

## INSIDE



### P2 LABOUR LAW

Severance  
Compensation:  
All You Need to  
Know!



### P4 IP & EU

Trend of Chinese  
trademarks at EUIPO



### P5 TECH LAW

Live streaming  
on eCommerce:  
a trend explained



### P7 TECH LAW

Huawei joins  
the 5G royalty club



### P8 IP LAW

Amendment to PRC  
Criminal Law regard-  
ing IP industry

Dear readers,

Already May and rainy and hot here in China, but we're ready to refresh you with some new topics.

The first one deals with the so-called Severance compensation. Never heard of it before?

That might interest for you both as employer and employee working in China.

On the field of IP & Europe, the second article makes an analysis of the trend of Chinese trademarks in Europe in the past 10 years.

Try to guess... is it a positive trend? Read and discover.

E-commerce in China has been developing very fast, and the last booming phenomenon is livestreaming advertisements and sales.

But it needs regulation. How is the law dealing with this new trend?

We all are tech addicted, we can't do without our electronic devices, and we want a speed connection (of course!).

5G technologies patented by Huawei are for now available for free, but the China's biggest technical contributor to 5G standards could soon implement a way to impose a royalty fee on the use of its technology.

The last article highlights the difference between the old version of the Chinese Patent and Copyright Law and the new

Amendment, which came into action on March 1, 2021.

We summarize the major changes and make a comparison so it's very easy to understand what's new.

**Enjoy the reading and stay dry!**

HFG Law&Intellectual Property

# HFG

LAW &  
INTELLECTUAL  
PROPERTY



## Labour Law

### Severance Compensation: All You Need to Know!



If you work in China, probably you have heard one word called economic compensation or severance payment, as well as a bunch of confusing “N”, “N+1” and “2N”... What on earth are they? Now we will introduce you thoroughly about them.

#### ✔ Definitions

**“Economic Compensation”** - a monetary payment paid by the employer to the employee in case of earlier termination of labor contract under specific conditions pursuant to PRC laws.

**“N”**- the number of years that one employee has worked for the employer.

If the working period is more than 6 months N is equal to 1; in case less than year N is equal to 0.5.

Working period  $\geq$  six (6) months, N=1;

Working period < six (6) months, N=0.5.

**“Rate”** - the basis to calculate Economic Compensation, which is generally the monthly salary of the employee, with some exceptions to be explained in the Section Calculation of Economic Compensation.

#### ✔ Economic Compensation = 0

Under the following situations, the employer is NOT obliged to pay any Economic Compensation when the labor contract is terminated:

1. The employee notifies the employer three days in advance during the probation period to terminate the labor contract.
2. The employee notifies the employer in writing 30 days in advance to terminate of the labor contract.
3. The employee proposes to terminate the labor contract by consensus with the employer.
4. The employee is proved to have failed meeting the conditions for employment during the probation period, and consequently the employer terminates the labor contract.

5. The employee seriously violates the rules and regulations of the employer and consequently the employer terminates the labor contract.

6. The employee has seriously failed in his/her duty, committed fraud for personal gain, caused great damage to the employer, and the employer terminates the labor contract consequently.

7. The employee has established labor relations with other employers simultaneously which materially affects the completion of his task with the original employer, or he/she refuses to rectify the situation after being cautioned by the employer, and the employer terminates the labor contract accordingly.

8. The employee causes the labor contract to be invalid through fraud, coercion or exploitation of the other party's disadvantageous position, and the employer terminates the labor contract consequently.

9. The employee is subject to criminal liability in accordance with the law, and the employer terminates the labor contract accordingly.

10. When the labor contract expires, the employer maintains or raises the conditions stipulated in the labor contract and renews the labor contract with the employee, and the employee refuses to renew the labor contract.

11. The employee reaches the retirement age, is deceased or being declared dead or missing by the people's court.

#### ✔ Economic Compensation: N

The employer shall pay N times of the Rate as Economic Compensation at termination under the following situations:

1. The employer proposes to terminate the labor contract by consensus with the employee;
2. The employee resigns due to the employer's fault;

*Continue reading*

3. The employer applies for workforce layoff; or

4. The employer cancels the labor contract under any of the following circumstances by giving the employee 30 days' prior written notice:

a. where the employee is unable to resume his/her original work nor engage in other work arranged for him/her by the employer after the expiration of the prescribed medical treatment period for an illness or non-work-related injury;

b. where the employee is incompetent and remains incompetent after training or adjustment of his/her position; or

c. a material change in the objective circumstances relied upon at the time of conclusion of the labor contract renders it impossible for the parties to perform and, after consultation, the employer and the employee are unable to reach an agreement on amending the labor contract.

#### ✓ **Economic Compensation: N+1**

Under and only under the preceding situation marked in **blue** (n. 4, a, b, c) the employer can also choose to pay additional one month's salary together with the "N" Economic Compensation to avoid the 30 days' prior notice. Yes, the "1" is actually a payment in lieu of the notice.

#### ✓ **Economic Compensation: 2N**

If the employer terminates or cancels the labor contract without any legitimate basis, the employee can demand continued performance of such contract or request the employer to pay double of the "N" Economic



Compensation for the illegal termination or cancellation, which is the commonly called "2N".

Where the employee does not demand continued performance of the labor contract which is illegally terminated by the employer, or if continued performance of the labor contract has become impossible, the employer shall pay 2N times of the Rate to the employee.

#### ✓ **Calculation of Economic Compensation**

Firstly, we need to know how to define the Rate. Normally, the Rate equals the monthly salary which refers to the employee's average salary for the twelve (12) months prior to cancellation or termination of his/her labor contract.

However, if the monthly salary of an employee is three times higher than the average monthly wage (the "Average Wage") in the previous year as announced by the government at the municipal level where the employer is located, the Rate for Economic Compensations paid to him/her shall be three times of such announced Average Wage and it shall be for no more than 12 years of work.

Claire Fu  
HFG Law&Intellectual Property

IP&amp;EU

## Trend of Chinese trademarks at EUIPO



On February 24th, 2021, the European Intellectual Property Office (EUIPO) published the report entitled “China EUTM and RCD Focus” which focused the attention on 10 years of China trademark (TM) and registered community design (RCD) filings in the European Union.

The report also makes few considerations on the impact that the 2020 Covid-19 pandemic had in the intellectual property community.

Briefly, the European Union Trade Mark (EUTM) application filings from China, experienced a remarkable growth from 2010 to 2019, with an average rate of 33.2% and an overall growth rate of 1,027.9%. While, when comparing the 2019 and 2010 filing volumes, more than 63,000 EUTM filings, including over 116,500 goods and services classes, were filed by more than 47,000 individual applicants.

**Despite the Covid-19 pandemic, 2020 was a powerful year for Chinese trademark filings. In fact, the Chinese filing increased sharply of the 88% in 2020 compared to the past year 2019. A significant but less important rate is found in RCD filing with only 19%.**

It is reported that the Top 10 EUTM applicants from China during the period in question are all large enterprises operating in various industrial and commercial sectors, such as: consumer electronics; telecommunications equipment, systems and services; automotive design and manufacturing; Internet-related services and products.

Huawei is the company commands the chart being responsible for more than 50% of the collective Top 10 filing volume. ZTE (telecommunications equipment, networks and mobile devices) occupies the second position in the ranking, followed in third by Oppo Mobile (consumer electronics and mobile communications).

However, the Top 10 applicants collectively represent only 4% of overall EUTM filings from China, which are overwhelmingly filed by small and medium enterprises (SMEs).

Eventually, these data may be indicators that China’s efforts to expand its ownership of IP, beyond a few leading companies, is showing success.

Rank	Applicant	Volume
1	Huawei	1,448
2	ZTE	336
3	Oppo Mobile	208
4	Vivo Mobile	132
5	Qoros	79
6	Baidu	72
7	Shenzen Yisi	72
8	DJI	66
9	Le Shi	54
10	Bestway	52

However, despite the overall TM filings growth, filings using the Madrid system dropped from 38% to 14%; but it showed familiarity with the European system from the Chinese applicants.

Apart from trademark or design filings, 2019 indicated the absolute grounds objection rate for EUTMs with Chinese applicants, which was around 3% compared to the overall rate of 7%. Also, the Chinese classification deficiency rate was 2% compared to a 14% rate overall.

The only area where the rejection rate was higher for Chinese applicants, compared to the EU average, was in filing the so called “*formality deficiencies*” (3.7% vs. 2.2%).

The pandemic did not produce major changes regarding the basic composition and share distribution of the Top 10 overall EUTM and Direct RCD filing classes in 2020, although certain variations were most likely driven by the health crisis.

As the report declares, China’s preponderance on the EUTM and Direct RCD filings during 2020 is quite evident and was clearly decisive in sustaining the overall growth dynamic for the EUIPO’s main products even under extremely difficult circumstances.

The Office will closely monitor the evolution of filing volumes from China and other countries in order to properly adjust strategies and capabilities aimed on continuing to meet the needs of its users with excellent quality and timeliness.

Laura Batzella  
HFG Law&Intellectual Property

## Tech Law

### Live streaming on eCommerce: a trend explained



Last year Elon Musk, CEO of Space X, said in an interview with the New York Times that *“We are already Cyborg. In sense that, you have your computers and phones, and APPs on your phones, and your social media whatever. You are already part electronic if you think about it”*.

It might be a bit provocative sentence, however we must to admit that all kinds of electronic products have become the *“daily necessities”* in our life. Think especially to e-commerce in China that is developing so rapidly and the last booming phenomenon that is livestreaming sales.

Such new business mode brings a more convenient way of life for all of us, but also new potential threats in the process of live streaming sales. Therefore let’s take a look to see how the e-commerce platform should supervise the livestreaming sales to protect the rights and interests of consumers.

#### ✔ Qualification

According to E-commerce Law, e-commerce platform, as one of the e-commerce operators, should strictly register, verify, archive and update the business entities on the platform, and regularly review the authenticity of relevant information.

Meanwhile, according to the Notice on Strengthening the Management of Online Live Show and E-commerce Live Streaming Sales (the *“Notice”*) issued by National Radio and Television Administration, the e-commerce platform should also take the livestreaming room, the head streamer and account number, and the livestreaming activities with higher flow and sales as the main compliance targets.

#### ✔ Business Grading File

In practice, it might happen that in some case livestreaming rooms or live streamers sell fake and shoddy products.

According to the Notice, the platform shall take measures against the livestreaming room and streamer who frequently are involved in violations, such as stop the recommendation, limit the duration etc.

If the circumstances are serious, the platform can take more severe measures, such as close the livestreaming room, blacklist the relevant personnel or even permanently ban from livestreaming on the platform.

#### ✔ Unfair Competition

Unfair competition includes false publicity, false label, abuse of dominant position etc.

The unfair competition of e-commerce platform is consistent with the foregoing traditional unfair competition.

In daily online shopping, some e-commerce platforms make false publicity in order to attract consumers. The most common way is to hire some people to *“praise”* on the products (*“Click Farming”*), so as to improve the ranking and sales of products.

In the face of unfair competition such as clicking farming, e-commerce platforms may need to establish detection, capture and traceability of abnormal data, and prevent such behaviors through big data analysis to reduce losses and maintain market order.

#### ✔ Counterfeit Products

Because of the virtuality of the network, it is more difficult for consumers to identify whether the products bought are infringing products or counterfeit products when they are shopping online.

For example, some consumers purchased a bag with well-known brand on a certain platform, they may choose a professional institution for appraisal, however most results undoubtedly show that the product is counterfeit.

According to the Statistics of Judicial Big Data of China in 2020, 9.15% of online shopping contract disputes involve counterfeit products.

*Continue reading*

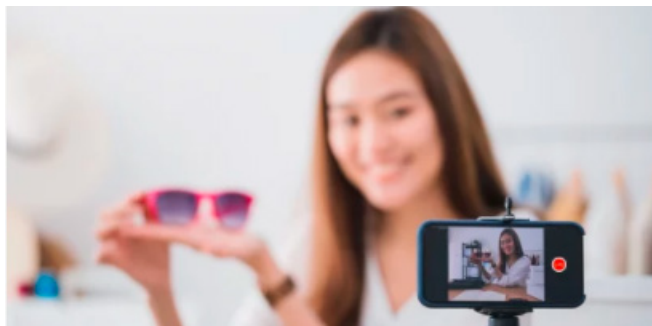
In view of this, the e-commerce platform should strictly conduct preliminary examination on the qualification of product operators and the ownership of relevant intellectual property rights, and also focus on the registration and filing of the category and quantity of products sold for later traceability.

### **Advertisement**

The illegal acts of advertising mainly include exaggerating propaganda, vulgar content, and expressions that stimulate consumers' buying. The frequent occurrence of these behaviors is one of the characteristics of livestreaming activities.

Livestreaming sales has the characteristics of immediacy, which makes it difficult to audit in advance and pursue responsibility afterwards.

Based on the Statistics of Judicial Big Data of China in 2020, 22.56% of the online shopping contract disputes, consumers think that the seller has the false publicity or other fraud behaviors.



In this regard, the e-commerce platform should focus on strengthening the supervision of illegal acts such as false advertising and illegal advertising of all kinds of products, especially in key areas such as medical treatment, drugs, food, health food and formula food for special medical purposes etc.

Of course, the e-commerce platforms should not only pay attention to the above aspects, but also improve the internal supervision system from time to time, to better protect the rights and interests of consumers.

**Karen Wang**  
**HFG Law&Intellectual Property**

## Tech Law

---

### Huawei joins the 5G royalty club



**Huawei Technologies Co., China's biggest technical contributor to 5G standards, is seeking to charge smartphone manufacturers royalties for access to its patented 5G technologies.**

The Chinese telecom giant has announced, for the first time, royalty rates for the use of its 5G patents, stating that it will start to charge a "reasonable percentage rate" of the sales price up to \$2.50 for every smartphone that can connect to 5G and previous generations of mobile networks.

This price is on the lower end compared to Huawei's major competitors in the 5G field, including Qualcomm, Nokia, and Ericsson.

Huawei founder Ren Zhengfei once revealed that his company's attitude towards 5G patents might become more aggressive.

---

*"We have a lot of 5G intellectual property rights, but we have not yet asked many companies for money. The main reason is that we are too busy, and wait until we are not busy, we will start to collect this money, we may not ask for much, not necessarily as much as Qualcomm. Intellectual property is created by labor, and cross-licensing or mutual payment is necessary.*

*Many large companies pay Huawei a large amount of money every year, and the two sides have a confidentiality agreement.*

*We can't tell you which company paid how much, but we will not weaponize 5G patents to inhibit the development of human society." - Ren Zhengfei said in an interview with CGTN back in 2019.*

---

Data from public channels show that over the last 3 decades, Huawei has paid more than \$6 billion in patent fees, 80% of which have been paid to US companies. Meanwhile, the company invests 10% to 15% of its annual revenue in research and development, thus accumulating a valuable SEP ("Standard Essential Patent") portfolio.

---

**So far, Huawei has conducted extensive cross-licensing negotiations with major patent holders in the ICT industry, and has signed more than 100 patent licensing agreements with major ICT manufacturers in the US, Europe, Japan and South Korea.**

**According to Jason Ding, Huawei's head of IP, the company should earn about \$1.2 billion to \$1.3 billion from its intellectual property rights between 2019 and 2021.**

---

GreyB, an intellectual property research organization, estimates that Huawei's number of active 5G SEPs exceeds that of its competitors, accounting for approximately 18.3% of Huawei's 5G patent family.

Regardless of the challenges of doing business in the US and some other countries, Huawei has demonstrated to the world its confidence and determination to compete in the 5G arena in accordance with international rules.

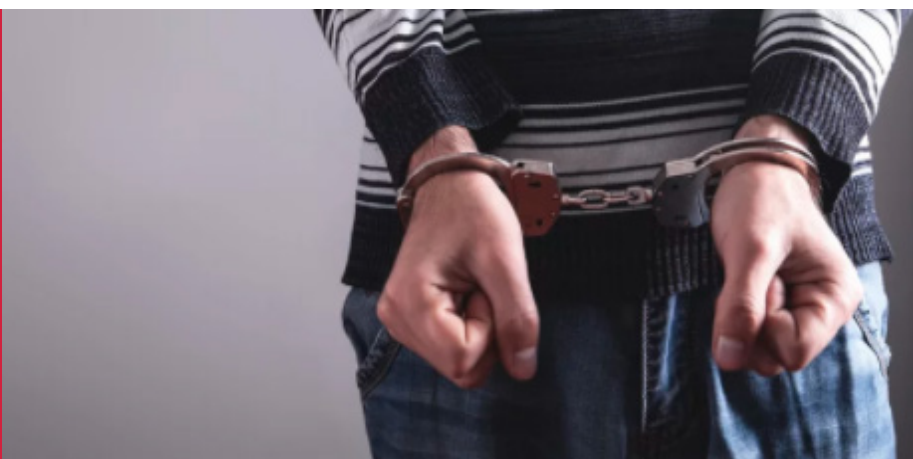
Huawei's experience in the 5G field shows that the accumulation and value realization of patents is a long process that requires patience and determination.

On the other hand, only by persisting in research and innovation, protecting intellectual property rights, and playing in accordance with international rules, Chinese tech companies can gain a foothold in the global marketplace.

**Emma Qian**  
HFG Law&Intellectual Property

## IP Law

### Amendment to PRC Criminal Law regarding IP industry



In September 2020, the Chinese Patent Law and Copyright Law have been amended. As a consequence, also the PRC Criminal Law was amended to reflect the amendments in The Patent and Copyright Law.

The Amendment to PRC Criminal Law (XI) (The Amendment) was adopted at the 24th meeting of the Standing Committee of the 13th National People's Congress on December 26, 2020 and came into force on March 1, 2021.

Comprehensibly, the Amendment effectively implemented the content of the relevant provisions of Chapter I of Economic and Trade Agreement between the government of the PRC and the government of the US, expanded the scope of incrimination of the criminal law regarding intellectual property (Articles 213-215, 217-219 in Section 7), increased the intensity of punishment, and added a new crime.

We have summarised major changes here.

---

**First, the Amendment has expanded the scope of incrimination.**

---

For example, Article 213 expands the scope of determining the crime of counterfeiting registered trademark from “goods” to “goods or services”. Covering “services” in Article 213 filled a gap in trademark protection timely because currently the focus of economic development is shifting from physical industry to the Internet industry.

Also, Article 214 expands the scope of incrimination from “the amount of sales is relatively large” to “if the amount of illegal income is relatively large or there are other serious circumstances.”

Such changes significantly increased disciplinary power.

---

**Second, the Amendment deleted the majority of the lighter primary sentences for most crimes and increased the maximum fixed-term imprisonment for certain crimes.**

---

For example, Article 213, 214, 215 etc. changed the maximum fixed-term from “less than three years no more than seven years” to “less than three years no more than ten years”, and deleted a lighter primary sentence “criminal detention”.

After the Amendment, the cost of committing crime significantly increased, and hopefully will effectively deter the occurrence of relevant criminal acts and further protect the legitimate interests of rights holders.

---

**Third, the Amendment evidently strengthened the protection of trade secrets.**

---

Article 219 changes the words “brings significant losses to persons having the rights to the commercial secrets” to “if the circumstances are serious”.

This means that the infringement of trade secrets can be changed from a “Result constituted offense” to “Non-result constituted offense”.

The Amendment also added a new kind of crime, which is the “crime of commercial espionage” stipulated in Article 219.1. These changes show the PRC’s determined attitude to protecting trade secrets.

*Continue reading*



## Comparison of original and amended articles

Original Articles	Amended Articles
<p>第二百一十三条【假冒注册商标罪】未经注册商标所有人许可，在同一种商品上使用与其注册商标相同的商标，情节严重的，处三年以下有期徒刑或者拘役，并处或者单处罚金；情节特别严重的，处三年以上七年以下有期徒刑，并处罚金。</p> <p>Article 213</p> <p>Whoever uses a trademark identical with a registered trademark on the same kind of goods without the permission of the owner of the registered trademark shall, if the case is of a serious nature, be sentenced to imprisonment or criminal detention of not more than three years and a fine, or be sentenced to a fine only; or if the circumstances are especially serious, be sentenced to imprisonment of not less than three years no more than seven years, and a fine.</p>	<p>第二百一十三条【假冒注册商标罪】未经注册商标所有人许可，在同一种商品、服务上使用与其注册商标相同的商标，情节严重的，处三年以下有期徒刑，并处或者单处罚金；情节特别严重的，处三年以上十年以下有期徒刑，并处罚金。</p> <p>Article 213</p> <p>Whoever uses a trademark identical with a registered trademark on the same kind of goods or services without the permission of the owner of the registered trademark shall, if the case is of a serious nature, be sentenced to imprisonment of not more than three years and a fine, or be sentenced to a fine only; or if the circumstances are especially serious, be sentenced to imprisonment of not less than three years no more than ten years, and a fine.</p>
<p>第二百一十四条【销售假冒注册商标的商品罪】销售明知是假冒注册商标的商品，销售金额数额较大的，处三年以下有期徒刑或者拘役，并处或者单处罚金；销售金额数额巨大的，处三年以上七年以下有期徒刑，并处罚金。</p> <p>Article 214</p> <p>Whoever knowingly sells goods bearing a falsely used registered trademark shall, if the amount of sales is relatively large, be sentenced to imprisonment of not more than three years or criminal detention and a fine, or be sentenced to a fine only; or if the amount of sales is huge or there are other especially serious circumstances, be sentenced to imprisonment of not less than three years no more than seven years, and a fine.</p>	<p>第二百一十四条【销售假冒注册商标的商品罪】销售明知是假冒注册商标的商品，违法所得数额较大或者有其他严重情节的，处三年以下有期徒刑，并处或者单处罚金；违法所得数额巨大或者有其他特别严重情节的，处三年以上十年以下有期徒刑，并处罚金。</p> <p>Article 214</p> <p>Whoever knowingly sells goods bearing a falsely used registered trademark shall, if the amount of illegal income is relatively large or there are other serious circumstances, be sentenced to imprisonment of not more than three years and a fine, or be sentenced to a fine only; or if the amount of illegal income is huge or there are other especially serious circumstances, be sentenced to imprisonment of not less than three years no more than ten years, and a fine.</p>
<p>第二百一十五条【非法制造、销售非法制造的注册商标标识罪】伪造、擅自制造他人注册商标标识或者销售伪造、擅自制造的注册商标标识，情节严重的，处三年以下有期徒刑、拘役或者管制，并处或者单处罚金；情节特别严重的，处三年以上七年以下有期徒刑，并处罚金。</p> <p>Article 215</p> <p>Whoever forges or produces without permit labels of another person's registered trademark or sells labels of a registered trademark that is forged or produced without permit shall, if the circumstances are serious, be sentenced to imprisonment of not more than three years or criminal detention or public surveillance and a fine, or be sentenced to a fine only; or if the circumstances are especially serious, be sentenced to imprisonment of not less than three years no more than seven years, and a fine.</p>	<p>第二百一十五条【非法制造、销售非法制造的注册商标标识罪】伪造、擅自制造他人注册商标标识或者销售伪造、擅自制造的注册商标标识，情节严重的，处三年以下有期徒刑，并处或者单处罚金；情节特别严重的，处三年以上十年以下有期徒刑，并处罚金。</p> <p>Article 215</p> <p>Whoever forges or produces without permit labels of another person's registered trademark or sells labels of a registered trademark that is forged or produced without permit shall, if the circumstances are serious, be sentenced to imprisonment of not more than three years and a fine, or be sentenced to a fine only; or if the circumstances are especially serious, be sentenced to imprisonment of not less than three years no more than ten years, and a fine.</p>

*Continue reading*

Original Articles	Amended Articles
<p>第二百一十七条【侵犯著作权罪】以营利为目的，有下列侵犯著作权情形之一，违法所得数额较大或者有其他严重情节的，处三年以下有期徒刑或者拘役，并处或者单处罚金；违法所得数额巨大或者有其他特别严重情节的，处三年以上七年以下有期徒刑，并处罚金：</p> <p>(一) 未经著作权人许可，复制发行其文字作品、音乐、<del>电影、电视、录像作品</del>、计算机软件及其他作品的；</p> <p>(二) 出版他人享有专有出版权的图书的；</p> <p>(三) 未经录音录像制作者许可，复制发行其制作的录音录像的；</p> <p>(四) 制作、出售假冒他人署名的美术作品的。</p> <p>Article 217</p> <p>Whoever, for profits, infringes upon copyright under any of the following circumstances shall, if the amount of illegal income is relatively large or there are other serious circumstances, be sentenced to imprisonment of not more than three years or <b>criminal detention</b> and a fine, or be sentenced to a fine only; or if the amount of illegal income is huge or there are other especially serious circumstances, be sentenced to imprisonment of not less than three years no more than <b>seven years</b>, and a fine:</p> <p>(1) Duplicating and/or distributing any literary work, music work, <b>cinematographic work, televised work, video work</b>, computer software or any other work without the permission of its copyright owner.</p> <p>(2) Publishing any book of which another person has the exclusive right of publication.</p> <p>(3) Duplicating and/or distributing any audio or video product without the permission of its producer.</p> <p>(4) Producing or selling any artistic work bearing a fake signature of another person.</p>	<p>第二百一十七条【侵犯著作权罪】以营利为目的，有下列侵犯著作权或者与著作权有关的权利的情形之一，违法所得数额较大或者有其他严重情节的，处三年以下有期徒刑，并处或者单处罚金；违法所得数额巨大或者有其他特别严重情节的，处三年以上十年以下有期徒刑，并处罚金：</p> <p>(一) 未经著作权人许可，复制发行、<b>通过信息网络向公众传播</b>其文字作品、音乐、<b>美术、视听作品</b>、计算机软件及<b>法律、行政法规规定的</b>其他作品的；</p> <p>(二) 出版他人享有专有出版权的图书的；</p> <p>(三) 未经录音录像制作者许可，复制发行、<b>通过信息网络向公众传播</b>其制作的录音录像的；</p> <p>(四) 未经表演者许可，复制发行录有其表演的录音录像制品，<b>或者通过信息网络向公众传播其表演的</b>；</p> <p>(五) 制作、出售假冒他人署名的美术作品的；</p> <p>(六) 未经著作权人或者与著作权有关的权利人许可，<b>故意避开或者破坏权利人为其作品、录音录像制品等采取的保护著作权或者与著作权有关的技术措施的</b>。</p> <p>Article 217</p> <p>Whoever, for profits, infringes upon copyright <b>or the rights relating to copyright</b> under any of the following circumstances shall, if the amount of illegal income is relatively large or there are other serious circumstances, be sentenced to imprisonment of not more than three years and a fine, or be sentenced to a fine only; or if the amount of illegal income is huge or there are other especially serious circumstances, be sentenced to imprisonment of not less than three years no more than <b>ten years</b>, and a fine:</p> <p>(1) Duplicating and/or distributing <b>or through the information network, disseminating to the public</b> any literary work, music work, <b>artistic work, audio visual work</b>, computer software or <b>any other work provided for by laws and administrative regulations</b> without the permission of its copyright owner.</p> <p>(2) Publishing any book of which another person has the exclusive right of publication.</p> <p>(3) Duplicating and/or distributing <b>or through the information network, disseminating to the public</b> any audio or video product without the permission of its producer.</p> <p>(4) Duplicating and/or distributing any audio or video product recording the performance, <b>or through the information network, disseminating to the public the performance, without the permission of its performer.</b></p> <p>(5) Producing or selling any artistic work bearing a fake signature of another person.</p> <p>(6) <b>Intentionally evading or disrupting the technical measures taken by a copyright owner or the owner of rights relating to the copyright to protect his or her copyright or the rights relating to the copyright to a work or audio or video product, without the permission thereof.</b></p>

Original Articles	Amended Articles
<p>第二百一十八条【销售侵权复制品罪】以营利为目的，销售明知是本法第二百一十七条规定的侵权复制品，违法所得数额巨大的，处三年以下有期徒刑或者拘役，并处或者单处罚金。</p> <p>Article 218</p> <p>Whoever, for profits, knowingly sells the infringing duplicates set forth in Article 217 of this Law shall, if the amount of illegal income is huge, be sentenced to imprisonment of not more than <del>three years or criminal detention</del> and a fine, or be sentenced to a fine only.</p>	<p>第二百一十八条【销售侵权复制品罪】以营利为目的，销售明知是本法第二百一十七条规定的侵权复制品，违法所得数额巨大或者有其他严重情节的，处五年以下有期徒刑，并处或者单处罚金。</p> <p>Article 218</p> <p>Whoever, for profits, knowingly sells the infringing duplicates set forth in Article 217 of this Law shall, if the amount of illegal income is huge <b>or there are other especially serious circumstances</b>, be sentenced to imprisonment of not more than <b>five years</b> and a fine, or be sentenced to a fine only.</p>
<p>第二百一十九条【侵犯商业秘密罪】有下列侵犯商业秘密行为之一，<del>给商业秘密的权利人造成重大损失的</del>，处三年以下有期徒刑或者拘役，并处或者单处罚金；<del>造成特别严重后果的</del>，处三年以上七年以下有期徒刑，并处罚金：</p> <p>(一) 以盗窃、利诱、胁迫或者其他不正当手段获取权利人的商业秘密的；</p> <p>(二) 披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密的；</p> <p>(三) 违反约定或者违反权利人有关保守商业秘密的要求，披露、使用或者允许他人使用其所掌握的商业秘密的。</p> <p>明知或者应知前款所列行为，<del>获取、使用或者披露他人的商业秘密的</del>，以侵犯商业秘密论。</p> <p>本条所称商业秘密，是指不为公众所知悉，能为权利人带来经济利益，具有实用性并经权利人采取保密措施的技术信息和经营信息。</p> <p>本条所称权利人，是指商业秘密的所有人和经商业秘密所有人许可的商业秘密使用人。</p> <p>Article 219</p> <p>Whoever commits any of the following conduct to infringe upon a trade secret <del>and brings significant losses to persons having the rights to the commercial secrets</del> shall be sentenced to imprisonment of not more than three years or <del>criminal detention</del> and a fine, or be sentenced to a fine only; or if the <del>consequences</del> are especially serious, be sentenced to imprisonment of not less than three years no more <del>seven years</del> and a fine: (1) Obtaining a right holder's trade secret by theft, <del>inducement</del>, coercion or any other illicit means. (2) Disclosing, using or allowing any other person to use the trade secret obtained from the right holder by the means mentioned in the preceding paragraph. (3) Disclosing, using or allowing any other person to use the trade secret known by him or her in violation of <del>the agreement with the right holder</del> or the requirements of the right holder for keeping the trade secret confidential. Whoever acquires, uses, or discloses other people's trade secret, although he or she knows or <del>should know</del> the conduct set forth in the preceding paragraph shall be punished as infringing upon the trade secret. <del>For the purposes of this Article, 'trade secret' means the technical information and operation information that are unknown to the public, can bring economic profits to their right holders, are functional, and are kept as secrets by their right holders.</del> For the purposes of this Article, 'right holder' means the owner of the trade secret and the person who is permitted by the owner to use the trade secret.</p>	<p>第二百一十九条【侵犯商业秘密罪】有下列侵犯商业秘密行为之一，<b>情节严重的</b>，处三年以下有期徒刑，并处或者单处罚金；<b>情节特别严重的</b>，处三年以上十年以下有期徒刑，并处罚金：</p> <p>(一) 以盗窃、<b>贿赂、欺诈、胁迫、电子侵入</b>或者其他不正当手段获取权利人的商业秘密的；</p> <p>(二) 披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密的；</p> <p>(三) 违反<b>保密义务</b>或者违反权利人有关保守商业秘密的要求，披露、使用或者允许他人使用其所掌握的商业秘密的。</p> <p>明知前款所列行为，获取、披露、使用<b>或者允许他人使用该商业秘密的</b>，以侵犯商业秘密论。</p> <p>本条所称权利人，是指商业秘密的所有人和经商业秘密所有人许可的商业秘密使用人。</p> <p>Article 219</p> <p>Whoever commits any of the following conduct to infringe upon a trade secret shall, <b>if the circumstances are serious</b>, be sentenced to imprisonment of not more than three years and a fine, or be sentenced to a fine only; or <b>if the circumstances are especially serious</b>, be sentenced to imprisonment of not less than three years no more <b>ten years</b> and a fine:</p> <p>(1) Obtaining a right holder's trade secret by theft, <b>bribery, fraud</b>, coercion, <b>electronic intrusion</b> or any other illicit means.</p> <p>(2) Disclosing, using or allowing any other person to use the trade secret obtained from the right holder by the means mentioned in the preceding paragraph.</p> <p>(3) Disclosing, using or allowing any other person to use the trade secret known by him or her in violation of <b>the confidentiality obligation</b> or the requirements of the right holder for keeping the trade secret confidential.</p> <p>Whoever acquires, <b>discloses</b>, or uses or <b>allows any other person to use</b> the trade secret although he or she knows the conduct set forth in the preceding paragraph shall be punished as infringing upon the trade secret. For the purposes of this Article, 'right holder' means the owner of the trade secret and the person who is permitted by the owner to use the trade secret.</p>

Original Articles	Amended Articles
	<p>第二百一十九条之一为境外的机构、组织、人员窃取、刺探、收买、非法提供商业秘密的，处五年以下有期徒刑，并处或者单处罚金；情节严重的，处五年以上有期徒刑，并处罚金。</p> <p>Article 219A</p> <p>Whoever steals, spies on, buys or illegally provides any trade secret for an overseas institution, organization or individual shall be sentenced to imprisonment of not more than five years and a fine, or be sentenced to a fine only; and if the circumstances are serious, be sentenced to imprisonment of not less than five years and a fine.</p>
<p>第二百二十条【单位犯侵犯知识产权罪的处罚规定】单位犯本节第二百一十三条至第二百一十九条规定之罪的，对单位判处罚金，并对其直接负责的主管人员和其他直接责任人员，依照本节各该条的规定处罚。</p> <p>Article 220</p> <p>Where an entity commits a crime as provided for in Article 213 through Article 219 of this Section, the entity shall be sentenced to a fine, and its directly liable executive in charge and other directly liable persons shall be punished in accordance with the provisions of the aforesaid articles of this Section respectively.</p>	<p>第二百二十条【单位犯侵犯知识产权罪的处罚规定】单位犯本节第二百一十三条至第二百一十九条之一规定之罪的，对单位判处罚金，并对其直接负责的主管人员和其他直接责任人员，依照本节各该条的规定处罚。</p> <p>Article 220</p> <p>Where an entity commits a crime as provided for in Article 213 through Article 219A of this Section, the entity shall be sentenced to a fine, and its directly liable executive in charge and other directly liable persons shall be punished in accordance with the provisions of the aforesaid articles of this Section respectively.</p>

Summer Xia  
HFG Law&Intellectual Property