 216 Whoever uses the patent of another without authorization, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than 3 years or short-term custody, and concurrently, a fine, or shall be sentenced to a fine only.

Article 217 Whoever, for the purpose of making profits, commits any of the following acts infringing on copyrights or copyright-related rights, if the amount of illegal gains is relatively large or there are other serious circumstances, shall be sentenced to fixed-term imprisonment of not more than 3 years, and concurrently, a fine, or shall be sentenced to a fine only. If the amount of illegal gains is large or there are other especially serious circumstances, the offender shall be sentenced to fixed-term imprisonment of not less than 3 years but not more than 10 years, and concurrently, a fine:

(1) reproducing, distributing, or disseminating to the public through information network the written works, music, works of fine arts, audiovisual works, computer software, or other works prescribed by laws or administrative regulations, without permission of the copyright owner;

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(2) publishing a book of which the exclusive right of publication is enjoyed by another;

(3) reproducing, distributing, or disseminating to the public through information network a sound or video recording, without permission of the producer;

(4) reproducing or distributing sound or video recordings of a performance or making the performance available to the public through information network, without permission of the performer;

(5) producing or selling a work of fine art with a forged signature of a painter; or

(6) intentionally circumventing or destroying the technological measures which are adopted by a copyright owner or copyright-related right holder to protect the copyright or copyright-related rights on a work or on a sound or video recording, etc., without permission of the copyright owner or copyright-related right holder.

Article 218 Whoever, for the purpose of making profits, knowingly sells works reproduced which infringe on the copyright or copyright-related rights as mentioned in Article 217 of this Law, if the amount of illegal gains is large or there are other serious circumstances, shall be sentenced to fixed-term imprisonment of not more than 5 years, and concurrently, a fine, or shall be sentenced to a fine only.

Article 219 Whoever commits any of the following acts infringing on business secrets, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than 3 years, and concurrently, a fine, or shall be sentenced to a fine only. If the circumstances are especially serious, the offender shall be sentenced to fixed-term imprisonment of not less than 3 years but not more than 10 years, and concurrently, a fine:

(1) obtaining a right holder's business secrets by theft, bribing, fraud, coercion, electronic intrusion, or by any other unjustifiable means;

(2) disclosing, using, or allowing another to use the business secrets obtained from the right holder by the means as mentioned in the preceding paragraph; or

(3) disclosing, using, or allowing another to use the business secrets one has learned, by breaching his confidentiality obligation or by going against the right holder's demand for keeping said business secrets confidential.

Whoever, knowing that the business secrets fall under the circumstances specified in the preceding paragraph, obtains, discloses, uses, or allows another to use such business secrets, shall be deemed an offender who infringes on business secrets.

Right holders as mentioned in this Article refer to the owner of business secrets and the authorized users of the business secrets.

Article 219a Whoever acquires through theft or spying, or illegally purchases or provides business secrets for an overseas institution, organization or individual shall be sentenced to fixed-term imprisonment of not more than 5 years, and concurrently, a fine, or shall be sentenced to a fine only. If the circumstances are serious, the offender shall be sentenced to fixed-term imprisonment of not less than 5 years, and concurrently, a fine.

Article 220 An entity committing a crime as prescribed in Articles 213 to 219a of this Section shall be fined, and the directly responsible persons in charge and other directly responsible persons shall be punished in accordance with the provisions in the corresponding article of this Section.

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