

Fresh judicial interpretation on criminal IP cases introduces welcome change – but impact on sentencing severity remains unclear

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On 23 April 2025, China's Supreme People's Court and Supreme People's Procuratorate jointly released the "Interpretation on Several Issues Concerning the Application of Law in the Handling of Criminal Cases Involving the Infringement of Intellectual Property Rights". It took effect on 26 April 2025.

The new Interpretation provides explanations for the implementation of Articles 213 to 219 of the Criminal Law concerning IP crimes, and supersedes the previous 2004, 2007 and 2020 versions.

The revision of the Criminal Law

The Criminal Law was revised in 2021 to extend the crime of counterfeiting registered marks to include service marks.

The concept of "causing major losses" was replaced by "serious circumstances", which focuses more on the concerned party's conduct rather than on the result of the conduct. This broadens the criteria for determining harm and, to some extent, lowers the threshold for criminal prosecution.

The amended law also provides harsher penalties. For Articles 213 (counterfeiting trademarks), 214 (selling goods bearing counterfeit registered trademarks), 215 (manufacturing or selling counterfeit trademark labels), 217 (copyright infringement), and 219 (trade secret infringement), the maximum term of imprisonment has increased from seven to 10 years. The term under Article 218 (selling infringing replicas) has been raised from "not more than three years" to "not more than five years".

Comprising 31 articles, the 2025 Interpretation is now the sole judicial interpretation of the revised Criminal Law.

A deep dive into the new Interpretation

New content

Article 3 explicitly applies the criminal thresholds for the act of counterfeiting a service mark: illegal gains reach 50,000 yuan, or where two or more registered marks are counterfeited, illegal gains reach 30,000 yuan.

The new Interpretation defines “two or more registered trademarks” in Article 7, which clarifies that the marks must “identity goods or services from different sources”. In other words, if a party counterfeits two or more different trademarks, but these point to the same product or service, this does not count.

Article 4 recognises two additional circumstances that show when the seller knows that the goods are counterfeit:

- purchasing or selling well below market price without legitimate reason; and
- concealing or destroying infringing goods or accounting records or providing false evidence after being found out by administrative enforcement authorities or judiciary.

Articles 3, 5, 6, 10 and 14 lower the entry thresholds where a defendant reoffends within two years of a prior IP crime conviction or administrative penalty.

Article 28 sets out that illegal gains equal all infringing revenue minus purchase costs of raw materials for the infringing goods or the purchase price of the infringing goods that had been sold. For service providers, costs of any goods used are deductible. However, profits earned by charging service, membership, advertising or similar fees must be classified as illegal gains.

The Interpretation closes the goods/labels separation loophole, which is a trick employed by counterfeiters that are well informed of the law. They use it to ensure that the products and the counterfeit labels remain detached as late as possible, making evidence of the crime more difficult to establish. Article 29 provides that, if there is evidence showing that the products are intended to bear the counterfeit mark, the value of the finished products (even if not yet or fully affixed with the fake labels) will be counted in illegal turnovers.

Article 22 explicitly includes the following parties within the potential scope of accomplice liability – provided that their knowing participation can be proven:

- payment processors;
- warehousing companies;
- couriers;
- server hosting providers; and
- cloud storage operators.

Amended rules

Under Article 6 – the offence of manufacturing or selling counterfeit trademark labels – the minimum quantities or illegal gains have been approximately halved. For online copyright infringement (Article 13), the download threshold has dropped from 50,000 to 10,000 and an alternative click through threshold of 100,000 has been added. For selling infringing copies (Article 14), the illegal-gain threshold has fallen from 100,000 to 50,000 yuan.

In terms of higher fines, Article 25 raises the maximum fine from fivefold to tenfold the amount of illegal gains. Articles 3, 5 and 13 now require illegal gains or business turnovers to reach 10 times (increased from five) the basic threshold to constitute “particularly serious circumstances”, which carry sentences of up to 10 years of imprisonment.

The wording of Article 24 has changed from “may be leniently punished at discretion” to “may be leniently punished according to law”. It also states that where the offence is minor, prosecutors may decline to indict or courts may exempt punishment; behaviour that is “obviously minor and causes little harm” is not treated as criminal.

Key takeaways

Outlining the new list of accomplices creates a powerful deterrent. When receiving a rights holder’s cease and desist letter, these intermediaries are far more likely to cooperate in order to avoid criminal implication. Similarly, lowering the criminal thresholds and raising fine ceilings strengthens the fight against IP crime – especially the online dissemination of copyrighted works – and is an area where the new measures have already shown marked results.

The new rule targeting goods and label separation is another significant step forward. What remains unclear, however, is whether it will apply when infringers store labels and goods separately, ship them in separate consignments and then instruct purchasers to affix the labels themselves.

While these are all welcome developments, a more cautious view should be taken with regard to raising the threshold for “particularly serious” offences while lowering the bar for lenient treatment. Under China’s Criminal Law, IP infringement cases classified as “serious” carry sentences of up to three years and remain eligible for probation – and, in practice, most such cases do result in suspended sentences. Only offences deemed “particularly serious” are ineligible for probation. By increasing this threshold and broadening access to leniency, the new Interpretation is likely to make actual custodial sentences for IP crimes even rarer.

In short, the 2025 Interpretation better aligns criminal enforcement with today’s infringement realities and will be welcomed by rights holders, though its impact on sentencing severity remains to be observed.