

An Empirical Examination of Intellectual Property Crimes Involving Enterprises in China—A Quantitative Analysis of 171 Judgments Issued by Chinese Courts from 2022 to 2025

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ABSTRACT: Drawing on 171 Chinese judgments concerning intellectual property crimes involving enterprises from 2022 to 2025, this article uses 34 variables—including criminal motivation, the offender's organizational role, asset recovery and restitution, and the amount involved—to examine systematically the characteristics of these offenses and patterns of judicial discretion. The principal findings are as follows. First, the most common offense pattern involves offenders acting to benefit their enterprises by harming external interests and, together with accomplices, manufacturing or selling goods or representations bearing counterfeit registered trademarks, particularly in the fields of industrial equipment and chemical raw materials. Second, these offenses occur most often in manufacturing and wholesale or retail businesses in Shanghai, Zhejiang, and several other provinces, and are typically committed by enterprise principals or rank-and-file employees in the course of trading or production. Third, procedural handling is marked by delayed intervention, inadequate asset recovery and restitution, excessively long pretrial detention, and a notable incidence of improper profit-driven cross-jurisdictional criminal enforcement. Fourth, multiple linear regression and binary logistic regression show that eight variables—the number of offenses, number of offenders, fine, amount of loss restored, duration of pretrial detention, guilty plea and acceptance of punishment, victim forgiveness, and the offender's organizational role—significantly affect the term of imprisonment or the likelihood of a suspended sentence. Yet many statutory or discretionary sentencing circumstances, including voluntary surrender and the amount involved, fail to pass the relevant significance tests, indicating that sentencing remains insufficiently standardized. The data likewise do not support the hypotheses that fines imposed on entities divert punishment away from principal penalties imposed on natural persons or that an enterprise's public-interest functions and need for continued operation mitigate punishment. Qualitative review of the judgments further identifies problems in legal characterization, including the unwarranted expansion of criminal liability through overextended causal chains.

KEYWORDS. intellectual property crimes involving enterprises; offense patterns; procedural treatment; determinants of sentencing

INTRODUCTION

Intellectual property protection bears directly on the modernization of China's system and capacity for governance, high-quality development, people's well-being, the country's broader policy of opening to the outside world, and national security. As the law of last resort and a legal safeguard, criminal law can provide intellectual property with final and effective protection. Chinese scholarship on intellectual property crime is extensive, but most studies are doctrinal analyses of the application of particular offenses. In recent years, Chinese scholars have paid increasing attention to the challenges that the research, development, and application of new technologies pose to the criminal-law protection of intellectual property. Yang (2025), for example, argues that digital technology has diversified the constituent elements from which trademarks may be generated while also giving rise to new forms of trademark crime, such as deepfakes [1]. Liu (2023) maintains that generative artificial intelligence may function as the object or instrument of an intellectual property offense and may even qualify as an offender [2]. A smaller body of work uses empirical methods to reveal adjudicative patterns in Chinese intellectual property cases. Based on a sample of 430 judgments, Chen (2024) identifies changes in judicial standards for determining the amount involved in the crime of counterfeiting registered trademarks and argues that the amount should be based on appraised value [3]. By counting cases, defendants, types of protected works, and sanctions in copyright-infringement cases, Xu and Chen (2019) call for stronger criminal-law protection of copyright

[4]. By contrast, international scholarship includes a substantial criminological literature on the causes and forms of intellectual property crime and the corresponding preventive strategies, including Piquero's work (2005) [5].

A review of the Chinese literature, read against international research, reveals two limitations. First, Chinese studies emphasize normative and interpretive questions but devote limited attention to the practical operation of intellectual property crime. The few empirical studies generally provide only basic counts of cases, protected objects, and sanctions. They neither portray the characteristic forms and factual patterns of these offenses nor use statistical methods to identify factors that affect judicial discretion. International empirical research employs more varied perspectives and methods, but its evidence does not derive from Chinese criminal cases; its conclusions therefore have limited transferability to China, and it rarely examines the factual operation of conviction and sentencing. Second, the existing literature does not focus on enterprises and therefore cannot adequately respond to the practical needs of governing intellectual property crime within enterprises, implementing intellectual property compliance, and strengthening internal risk control. This study accordingly adopts the perspective of enterprise-related crime. It both maps the practical forms of intellectual property crimes involving enterprises in China and analyzes patterns and problems in conviction and sentencing from procedural and substantive perspectives. The goal is to inform more effective prevention and control, promote regularity in criminal procedure and adjudication, and support enterprise digital innovation through stronger intellectual property protection [6].

2. RESEARCH DESIGN

2.1 Sampling Method and Sample Composition

To capture the most recent forms and adjudicative patterns of intellectual property crimes involving enterprises in China, this study selected the period from 1 January 2022 to 15 April 2025. Using the advanced-search condition that the full text contain either “company” or “enterprise,” it searched China Judgments Online for the eight offenses in Chapter III, Section 7 (“Crimes of Infringing Intellectual Property Rights”) of the Criminal Law of the People's Republic of China and retrieved 1,029 judgments. Manual review excluded documents that fell outside the study's definition of “enterprise crime,”¹ duplicated other documents, lacked adequate information, or merely recorded an intermediate procedural step, leaving 166 valid judgments. Because the retrieved sample contained no case involving the crime of counterfeiting patents and very few such cases had been disclosed, the study added all five judgments on China Judgments Online that involved that offense and met the definition of enterprise crime, even though they fell outside the designated time period. The final sample thus consists of 171 judgments. Five judgments, however, concern two or more independent intellectual property offenses. Those distinct criminal facts were coded separately, yielding 179 offense records as the basic units of analysis.

2.2 Hypotheses and Variable Design

To provide a comprehensive account of the characteristics of intellectual property crimes involving enterprises and to meet the practical needs of prevention, the study designed fifteen variables: offense pattern; offense of conviction; offender's organizational role; number of participants; criminal motivation; place of crime; industry; business stage implicated; number of offenses; latency period; infringed brand and product; criminal proceeds or net profit; criminal expenditure or cost; sales revenue; and amount involved. To assess whether judicial authorities engage in misconduct such as improper profit-driven cross-jurisdictional enforcement, excessive pretrial detention, or inadequate asset recovery and restitution—and to identify the factors that materially affect conviction and sentencing—the study designed a further nineteen variables: relevant jurisdictional connecting factors (place of enterprise registration, conduct, and result); place of trial; pretrial detention; residential surveillance at a designated location; asset recovery and restitution; result on appeal or retrial; voluntary surrender; truthful confession; meritorious service; guilty plea and acceptance of punishment; victim forgiveness; prior conviction; crime committed by a unit; registered capital; term of imprisonment; suspension of sentence; fine; occupational disqualification or injunction; and questionable aspects of conviction or sentencing. All findings below derive from these 34 variables.

2.3 Empirical Methods

This quantitative study relies principally on publicly available judgments concerning intellectual property crimes involving enterprises in China. Descriptive results are presented in figures and tables. Where relationships among variables must be tested, the study constructs multiple linear regression and logistic regression models. Certain recurrent offense patterns and difficult questions of legal characterization cannot be reduced to quantitative indicators; those issues are examined through qualitative case analysis.

¹ In this article, “enterprise crime” means crime committed by an enterprise or its personnel in connection with enterprise operations.

3. EMPIRICAL ANALYSIS

3.1 Overall Structure of Intellectual Property Crimes Involving Enterprises

The distribution of offenses among the 179 offense records is shown in Figure 1.

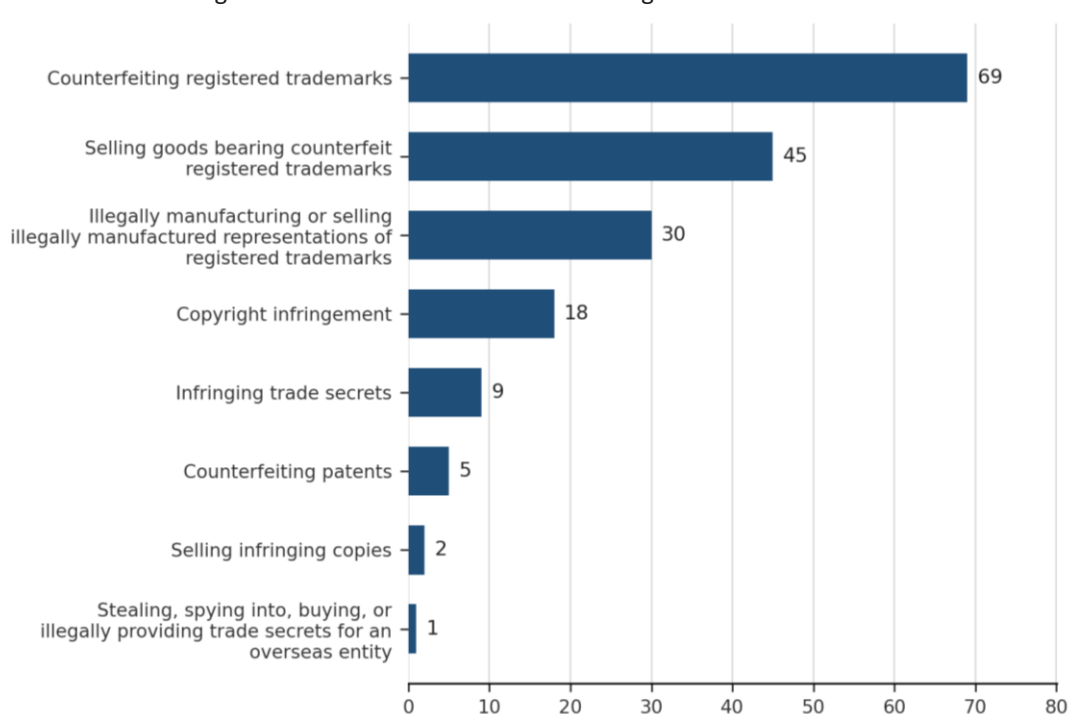


Figure 1. Distribution by offense (N = 179)

Although Article 220 of the Criminal Law provides for punishment of a unit for each of the eight intellectual property offenses, only 31 of the 179 offense records were treated as crimes committed by a unit, resulting in a fine imposed on the enterprise. They account for 17.32% of the sample.

For purposes of prevention, this article divides enterprise crime by motivation into offenses driven by personal interests and offenses driven by enterprise interests. The first category comprises offenses committed by enterprise personnel solely for personal gain and to the detriment of the enterprise. It also includes offenses that do not directly harm the enterprise but use its resources for private gain while injuring the state, society, or a third party. Because the enterprise is a victim in the broader sense and has ample incentive to respond, prevention and control should focus on internal risk controls. The second category comprises offenses committed by enterprise personnel wholly or partly for the benefit of the enterprise and to the detriment of the state, society, or a third party. Here, the enterprise is a beneficiary and often lacks the internal incentive to undertake painful self-correction; prevention and control therefore require regulatory intervention through state judicial authority [7]. Figure 2 presents the motivational structure of the 179 offense records.

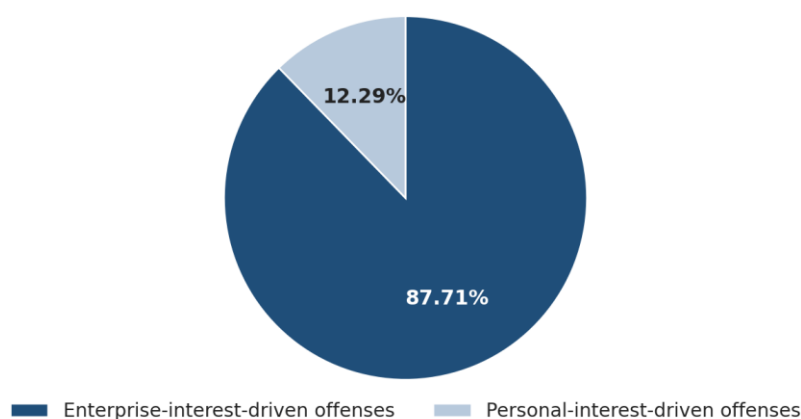


Figure 2. Motivational structure (N = 179)

3.2 General Characteristics of the Offenses

3.2.1 Organizational Roles and Business Stages

The roles that offenders occupy within their enterprises and the business stages implicated by the offense are essential to identifying high-risk positions and activities, tightening governance rules, and targeting preventive monitoring. Figure 3 shows the distribution of offender roles among the 153 offense records for which the offender's organizational role was known.²

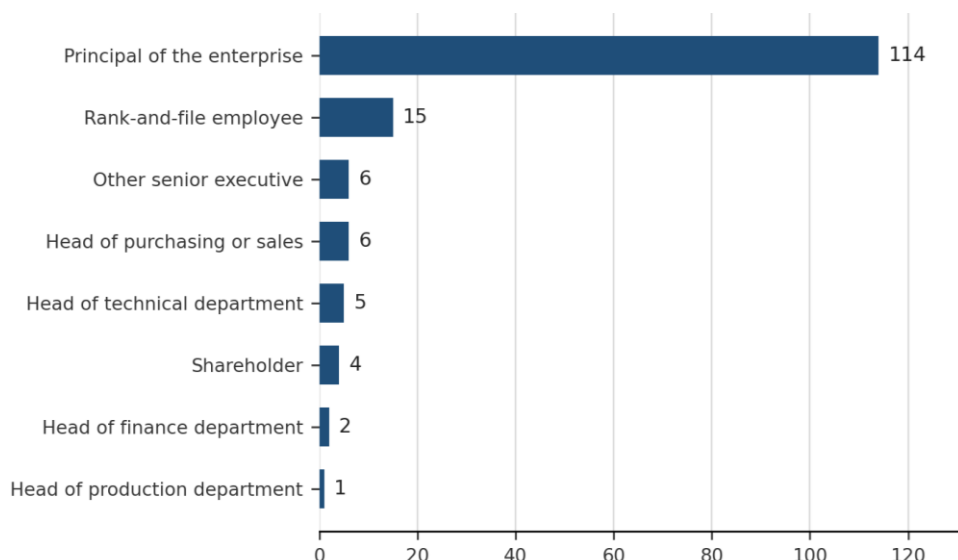


Figure 3. Distribution by offender's organizational role (n = 153)

Figure 4 shows the distribution of offenses across business stages among the 178 offense records for which that information was available.

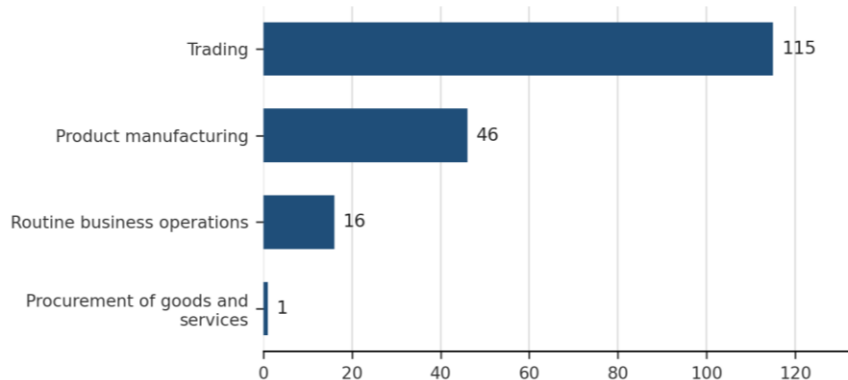


Figure 4. Distribution by implicated business stage (n = 178)

3.2.2 Numbers of Offenders and Offenses

Among the 179 offense records for which the numbers of offenders and offenses were known, the mean number of participants was 2.31 and the maximum was 14. One hundred records (55.87%) involved more than one participant, indicating that joint offending is common. The mean number of offenses was 1.72 and the maximum was nine; 56 records (31.28%) involved repeated offending. Thus, although most intellectual property crimes involving enterprises are not continuous or habitual offenses, repeated infringement is far from uncommon.

3.2.3 Monetary Amounts

First, among the 89 offense records that disclosed criminal proceeds (net profit), mean proceeds were RMB 1.2192 million. Second, among the 76 records that disclosed criminal expenditure or cost, mean expenditure was RMB 1.3359 million. Third, intellectual property offenses may generate illicit revenue through the external sale of goods bearing counterfeit registered

² Chinese judgments disclose case facts only to a limited extent, so a value is often coded as unknown because the relevant information is missing. Whenever the denominator reported for a variable differs from the 179 offense records used as the basic units of analysis, the difference consists of records excluded for missing information on that variable.

trademarks, patented products, infringing copies, or products developed using another person's trade secrets. Sales revenue therefore provides another meaningful indicator. Among the 156 records for which sales revenue was known, mean revenue was RMB 2.3047 million.³ Dividing mean criminal proceeds by mean sales revenue yields an average “profit margin” of 52.90%.

Fourth, the “amount involved” means the illegal business turnover in trademark, patent, and copyright offenses⁴ and the right holder's loss in trade-secret offenses. Among the 164 offense records that disclosed this variable, the mean amount involved was RMB 2.8503 million, the median was RMB 526,100, and the maximum was RMB 60.16 million. Excluding trade-secret offenses, mean amount involved in trademark, patent, and copyright cases was RMB 2.2130 million, while mean sales revenue was RMB 1.7097 million. In these three categories, the difference between the amount involved and sales revenue represents the value of infringing products not yet sold. The ratio of the two values (77.25%) can therefore serve as a rough indicator of how promptly judicial authorities intervene. On average, judicial authorities did not intervene and terminate the offense until 77.25% of the infringing products had already been sold.

3.2.4 Distribution by Industry and Region

Identifying the industries and fields in which intellectual property crimes involving enterprises are concentrated is essential to assessing the seriousness and urgency of enterprise crime in different settings, deploying enforcement resources, setting priorities, and improving regulatory efficiency. Figure 5 shows the industry distribution among the 174 offense records for which industry was known.

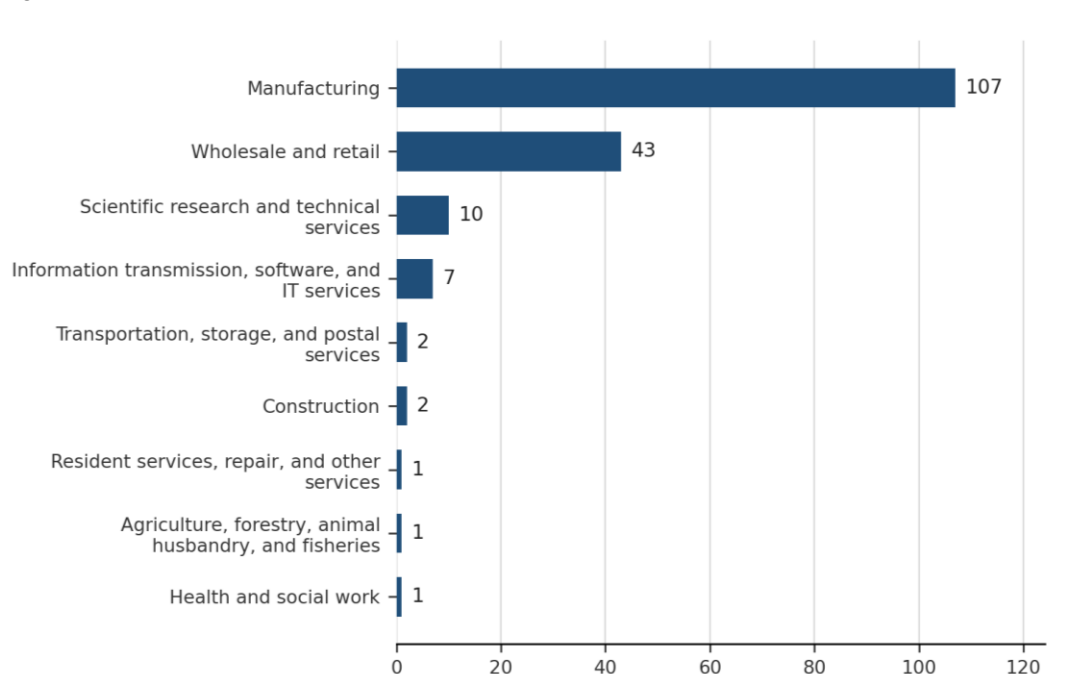


Figure 5. Distribution by industry (n = 174)

³ Criminal expenditure includes not only the cost of infringing products already sold but also the development, production, and procurement costs of unsold products. It is therefore unsurprising that mean sales revenue is lower than the sum of mean criminal expenditure and mean criminal proceeds. Differences in the extent of missing information across variables also materially affect these figures.

⁴ That is, the total value of infringing products manufactured, stored, transported, or sold in the course of the intellectual property offense.

Figure 6 shows the provincial distribution among all 179 offense records for which the place of trial was known.

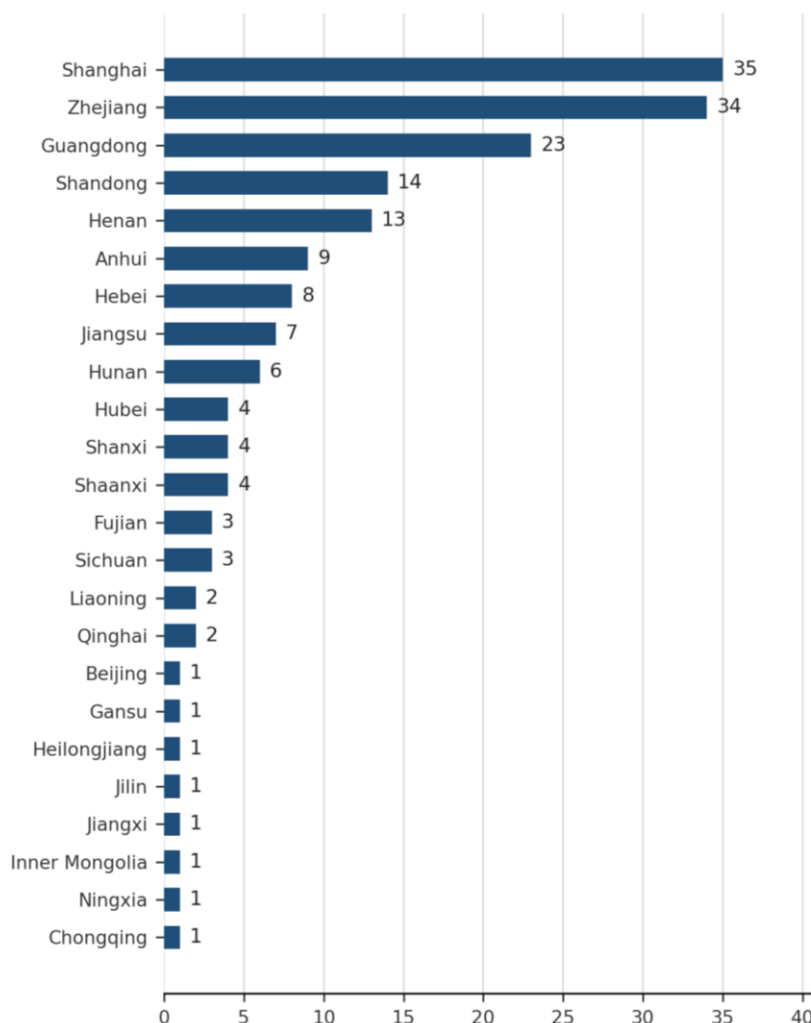


Figure 6. Distribution by province-level place of trial (N = 179)

3.2.5 Objects of Infringement

Trademark and patent offenses infringe tangible goods, services, and brands. Identifying the product sectors and brands most frequently affected is therefore important to helping right holders strengthen self-protection against external infringement. Figure 7 presents the distribution of products and services among the 147 trademark and patent offense records for which the infringed product or service was known.

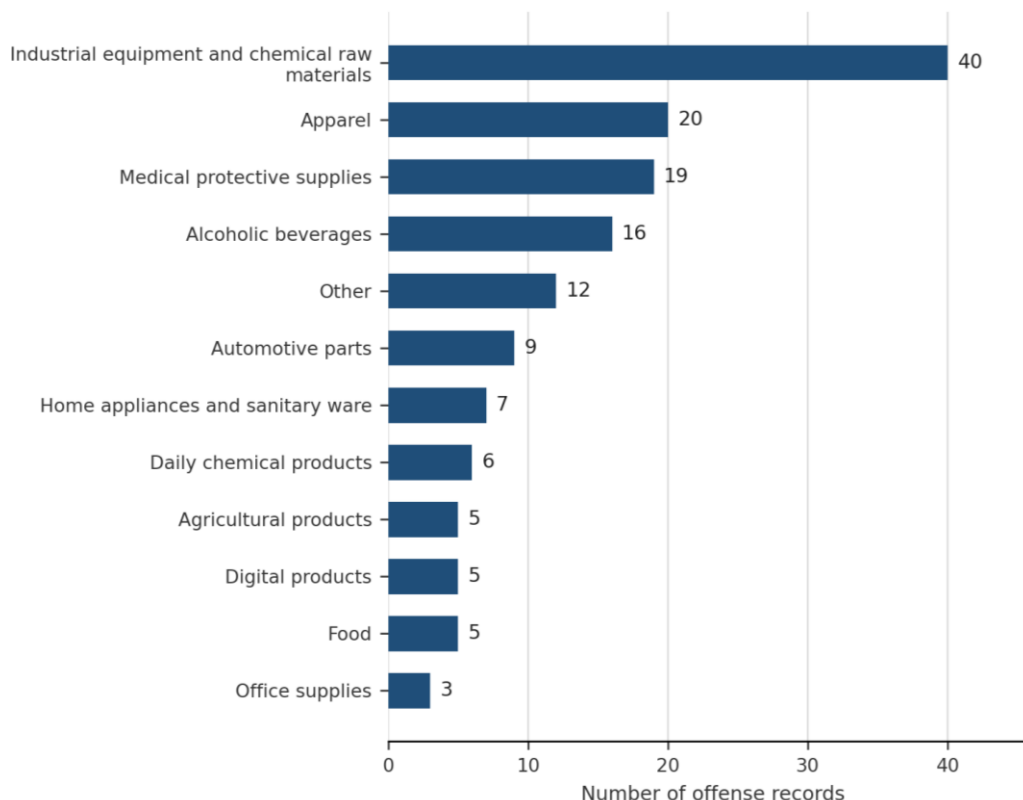


Figure 7. Distribution of infringed products or services (n = 147)

The 121 trademark and patent offense records that identified an infringed brand involved 205 victim brands in total. Figure 8 shows the brands infringed three or more times.

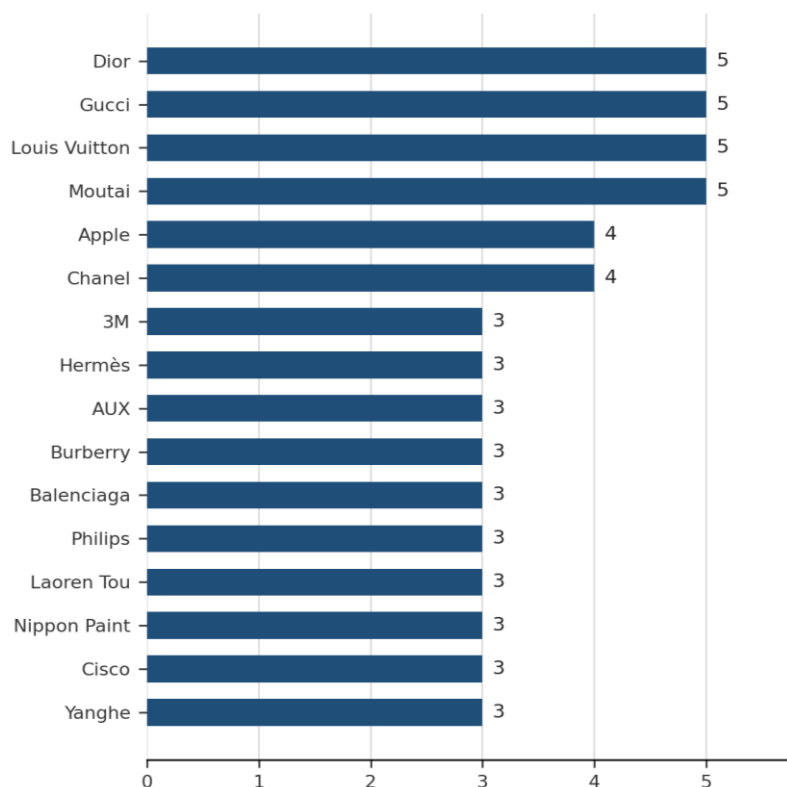


Figure 8. Brands infringed three or more times (n = 121 records; 205 brands)

3.2.6 Latency and Mode of Detection

For all 179 offense records, both the first offending date and the detection date were known, permitting latency to be calculated as the interval between the two. The mean latency was 21.11 months and the maximum was 86 months. How an offense comes to light is also an important indicator of how it enters the view of criminal justice authorities. Figure 9 presents the modes of detection among the 168 records for which this information was known.

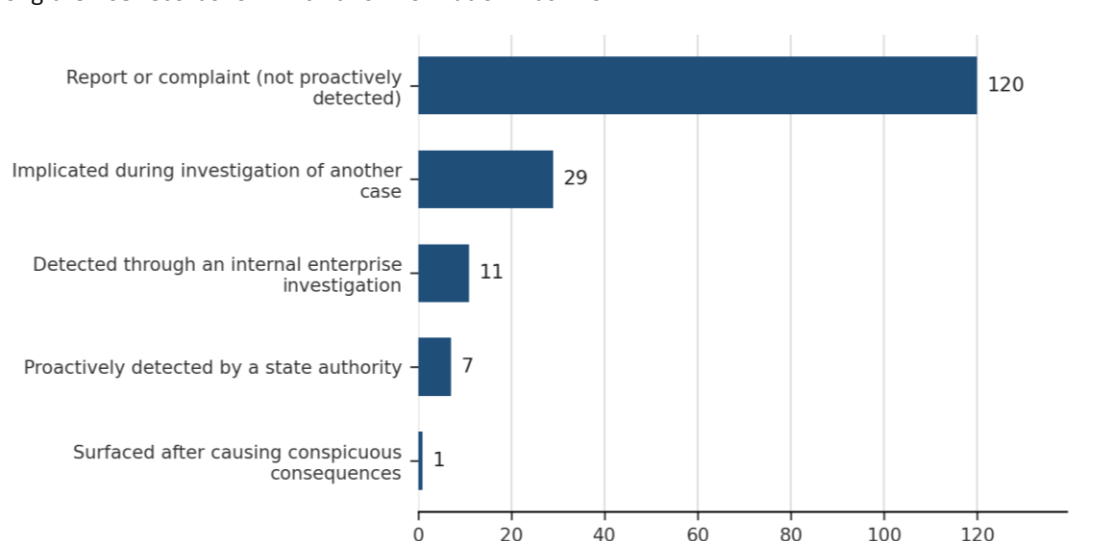


Figure 9. Modes of detection (n = 168)

3.3 Judicial Responses

3.3.1 Asset Recovery and Restitution

As explained above, the “amount involved” includes the value of illicit money and property obtained through an intellectual property offense. The study separately codes as the “amount recovered” the value of illicit money and property recovered, returned, or confiscated following judicial intervention. The ratio between the amount recovered and the amount involved reflects the extent to which public authority succeeds in tracing and securing “unlawful or criminal proceeds” in the broad sense. For each of the 145 offense records that disclosed both amounts, the study calculated a recovery rate and then took the arithmetic mean. Judicial authorities recovered, on average, 54.16% of the amount involved. Nineteen offense records (13.10%) involved no recovery at all.

In intellectual property cases, victims commonly seek relief in separate civil proceedings. As a result, illegal proceeds and unsold infringing products recovered in criminal proceedings are generally confiscated and paid into the state treasury rather than applied to compensate victims—a pattern of “recovery without restitution.” Among the 142 offense records that disclosed both the recovered amount and the amount of victims' losses restored, 85 (59.86%) displayed this pattern. Of the 149 records in which the amount of restitution could be determined, only 38 (25.50%) produced any restitution, and mean restitution was RMB 1.1725 million.

3.3.2 Sentencing

3.3.2.1 Basic Sentencing Outcomes

Of the 179 offense records, 174 resulted in fixed-term imprisonment, four in a stand-alone fine, and one in criminal detention, accounting respectively for 97.21%, 2.23%, and 0.56%. The mean term of imprisonment was 27.13 months, the median was 30 months, and the maximum was 72 months. Every record involved a fine. For natural persons, the mean fine was RMB 288,100, the median was RMB 75,000, and the maximum was RMB 6.8 million. For units, the mean fine was RMB 377,100, the median was RMB 70,000, and the maximum was RMB 5 million. A suspended sentence was imposed in 105 records, producing a suspension rate of 58.66%; the mean probation period was 29.99 months. Only one defendant was also subjected to occupational disqualification or an injunction.

3.3.2.2 Factors Associated with the Severity of Imprisonment

To identify factors associated with the severity of punishment, the study used the term of imprisonment as the dependent variable and constructed a multiple linear regression model using variables that may affect sentencing under Articles 213–220 of the Criminal Law, the Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Intellectual Property Infringement jointly issued by the Supreme People's Court and Supreme People's Procuratorate, and the Guiding Opinions on Sentencing for Common Crimes (Trial). Two methodological points should be noted. First, where a judgment omitted

information and thereby generated a missing value, missing categorical values were imputed through discriminant analysis using interval variables such as imprisonment, fine, and duration of pretrial detention as discriminating variables. Missing interval values were imputed using the mean. Second, when the 20 initially selected variables were entered into the model, some variance inflation factors exceeded 10, indicating severe multicollinearity. Criminal proceeds, sales revenue, and criminal cost were therefore removed. The model's R-squared is 0.48, meaning that the selected independent variables explain 48.00% of the variation in the dependent variable. The model is expressed as follows:

$$y = 420.075 + \sum_{i=1}^{17} \beta_i x_i \quad (1)$$

In Equation (1), y is the dependent variable—the term of imprisonment—and 420.075 is the intercept, representing a baseline term of 420.075 days when all independent variables equal zero. Variables x1 through x17 represent voluntary surrender, number of offenders, latency, and the other independent variables listed in Table 1; beta-i is the partial regression coefficient. Dichotomous variables were dummy-coded as 0 for “no” and 1 for “yes.” A one-unit change in xi increases or decreases y by beta-i days from the baseline of 420.075 days, depending on whether the coefficient is positive or negative.

Table 1. Factors associated with the term of imprisonment

Independent variable	B	SE	Beta	t	p	Tolerance	VIF
Constant	420.075	151.221		2.778	.006		
Voluntary surrender	-128.715	65.652	-.131	-1.961	.052	.735	1.360
Truthful confession	-55.065	104.712	-.044	-.526	.600	.478	2.091
Meritorious service	161.677	117.849	.093	1.372	.172	.711	1.407
Guilty plea and acceptance of punishment	51.659	111.660	.037	.463	.644	.530	1.888
Victim forgiveness	44.925	59.435	.047	.756	.451	.851	1.176
Prior conviction	16.954	94.768	.011	.179	.858	.799	1.252
Crime committed by a unit	-59.669	76.087	-.049	-.784	.434	.859	1.165
Number of offenses	43.516	20.321	.135	2.141	.034	.825	1.212
Number of offenders	36.449	14.639	.158	2.490	.014	.814	1.229
Offender's organizational role	39.670	38.147	.068	1.040	.300	.779	1.284
Registered capital (RMB 10,000)	-.012	.000	-.085	-1.378	.170	.859	1.165
Amount involved (RMB 10,000)	.102	.000	.156	1.607	.110	.349	2.862
Fine (RMB 10,000)	1.513	.000	.311	3.902	<.001	.520	1.921
Amount recovered (RMB 10,000)	.061	.000	.027	.284	.777	.373	2.681
Restitution (RMB 10,000)	-.625	.000	-.203	-2.033	.044	.331	3.020
Pretrial detention (days)	.593	.201	.212	2.953	.004	.640	1.561
Latency (days)	.056	.053	.064	1.062	.290	.899	1.112

Note: Dependent variable: term of imprisonment (days).

3.3.2.3 Factors Associated with Suspended Sentences

The binary logistic regression model has a Nagelkerke R-squared of 0.611, indicating that the selected independent variables explain 61.1% of the variation in the dependent variable. The model is expressed as follows:

$$\text{Logit}(p) = -2.354 + \sum_{i=1}^{20} \beta_i x_i \quad (2)$$

In Equation (2), $\text{Logit}(p)$ is the log-odds of a suspended sentence—the natural logarithm of the ratio of the probability that the sentence is suspended to the probability that it is not. The intercept of -2.354 means that, when every independent variable equals zero, the odds of a suspended sentence are $\exp(-2.354)$, or 9.5%. Variables x_1 through x_{20} represent voluntary surrender, registered capital, latency, and the other independent variables listed in Table 2; β_i is the partial regression coefficient. For each one-unit change in x_i , the odds ratio for a suspended sentence is multiplied by $\exp(\beta_i)$, increasing when the coefficient is positive and decreasing when it is negative.

Table 2. Factors associated with suspended sentences

Independent variable	B	SE	Wald	df	p	Exp(B)
Voluntary surrender	-.305	.520	.343	1	.558	.737
Truthful confession	-.150	.930	.026	1	.872	.860
Meritorious service	-.504	1.202	.176	1	.675	.604
Guilty plea and acceptance of punishment	3.535	1.368	6.678	1	.010	34.288
Victim forgiveness	1.550	.599	6.686	1	.010	4.711
Prior conviction	-1.240	.702	3.121	1	.077	.289
Crime committed by a unit	.458	.685	.446	1	.504	1.580
Number of offenses	-.022	.158	.019	1	.891	.979
Number of offenders	-.433	.163	7.017	1	.008	.649
Offender's organizational role	.654	.301	4.714	1	.030	1.923
Registered capital (RMB 10,000)	.000	.000	.674	1	.412	1.000
Criminal proceeds (RMB 10,000)	.000	.001	.003	1	.954	1.000
Sales revenue (RMB 10,000)	-.007	.004	2.331	1	.127	.993
Criminal expenditure (RMB 10,000)	-.006	.004	2.652	1	.103	.994
Amount involved (RMB 10,000)	.007	.004	2.476	1	.116	1.007
Fine (RMB 10,000)	-.009	.007	1.663	1	.197	.991
Amount recovered (RMB 10,000)	-.003	.004	.647	1	.421	.997
Restitution (RMB 10,000)	.001	.007	.043	1	.836	1.001
Pretrial detention (days)	-.008	.002	14.319	1	<.001	.992
Latency (days)	.001	.001	1.772	1	.183	1.001
Constant	-2.354	1.531	2.364	1	.124	.095

Note: Dependent variable: whether a suspended sentence was imposed.

3.3.3 Coercive Measures

Among the 161 offense records that disclosed coercive measures, the pretrial detention rate was 66.46%. Mean detention lasted 179.53 days, the median was 150 days, and the maximum was 854 days. Mean pretrial detention amounted to 23.09% of the mean term of imprisonment among detained defendants. At the individual-record level, pretrial detention exceeded 50% of the prison term in 55 records and exceeded 90% in four, representing 51.40% and 3.74%, respectively, of records involving detention. Residential surveillance at a designated location was used in only five records (3.11%), for a mean duration of 60.8 days.

3.3.4 Appellate, Retrial, and Jurisdictional Practice

The study period includes 21 second-instance cases. Eighteen were defendant appeals, and every appeal was dismissed with the original judgment affirmed. Of the remaining three procuratorial protests, two concerned errors in fact-finding. In one, the court incorrectly determined illegal business turnover; the original judgment was vacated and the case remanded, after which the

defendant received a heavier sentence. In the other, the original court failed to find that the defendant had surrendered RMB 10,000 in illicit proceeds, preventing confiscation of that amount; the judgment was vacated and revised, but the sentence remained unchanged. The third protest concerned an error of law: without changing the sentence, the second-instance court changed the conviction from selling illegally manufactured representations of registered trademarks to illegally manufacturing or selling illegally manufactured representations of registered trademarks.

Only two retrial cases appear in the study period. One involved an error of law: the court imposed a nine-month probation period, contrary to Article 73 of the Criminal Law, which requires a probation period of at least one year where fixed-term imprisonment is suspended. A protest initiated adjudicatory supervision, and the probation period was revised to one year and one month. The other case involved unclear facts and insufficient evidence. On retrial, the court concluded that the evidence did not establish that the technical information at issue was non-public and therefore a trade secret. A petition and protest initiated adjudicatory supervision, and the defendant was acquitted. The acquittal rate for the study period was thus 0.56%. Across all 23 second-instance and retrial cases, only one defendant obtained a more favorable result through criminal appellate or retrial remedies.

Preventing abuse of jurisdiction and improper profit-driven cross-jurisdictional criminal enforcement against private entrepreneurs has recently become a central focus of special judicial supervision. “Improper profit-driven cross-jurisdictional enforcement” refers to cases in which authorities create a formal jurisdictional nexus with the “place of crime” or “defendant's domicile” under Article 25 of the Criminal Procedure Law—by relying on normative judicial documents, expansive interpretation, multi-level designation of jurisdiction, or joinder—while substantively violating the jurisdictional principles that proceedings should facilitate fact-finding and participation by the parties. The result is the displacement of the authority better positioned to secure fairness and procedural convenience [8]. The underlying motive often involves a less-developed locality dispatching authorities to an economically developed area to seize, impound, freeze, confiscate, or fine enterprise property and thereby generate substantial revenue for the local treasury [9].

To identify suspected cases of this practice—colloquially described as “deep-sea fishing”—among the 124 offense records for which jurisdictional connecting factors were known, the study adopted two screening criteria. First, the place of trial differed from every directly observable place of enterprise registration, criminal conduct, and criminal result. Second, the place of trial and the places of registration, conduct, and result were not within the same prefecture-level city. Fourteen suspected cases met both criteria, accounting for 11.29% of the relevant records.⁵

3.4 Salient Offense Patterns and Adjudicative Issues

3.4.1 Basic Offense Patterns

First, the three trademark offenses—the dominant category—account for 90.00% of all offense records and arise along a single criminal chain. In the case involving Ma and others, six co-offenders, organized by Lai, jointly manufactured and sold main airbag covers bearing a counterfeit automobile trademark. Zhang and Chen first forged automobile trademarks and supplied them to Lai, conduct constituting the crime of illegally manufacturing or selling illegally manufactured representations of registered trademarks. Lü 1, Lü 2, and Yao then used injection-molding machines and molds to manufacture, paint, and label the airbag covers, constituting the crime of counterfeiting registered trademarks. Finally, Ma sold the finished counterfeit covers through a Taobao shop, constituting the crime of selling goods bearing counterfeit registered trademarks.^①

Second, copyright offenses are a less common category. Their principal forms include printing books or manufacturing toys without the copyright holder's permission and selling them, or knowingly selling such infringing copies. A small number of cases reveal newer patterns in the online environment. One is the use of web-crawling technology to copy novels uploaded by others to the internet, disseminate them to the public through an app, attract users, and obtain advertising-traffic revenue. Criminal liability may arise even where the infringed work is not stored on the offender's server: a crawler equipped with a search engine and transcoding technology can access the website containing the work on the user's behalf and display the content. Another pattern involves unlawfully obtaining a game's source code and assets, partially modifying them, and establishing an unauthorized private server to attract paying users.

Third, in the less common fields of patent counterfeiting and trade-secret infringement, the basic pattern of patent counterfeiting is the unauthorized production, operation, or sale of another person's patented invention or utility model, or the use of another person's patent information on one's own products or in advertising. Trade-secret infringement typically involves a person who possesses a trade secret leaving the original enterprise, forming a new enterprise with others, and then disclosing or using the

⁵ Because judgments disclose only limited facts, they may omit facts material to establishing jurisdictional connecting factors. The classification is therefore only a finding of suspicion and an approximate estimate.

secret in breach of a duty of confidentiality. This enables the new enterprise to compete against the former employer in the same relevant market and causes the latter to lose market share it would otherwise have retained.

3.4.2 Questionable Judicial Outcomes

Three cases illustrate the unwarranted expansion of criminal liability. First, courts may overextend the causal chain. In the case involving Tang, the defendant and the enterprise made and sold two flexographic printing plates at Enterprise A's request for RMB 835.92, producing a net profit of only slightly more than RMB 200. Enterprise A used the plates to manufacture 14,111 square meters of dialysis paper for medical paper-plastic mask pouches bearing the "Shangshen" mark. It then sold the paper to Enterprise B, which processed it into 543,500 finished pouches. Although the defendant enterprise had no meeting of minds with Enterprise B and provided only remote assistance for minimal profit, both the individual and the enterprise were convicted of illegally manufacturing or selling illegally manufactured representations of registered trademarks and fined a total of RMB 4,000.^② Second, courts may fail to account for the operational hardships of private enterprises, leaving little room for leniency in minor offenses committed to preserve the enterprise's survival. In Guo Xiu'an's case, the Xining Ethnic Printing Factory was relocated through demolition, and the COVID-19 pandemic caused a substantial loss of business. To pay employees' wages, Guo arranged for employees to print a Tibetan-language edition of Model Compositions for Primary and Secondary School Students without the copyright holder's permission. The books were never sold; the right holder promptly forgave the infringement after the case arose; and employees submitted a joint letter requesting a lighter or mitigated punishment. The court nevertheless sentenced Guo to two years and six months' imprisonment, suspended for three years, and imposed a fine of RMB 60,000.^③

Third, courts may fail to establish the "non-public" character required for information to qualify as a trade secret. In one case, information disclosed through a patent application—and therefore already public and part of the existing technical knowledge in the relevant field—was wrongly treated as a trade secret. The error was corrected only after a civil judgment determined that the information was not a trade secret and that the defendant's conduct did not constitute infringement.^④

4. CONCLUSIONS AND RECOMMENDATIONS

4.1 Crime-Governance Recommendations Based on the Empirical Findings

First, because most intellectual property crimes involving enterprises are motivated by a desire to benefit the enterprise at the expense of external interests, enterprises lack adequate incentives for internal control. Detecting and investigating these offenses therefore requires administrative and judicial authorities to act more proactively. Yet the modes of detection show that criminal justice authorities currently depend heavily on victim enterprises conducting periodic online searches, identifying risks of infringement, and reporting them. This narrow discovery channel also contributes to prolonged latency. Administrative and judicial authorities should therefore strengthen supervision of intellectual property infringement. Because infringing products commonly generate consumer complaints, improving complaint channels and providing prompt responses can broaden existing sources of criminal leads. Online shopping platforms must also be held to their self-regulatory duties, periodically inspect merchants, promptly block stores that sell counterfeit goods, and impose stringent penalties.

Second, prevention and enforcement should concentrate on trademark-related conduct undertaken by enterprise principals or rank-and-file employees during trading and production in the manufacturing and wholesale or retail sectors of Shanghai, Zhejiang, Guangdong, and other high-incidence provinces. Enforcement and judicial resources should be deployed more densely in these regions, industries, positions, business stages, and offense categories to strengthen routine supervision and the collection of leads. Authorities should also guide enterprises in improving compliance management and internal control over risks of unlawful or criminal conduct.

Third, protection should focus on the principal targets of intellectual property crime. In the fields of trademarks and patents, priority should be given to industrial equipment and chemical raw materials, apparel, medical protective supplies, digital products, and luxury brands such as Dior, Gucci, Louis Vuitton, and Moutai. Enterprises in these high-incidence product and brand sectors should strengthen self-protection, expand their legal teams, improve lead collection, and pursue civil enforcement. Although mean sales revenue and criminal expenditure do not suggest that these offenses are invariably extraordinarily profitable, enterprises should increase the use of anti-counterfeiting measures to raise offenders' costs. In the fields of copyright and trade secrets, protection should focus on critical business resources such as source code and confidential commercial information. Enterprises should supervise employees and former employees who have access to key intellectual property, make systematic use of confidentiality agreements, and prevent insiders from misappropriating enterprise assets or profiting through disclosure.

Fourth, investigations should identify all participants along a common criminal chain, pursue evidence of repeated infringement, and attend to new online forms of copyright crime. The prevalence of joint and repeated offending, together with new techniques

enabled by information networks, requires stronger collection and preservation of online evidence and careful investigation of upstream and downstream participants and additional offenses.

4.2 Recommendations for Judicial Discretion

4.2.1 Procedural Recommendations

First, judicial authorities must intervene more promptly and improve asset recovery and restitution; cases involving no recovery require particular attention. Second, punishment is generally lenient and suspended sentences are common, yet the rate and duration of pretrial detention remain high. Coercive measures are therefore poorly aligned with ultimate sentences, especially because pretrial detention equals more than 50%, and sometimes more than 90%, of the prison term in a substantial number of cases. Judicial authorities should reduce both the use and duration of pretrial detention in intellectual property cases involving enterprises. Third, the notable number of suspected “deep-sea fishing” cases makes intellectual property crime a priority field for current efforts to curb improper profit-driven cross-jurisdictional enforcement.

4.2.2 Substantive Recommendations

First, five variables—the number of offenses, number of offenders, fine, amount of loss restored, and duration of pretrial detention—have statistically significant effects on the term of imprisonment. Each additional offense, offender, RMB 10,000 in fines, and day of pretrial detention is associated with increases of 43.516, 36.449, 1.513, and 0.593 days, respectively, in the term imposed. By contrast, each additional RMB 10,000 in restitution is associated with a reduction of 0.625 days. Most statutory or discretionary sentencing circumstances⁶, however, do not have a statistically significant effect in the multiple linear regression model. Most notably, the amount involved is not significant, even though intellectual property offenses are generally amount-based crimes. Significance tests are highly sensitive to sample size, and the failure of these variables to reach significance may be attributable in substantial part to the study's relatively small sample [10]. Even so, the present sample supports a limited conclusion: although legal norms prescribe numerous circumstances and monetary thresholds and thereby establish a relatively clear sentencing framework, courts do not apply that framework with sufficient consistency. Sentencing in intellectual property cases involving enterprises therefore requires further standardization.

Defense counsel in some judgments argued for leniency on the grounds that the case met the elements of a crime committed by a unit,⁵ that the defendant was a private entrepreneur,⁶ or that the enterprise was a nationally designated key high-technology enterprise.⁷ These arguments generate two hypotheses. First, under the dual-punishment system for unit crimes, counsel who knowingly argues that the case is a unit crime—even though that position exposes the unit itself to a fine—may believe that the fine imposed on the unit diverts or mitigates punishment otherwise imposed on the natural person. Second, the offender's importance within the enterprise and the enterprise's scale may lead a court to exercise leniency in light of the enterprise's public-interest functions and need for continued operation. The variables “crime committed by a unit,” “offender's organizational role,” and “registered capital” were included to test these hypotheses. None passed the relevant significance test; the data therefore do not support either hypothesis with respect to the term of imprisonment.

Second, five variables—guilty plea and acceptance of punishment, victim forgiveness, number of offenders, offender's organizational role, and duration of pretrial detention—significantly affect whether a suspended sentence is imposed. Compared with defendants who did not plead guilty and accept punishment or did not obtain victim forgiveness, defendants who did so were 34.288 and 4.711 times more likely, respectively, to receive a suspended sentence. As the offender's role rises one level—from rank-and-file employee or shareholder, to department head or other senior executive, and then to principal of the enterprise—the odds of a suspended sentence increase by a factor of 1.923. The second hypothesis described above is therefore partially supported with respect to sentence suspension. Each additional offender and each additional day of pretrial detention reduce the probability of a suspended sentence by 35.1% and 0.8%, respectively. As in the linear model, however, most statutory or discretionary sentencing circumstances⁷ are not significant in the logistic regression model. The data do not permit the conclusion that they affect sentence suspension. Nor does the model support the hypotheses that enterprise scale, a fine imposed on a unit, or the amount of the fine imposed on a natural person affects sentence suspension.

Third, beyond the need to standardize sentencing criteria and scales, courts should correct recurring errors in conviction: insufficient professional assessment of technical facts, overextension of causal chains, and reluctance to apply the proviso to

⁶ These variables include voluntary surrender, truthful confession, meritorious service, guilty plea and acceptance of punishment, victim forgiveness, prior conviction, amount involved, recovered proceeds, and latency.

⁷ These variables include voluntary surrender, truthful confession, meritorious service, prior conviction, number of offenses, criminal proceeds, sales revenue, criminal expenditure, amount involved, recovered proceeds, restitution, and latency.

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Article 13 of the Criminal Law or the exemption-from-punishment provision in Article 37 to minor conduct. These corrections are necessary to avoid wrongful convictions and overcriminalization.

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- 10) GUO Z G. Methods of Social Statistical Analysis: Applications of SPSS Software[M]. Beijing: China Renmin University Press, 2015. (in Chinese)

Endnotes

^①Shanghai Fengxian District People's Court, Criminal Judgment (2023) Hu 0120 Xing Chu No. 554.

^②Shanghai Fengxian District People's Court, Criminal Judgment (2023) Hu 0120 Xing Chu No. 554.

^③Xining Intermediate People's Court, Qinghai Province, Criminal Judgment (2023) Qing 01 Xing Chu No. 26.

^④Weihai Intermediate People's Court, Shandong Province, Criminal Retrial Judgment (2021) Lu 10 Xing Zai No. 5.

^⑤See Zhanhe District People's Court, Pingdingshan, Henan Province, Criminal Judgment (2023) Yu 0411 Xing Chu No. 177; Daqing Intermediate People's Court, Heilongjiang Province, Criminal Ruling (2022) Hei 06 Xing Zhong No. 144.

^⑥Pingshan District People's Court, Shenzhen, Guangdong Province, Criminal Judgment (2022) Yue 0310 Xing Chu No. 10.

^⑦Xiangyin County People's Court, Hunan Province, Criminal Judgment (2022) Xiang 0624 Xing Chu No. 519.