

Criminal Law of the People's Republic of China (Provisions of Intellectual property Crime)

Adopted by the Second Session of the Fifth National People's Congress on July 1, 1979 and amended by the Fifth Session of the Eighth National People's Congress on March 14, 1997.

Section 7 Crime of Intellectual Property Rights

Article 213. Using an identical trademark on the same merchandise without permission of its registered owner shall, if the case is of a serious nature, be punished with imprisonment or criminal detention of less than three years, with a fine, or a separately imposed fine; for cases of a more serious nature, with imprisonment of over three years and less than seven years, and with fine.

Article 214. Knowingly selling merchandise under a faked trademark with a relatively large sales volume shall be punished with imprisonment or criminal detention of less than three years, with a fine or a separately imposed fine; in cases involving a large sales volume, with imprisonment of more than three years but less than seven years, and with fine.

Article 215. Forging or manufacturing without authority or selling or manufacturing without authority other's registered trademarks or identifications shall, for cases of a serious nature, be punished with imprisonment or criminal detention, or restriction for less than three years, with a fine or a separately imposed fine; for cases of a especially serious nature, with imprisonment of over three years and less than seven years, and with fine.

Article 216. Whoever counterfeits other people's patents, and when the circumstances are serious, is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, and may in addition or exclusively be sentenced to a fine.

Article 217. Whoever, for the purpose of reaping profits, has committed one of the following acts of copyright infringement and gains a fairly large amount of illicit income, or when there are other serious circumstances, is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, and may in addition or exclusively be sentenced to a fine; when the amount of the illicit income is huge or when there are other particularly serious circumstances, he is to be sentenced to not less than three years and not more than seven years of fixed-term imprisonment and a fine:

- (1) copy and distribute written, musical, movie, televised, and video works; computer software; and other works without the permission of their copyrighters;
- (2) publish books whose copyrights are exclusively owned by others;
- (3) duplicate and distribute audiovisual works without the permission of their producers;

(4) produce and sell artistic works bearing fake signatures of others.

Article 218. Whoever, for the purpose of reaping profits, knowingly sells the duplicate works described in Article 217 of this Law, and gains a huge amount of illicit income, is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, and may in addition or exclusively be sentenced to a fine.

Article 219. Whoever engages in one of the following activities which encroaches upon commercial secrets and brings significant losses to persons having the rights to the commercial secrets is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, and may in addition or exclusively be sentenced to a fine; or is to be sentenced to not less than three years and not more than seven years of fixed-term imprisonment and a fine, if he causes particularly serious consequences:

- (1) acquire a rightful owner's commercial secrets via theft, lure by promise of gain, threat, or other improper means;
- (2) disclose, use, or allow others to use a rightful owner's commercial secrets which are acquired through the aforementioned means;
- (3) disclose, use, or allow others to use, in violation of the agreement with the rightful owner or the rightful owner's request of keeping the commercial secrets, the commercial secrets he is holding.

Whoever acquires, uses, or discloses other people's commercial secrets, when he knows or should know that these commercial secrets are acquired through the aforementioned means, is regarded as an encroachment upon commercial secrets. The commercial secrets referred to in this article are technical information and operation information that are unknown to the public, can bring economic profits to their rightful owners, are functional, and are kept as secrets by their rightful owners. The rightful owners referred to in this Article are owners of the commercial secrets and users who have the permission of the owners.

Article 220. When a unit commits the crimes stated in Article 213 through Article 219, it is to be sentenced to a fine; its directly responsible person in charge and other personnel of direct responsibility should be punished in accordance with the stipulations respectively stated in these Articles of this section.