



European Chamber
中国欧盟商会

Criminal IP Enforcement in China:

From IP Owners' perspective – Some viewpoints from European Industry in China.

浅谈中国知识产权刑事执法工作
——以欧洲知识产权权利人的视角

Elliot Papageorgiou

National Chair - EUCCC IPR Working Group

潘安略，中国欧盟商会知识产权工作组主席

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Overview:

1. Criminal IP Enforcement in China – **trend over last 5 years***
2. Criminal IP Enforcement in China – **trend between provinces***
3. **Criminal IP Enforcement Advantages** compared to other modes of IP enforcement – and when does it work?
4. **Criminal IP Enforcement Disadvantages** - what can be made better?
5. **Criminal IP Enforcement** – How to make it even better?

*The data are based on the reports on the Status of Judicial Protection of Intellectual Property Rights in Chinese Courts published by the Supreme People's Court

概述：

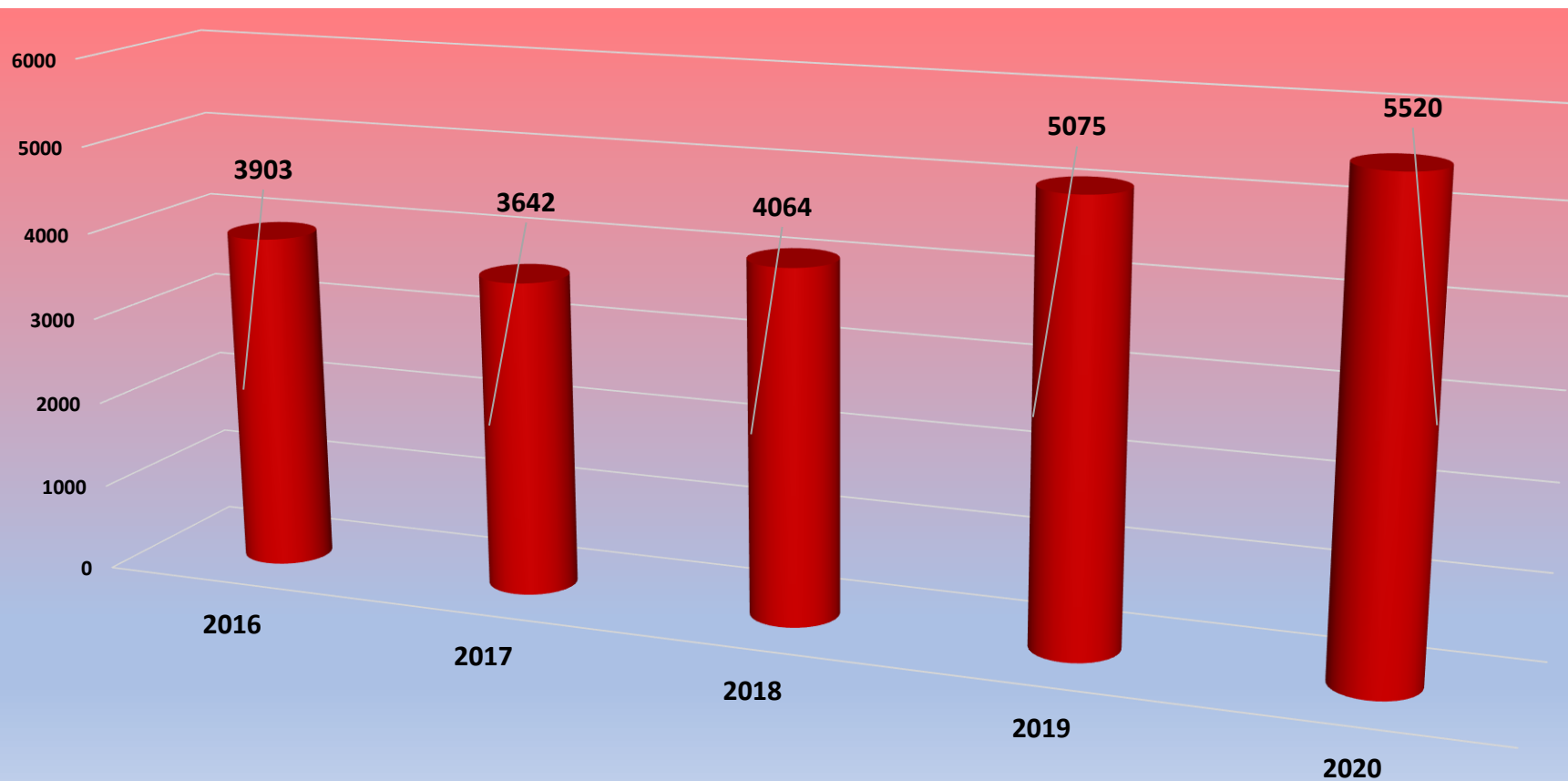
1. 中国的知识产权刑事执法工作——**过去5年的趋势***
2. 中国的知识产权刑事执法工作——**各省之间的趋势***
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5. **知识产权刑事执法工作**——如何使其更加完善？

*上述数据均来自最高人民法院发布的中国法院知识产权司法保护状况报告

1. Criminal IP Enforcement: trend over last 5 years

中国的知识产权刑事执法工作——过去5年趋势

First Instance Criminal Cases Concluded
审结的侵犯知识产权刑事一审案件



1. Criminal IP Enforcement: trend over last 5 years

中国的知识产权刑事执法工作——过去5年趋势



1. Criminal IP Enforcement: trend over last 5 years

Case Type 案件类型	2016	2017	2018	2019	2020
First-instance Criminal Cases Concluded 审结的侵犯知识产权刑事一审案件	3903	3642	4064	5075	5520
Crime of Counterfeiting Registered Trademark 假冒注册商标罪	1793	1687	1852	2134	2260
Crime of Selling Commodities Bearing Counterfeit Registered Trademark 销售假冒注册商标的商品罪	1543	1494	1724	2279	2528
Crime of Forging and Selling Representations of the Registered Trademarks Without Authorisation 非法制造、销售非法制造的注册商标标识罪	311	260	305	423	395
Crime of Counterfeiting Patent 假冒专利罪	5	1	2	1	2
Crime of Copyright Infringement 侵犯著作权罪	207	170	136	191	273
Crime of Selling Works Reproduced by Infringing on the Copyright 销售侵权复制品罪	4	4	6	8	17
Crime of Trade Secret Infringement 侵犯商业秘密罪	40	26	39	39	45
Second-instance Criminal Cases Concluded 审结的侵犯知识产权刑事二审案件	812	540	668	807	854

- 对一审判决的上诉率很低，在15-21%的范围内。

2. Criminal IP Enforcement: trend between provinces

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3. Criminal IP Enforcement: advantages ...

知识产权刑事维权的优势.....

1. Highest deterrent effect - due to severe penalties (by way of illustration ...)

- Crime of counterfeiting the registered trademark

- Up to 3 years imprisonment and penalties

- Illegal revenue more than RMB 50,000, or illegal profit more than RMB 30,000.
 - Counterfeit more than 2 trademarks, or illegal revenue more than RMB 30,000, or illegal profit more than RMB 20,000.

- 3-10 years imprisonment and penalties

- Illegal revenue more than RMB 250,000, or illegal profit more than RMB 150,000.
 - Counterfeit more than 2 trademarks, or illegal revenue more than RMB 150,000, or illegal profit more than RMB 100,000.

1. 威慑力最强—基于刑事惩治力度（举例说明.....）

- 假冒注册商标罪

- 三年以下有期徒刑，并处罚金

- 销售金额达5万元以上，或者违法所得3万元以上。
 - 假冒注册商标2件以上，或者销售金额3万元以上，或者违法所得2万元以上。

- 三年以上七年以下有期徒刑，并处罚金

- 销售金额达25万元以上，或者违法所得15万元以上。
 - 假冒注册商标2件以上，或者销售金额15万元以上，或者违法所得10万元以上。



3. Criminal IP Enforcement: advantages ...

知识产权刑事维权的优势.....

1. Highest deterrent effect - due to severe penalties (by way of illustration ...)

- Crime of Copyright Infringement

- Up to 3 years imprisonment and/or penalties

- Illegal revenue more than RMB 30,000, **plus** (i) illegal revenue more than RMB 50,000, or (ii) more than 500 reproductions distributed.

- up to 10 years imprisonment and penalties

- Illegal profit more than RMB 150,000, **plus** (i) illegal revenue more than RMB 250,000, or (ii) more than 2,500 reproductions distributed.

1. 威慑力最强—基于刑事惩治力度（举例说明.....）

- 侵犯著作权罪

- 三年以下有期徒刑，并处罚金

- 销售金额超过3万元，加上(i)销售金额超过5万元，或(ii)传播的复制品超过500件。

- 十年以下有期徒刑，并处罚金

- 违法所得超过15万元，加上(i)销售金额超过25万元，或(ii)传播的复制品超过2500件。



3. Criminal IP Enforcement: advantages ...

知识产权刑事维权的优势.....

1. Highest deterrent effect - due to severe penalties (by way of illustration ...)

- Crime of trade secret infringement

- Up to 3 years imprisonment and/or penalties

- The amount of loss caused to the right holder of trade secrets, or the amount of illegal income arising from infringement more than RMB 300,000.

- Up to 10 years of imprisonment and penalties

- The amount of loss caused to the trade secret owner, or the amount of illegal profit arising from infringement is more than RMB 2,500,000.

1. 威慑力最强—基于刑事惩治力度（举例说明.....）

- 侵犯商业秘密罪

- 三年以下有期徒刑，并处罚金

- 给商业秘密权利人造成损失的数额，或者因侵权所获得的利益超过30万元。

- 最高可判处十年有期徒刑，并处罚金

- 给商业秘密权利人造成损失的金额，或者因侵权所获得的利益超过250万元。



3. Criminal IP Enforcement: advantages ...

知识产权刑事维权的优势.....

2. Broadest geographic / cross-jurisdictional impact

- Possibility of **eradicating whole networks of counterfeit production** and sale.
 - PSB has the power & authority to investigate entire networks of counterfeiters and seize evidence, machinery & equipment used for producing and selling counterfeit goods, etc.

3. The most effective and comprehensive means of evidence collection

- Criminal enforcement, by virtue of the use of public authority, is more likely to result in a **comprehensive collection of evidence – at various locations and inter-provincial**, especially in cases of covert infringement of IP rights, such as infringement of trade secrets.

2. 最广泛地区/跨辖区的影响力

- 根除整个假货生产和销售网络的可能性。
 - 公安机关有权调查整个制假网络，并扣押用于生产和销售假货的证据、机器和设备等。

3. 最全面和有效的证据搜集手段

- 刑事执法行动，特别是在隐蔽性强的如侵犯商业秘密等知识产权侵权案件中，更能借助公权力在跨省份的不同地点，全面搜集证据。



4. Criminal IP Enforcement: disadvantages ...

知识产权刑事维权的劣势.....

1. **Costs:** can be higher than civil litigation – depending on proactiveness and workload of relevant PSB
 2. **Duration:** timing is indeterminate whereas courts generally have specific time-limits from time of accepting complaint
 - **PSB:** Period of considering complaint and requesting further evidence before case is even accepted: **several weeks to several months**; Period of investigation: **2 - 7 months** from the date of approval of arrest.
 - **Procuratorate (PP): 1 - 6.5 months** (including the period for additional investigation by the PSB) from the date of submission by PSB to PP for examination and prosecution.
 - **Criminal Tribunal: 20 days - 2.5 months** from the date of receiving the case.
-
1. **费用：**可能高于民事诉讼—取决于公安机关的主动性和工作量
 2. **期限：**对比法院程序而言，期限略显不确定，而法院诉讼程序通常有明确的审理期限
 - **公安机关：**在立案之前，考虑立案和要求提供进一步证据的期限为：几周至几个月；案件侦查期限为：从批准逮捕之日起**2-7个月**。
 - **检察院：**从公安机关向检察院移送审查起诉的案件材料之日起，审查起诉期限为：**1个月至6.5个月**（包括公安机关的补充侦查期间）。
 - **法院刑事审判庭：**自受理案件之日起**20天至2.5个月**。



4. Criminal IP Enforcement: disadvantages ...

知识产权刑事维权的劣势.....

3. Reduced control over enforcement process...

- In Civil litigation parties retain control over enforcement process.
- In Criminal enforcement, **some internal PSB process are not as transparent for IP rights holders.**
- If PSB reluctant to proceed with a case, it **can be difficult to push the case forward.**
- **Criteria for transfer of cases** from other administrative authorities (e.g. AMR – Administration for Market Regulation) **not always clear so transfers are not always straight forward.**
- **Case transfers can appear to be arbitrary** and, in some cases **PSB appears reluctant to receive leads from other authorities**, thus resulting in a lack of incentive for other authorities to transfer leads due to the high cost of communication (with the PSB).

3. 权利人对维权进程的把控权程度较低.....

- 在民事诉讼中，当事人对维权进程享有更高的把控权。
- 在刑事执法中，**公安机关的一些内部程序对知识产权权利人来说略显晦涩。**
- 权利人难以凭借自身力量**推动刑事案件的进展而更需要依赖公安机关的主动性。**
- 由其他行政机关（如市场监管局等）**移交案件的标准目前尚缺乏一定的明确性，导致其他机关移交案件和公安机关接收案件的渠道仍存在一定障碍，不够畅通。**



4. Criminal IP Enforcement: disadvantages ...

知识产权刑事维权的劣势.....

4. Reluctance to take on borderline cases

- Where **threshold met but not exceeded by a material amount**...
- **For some new and rare legal issues**, such as the **separation of goods and labels**, the PSB may have reservations and make lack incentive to initiate investigations on its own.
- **Trade Secrets cases** appear to be more challenging to launch for foreign trade secrets owners...

4. 具有争议案件的刑事案件立案门槛略高

- 如果案件达到了立案门槛，但没有超过重大数额.....
- 对于一些新型和少见的法律问题，如商品和标签分离，公安机关可能会有所顾虑，启动调查的动力略显不足。
- 对于外国商业秘密权利人来说，启动**商业秘密刑事案件**似乎更具挑战性.....



5. So, how to make Criminal IP Enforcement even better?

对于完善知识产权刑事执法工作的一些建议

1. Ensure greater allocation of enforcement resources to small and medium-sized brands

- Frequently in-depth investigations are required before evidence is deemed sufficient by PSB, thus brand owners may have to invest substantial resources and expertise which may not be affordable for small or medium brands/SMEs.

2. Strengthen the right holder's role in the whole criminal enforcement process

- **Improve the transparency of process for case acceptance** - PSB has sole discretion to decide whether to accept a criminal case, transparency for such discretionary procedure should be increased.
- **Maintain strong communication channels with the rights holders** - Once the PSB accepts the case, right holders would have little control over the investigation and case development. Even more timely communication between both parties may help in proceeding with the case.

1. 确保为中小品牌分配更多的执法资源

- 在公安机关认为证据充分之前，权利人往往需要先进行一定的前期调查。权利人对此可能需要投入大量的资源和专业知识，这对于中小品牌/中小企业来说可能负担较高。

2. 增强权利人在整个刑事执法过程中的作用

- **提高案件受理程序的透明度**—公安机关拥有决定是否受理刑事案件的裁量权，建议提高这种自由裁量程序的透明度。
- **与权利人保持长期有效的沟通**—在公安机关受理案件后，建议公安机关与权利人之间保持及时有效的沟通，以共同推动案件进展。



5. So, how to make Criminal IP Enforcement even better? 对于完善知识产权刑事执法工作的一些建议

2. Strengthen the right holder's role in the whole criminal enforcement process (cont.)

- **Improve the litigation rights (in criminal proceedings) of the right holders** – Enhance rights holders' role at all stages of criminal procedures, including access to case-related files, attending court hearings, providing sentencing input and recommendations on the case.

3. Avoid the “special project” approach / emphasis to cases

- PSB sometimes appears reluctant to accept and proceed with cases **unless there is a special project mandate by superior authorities.**
- It is recommended that criminal actions be conducted more regular and routine while retaining special projects.

2. 增强权利人在整个刑事执法过程中的作用（续）

- **改善权利人（在刑事诉讼中）的诉讼权利**—加强权利人在刑事诉讼各阶段的作用，包括查阅与案件有关的档案，参加庭审，提供对于案件的意见和建议等书面材料等。

3. 在“专项行动”基础上开展更多的常规执法工作

- 公安机关有时会将更多执法资源投入到“专项行动”中去
- 建议在保留“专项行动”的同时，日常也能常规性地开展刑事执法工作。



5. So, how to make Criminal IP Enforcement even better? 对于完善知识产权刑事执法工作的一些建议

4. Better coordination between administrative and criminal procedures

- For cases expected to be transferred from AMR to PSB, the criteria for transfer should be more clearly and properly implemented.
- It is again recommended that PSB, the Procuratorate, and the rights holders improve communication on the application of the law, and case facts.

4. 更好地衔接行政和刑事程序

- 对于市场监管局等行政部门移交给公安机关的刑事线索与案件，建议移交和接收案件的标准更为具体明确，并得以严格落实。
- 再次建议公安机关、检察院和权利人在法律适用和案件事实方面加强沟通，共同推动案件的妥善处理。

Further information & Questions?

更多信息和问题?

<https://www.europeanchamber.com.cn/en/home>



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Thank you!

感谢聆听!

Elliot Papageorgiou

elliot.papageorgiou@gowlingwlg.com

