

# CLIENT ALERT

## China Increases Focus on Protecting Against Intellectual Property Infringement

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On September 14, 2020, China's highest court, the Supreme People's Court of the People's Republic of China, released the "Opinions on Increasing Enforcement Against Intellectual Property Infringement According to Law" (关于依法加大知识产权侵权行为惩治力度的意见) ("Opinions").

The Opinions cover four main areas: (1) Evidence Preservation, (2) Injunctions, (3) Monetary Relief, and (4) Criminal Enforcement

### 1. Evidence Preservation

Articles 1-4 cover evidence preservation. Evidence preservation is a measure taken by Chinese courts to investigate, collect, and preserve evidence when it may be destroyed or difficult to collect in the future. Article 2 directs courts to promptly review and decide an application for an injunction and an application for evidence preservation when a party applies for both. Article 4 allows courts to make inferences in favor of an intellectual property rights holder when the alleged infringer damages or transfers evidence subject to an evidence preservation order.

### 2. Injunctions

Articles 5-6 cover injunctions. Article 5 reaffirms the primacy of injunctions in Chinese intellectual property litigation and states courts should grant an injunction first when facts supporting infringement are clear and infringement has been established.

### 3. Increasing Monetary Relief

Articles 7-13 cover increasing monetary relief for intellectual property infringement. Notably, Article 10 permits punitive damages in the event of severe and intentional infringement to deter intentional infringement. In terms of statutory damages, Article 11 permits courts to award statutory damages up to a maximum limit in situations where the infringement has caused a right holder severe damages or an infringer has obtained a substantial amount of profits through infringement and evaluates factors in assessing damages including whether the infringement was intentional; whether defendant has repeatedly infringed; duration of infringement; whether infringement involves a large area; and whether infringement endangers personal safety, exploits natural resources, or damages public interests.

### 4. Increasing Criminal Enforcement

Articles 15-16 cover increasing criminal enforcement of intellectual property rights and states courts should impose severe penalties for counterfeiting disaster relief items and epidemic prevention supplies. Notably, the Opinions removed a foreigner-

targeted clause from the draft opinions, which would have imposed severe penalties for infringement of trade secrets by overseas institutions, organizations, and personnel.

As China becomes a viable venue for intellectual property enforcement, it is important to monitor the recent developments in Chinese intellectual property legal system.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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