

Guidelines for strengthening intellectual property protection

A series of guidelines on strengthening intellectual property protection was recently issued by the Chinese government, which all localities and departments are expected to implement.

An evolving intellectual property regime has long been an aspect of China's development that concerns foreign investors and foreign firms operating in China.

Recently, the General Office of the Central Committee and the State Council have jointly issued **Guidelines for Strengthening Intellectual Property Protection** 中共中央办公厅国务院办公厅印发《关于强化知识产权保护的意见》, taking another step towards alleviating these concerns and addressing an issue that lies at the heart of bilateral trade friction.

This directive indicates a move by the Chinese government towards stronger protection and greater enforcement of intellectual property rights (IPR) in China.

Not only does it seek to introduce a system of compensation for copyright and patent infringement (similar to the system already in place for trademark infringement), but it also calls for tougher penalties for infringements and counterfeiting, enhancing enforcement mechanisms, and covers previously unregulated areas of business.

The *Guidelines* are separated into seven sections, a brief summary of which is below:

1. General requirements 总体要求

The first section identifies two phases of development for a more comprehensive and effective IPR regime.

By 2022, it calls for China to have effectively curbed IPR infringement, making it easier for rights holders to prosecute infringement by reducing the burden of proof and protracted periods of litigation, and by increasing punitive compensation.

By 2025, China should reach a high level of IPR protection with the understanding that a fundamental guarantee of intellectual property is required to continue to fuel innovation.

2. Guidance for strengthening institutional constraints and establishing strict protection of intellectual property rights 强化制度约束，确立知识产权严保护政策导向

This section summarises how China will review and improve Patent Law, Trademark Law and Copyright Law, increase

punishment for infringement and counterfeiting, implement systems of compensation for copyright and patent infringement, and significantly increase the upper limit of statutory compensation.

New powers of enforcement and oversight will be introduced, sanctioning the confiscation of illegal proceeds and destruction of counterfeit goods, and enabling stronger administrative and judicial penalties.

A "blacklist" will be established that records the infringement history of entities operating in market, and while strict standards of evidence will be required for civil litigation of intellectual property infringement, China will work to reduce the burden of proof for rights holders.

In addition, the *Guidelines* call for implementing systems of protection for new and previously uncovered areas of business.

This includes a drug patent linkage, term and punitive compensation system, and systems for strengthening protection in the realms of e-commerce, sports broadcasting, cross-border trade and new plant-based products.

3. Strengthening social supervision and co-governance and constructing a broad working structure for IPR protection 加强社会监督共治，构建知识产权大保护工作格局

China will strengthen professional and technical support, increase the supervision of intellectual property by law enforcement, and establish a sound model of governance towards IPR.

Infringements on intellectual property will form part of the new Corporate Social Credit system, which will enhance overall protection by requiring enterprises to publicly disclose their intellectual property infringement history on a national database.

4. Optimising mechanisms of cooperation, and rapid breakthrough in key aspects of IPR protection 优化协作衔接机制，突破知识产权快保护关键环节

This section calls for streamlining the review process for patents and trademarks of new products, and optimising communication between departments for notarisation, certification and administration.

China will strengthen cross-departmental and interprovincial cooperation in handling cases of infringement. This will include better mechanisms for joint investigation and the transfer of cases between departments, and linking administrative departments with law enforcement and public security.

IPR protection agencies will be established, providing “one-stop” centres with the capacity to quickly lodge, administer and resolve disputes.

5. Comprehensive mechanisms for international communication, creating a superior environment for IPR protection 健全涉外沟通机制，塑造知识产权同保护优越环境

In order to improve communication between foreign and domestic rights holders, greater efforts will be undertaken to further international cooperation.

This includes strengthening IPR information exchange between domestic and foreign trade associations, consulates and embassies, and actively responding to the concerns of rights holders at home and abroad.

China will create new mechanisms for the coordination and resolution of overseas disputes, and seek to protect the rights of Chinese IPR holders abroad by sharing information and coordinating with relevant international agencies.

6. Strengthening basic conditions and providing strong support for IPR protection 加强基础条件建设，有力支撑知识产权保护工作

This section discusses establishing a national intellectual property data-centre, and providing a network for registrations, approvals, announcements, major cases, and statistical information.

Local governments, departments, educational institutions and trade associations are encouraged to increase their training in relation to IPR, and personnel in administrative roles, law enforcement and judicial organisations to strengthen their capacity to manage IPR cases. It also calls for departments to increase investment in resources and support.

7. Increasing organisational capacity to ensure work tasks are effectively implemented 加大组织实施力度，确保工作任务落实

The final section discusses how the Chinese government will ensure changes in the IPR regime are effectively implemented throughout its system of governance.

The National Intellectual Property Administration (NIPA) will ensure that all relevant departments implement IPR policy directives and promptly submit major issues to the CPC Central Committee and the State Council.

Local Party committees and governments at all levels are called to fully implement the IPR guidelines, and regular assessments will be carried out to ensure that measures have been put in place.

In summary, while some commentators remain sceptical towards implementation of the *Guidelines*, they are a clear step forward towards a more robust IPR regime in China and a move that has been eagerly anticipated by foreign companies alike.

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Contact one of our experts below to discuss how these changes might present an opportunity for your business.



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