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Intellectual Property

Personal Information Protection Law in Force: Algorithmic Consumer Price Discrimination Prohibited

The Personal Information Protection Law of the People's Republic of China was adopted at the 30th Session of the Standing Committee of the 13th National People's Congress of the People's Republic of China on 20 August 2021. It takes effect 1 November 2021.

The law prohibits excessive personal information collection and algorithmic price discrimination, promotes processing principles for sensitive personal information, such as facial biometrics, and improves the mechanism for making complaints and whistleblowing. This law fully responds to social concerns and provides a robust legal framework to solve hot issues in personal information protection.

Source: [Xinhua News Agency](#)

Draft Amendment to Seed Law Expands New Plant Varieties Protection

A *Draft Amendment to the Seed Law* was reviewed at the 30th Session of the Standing Committee of the 13th National People's Congress of the People's Republic of China on 17 August 2021. The *Draft Amendment* contains proposals to expand the protection of new plants varieties, establishing a derivative variety system and increasing maximum punitive damages from three to five times the ordinary damages awarded at trial. For cases where ordinary damages are hard to prove, proposals were made to increase the limit of statutory damages from RMB 3 million to RMB 5 million.

Source: [Legal Daily](#)

Zhejiang Issues China's First Competition Compliance Guidelines for Platform Enterprises

The Zhejiang Provincial Administration for Market Regulation recently issued China's first competition compliance guidelines for platform enterprises. The *Competition Compliance Guidelines for Platform Enterprises in Zhejiang Province* provides clear guidelines and specific requirements for platform enterprises in Zhejiang to comply with their anti-monopoly and competition law compliance guidelines. The *Guideline* consists of 6 chapters and 30 articles, including General Provisions, Competition Compliance Commitments and Compliance Management, Competition Compliance Risk Identification, Competition Compliance Operation, Competition Compliance Assurance, and Bylaws.

Source: [Zhejiang Release](#)

CATL v. Tafel: ¥23.3 Million in Patent Infringement Damages

On 24 August, a court delivered the first instance judgment in the dispute between Contemporary Amperex Technology Co Ltd ("CATL") and Jiangsu and Dongguan Tafel Amperex Technology Co Ltd ("Tafel") for infringing a utility model patent. Without the permission of CATL, Tafel jointly manufactured and sold infringing products that fell within the scope of CATL's patent rights, which constituted joint infringement. Tafel was ordered to pay CATL RMB 23.3 million in damages.

Source: [Beijing News](#)

Universal Pictures Awarded ¥5.1 Million in Minions Infringement Case

Universal Pictures is a world-famous film and television studio. Its Minions film series is extremely popular in China. In 2018, Universal discovered that Qianchixue Company had, without authorisation, produced and sold dairy drinks with packaging containing images substantially similar to Universal's

Minions. Qianchixue also actively promoted and sold its products at national trade exhibitions and online.

In response to Qianchixue's acts, Universal filed a copyright infringement lawsuit at the Suzhou Intermediate People's Court on 25 April 2019. A judgment was handed down and appealed. Eventually, the Jiangsu High People's Court awarded Universal's RMB 5.1 million in damages.

Source: Sohu.com

Beijing TRT Group Files Trademark Infringement Lawsuit Against Tianjin TRT Group

Beijing Tongrentang Group ("BTRT") filed a trademark infringement lawsuit against Tianjin Tongrentang Group, claiming that it is the sole legal successor to the "Tongrentang" brand and the sole legal owner of the "Tongrentang" trademark and that any unauthorised use, such as counterfeiting or misleading promotions, of the Tongrentang trademark constitutes infringement and unfair competition.

Source: [Beijing Business Times](#)

Hitachi Maxell Sues ZHUHAI CosMX for Patent Infringement in the US

Recently, Hitachi Maxell filed a lawsuit in the Western District Court of Texas against Chinese lithium battery manufacturer ZHUHAI CosMX for infringing four US patents - US8691446, US9350019, US9077035 and US9166251. The patents protect vital technologies used in lithium batteries. Hitachi Maxell had sent a letter requesting patent license negotiations but did not receive a positive response from ZHUHAI CosMX. Therefore, one year after first contacting ZHUHAI CosMX, Hitachi Maxell chose to file a patent infringement lawsuit against ZHUHAI CosMX in the United States.

Source: [Shenzhen Special Zone Daily](#)

Germany Amends Patent Law to Strengthen Innovation

On 17 August 2021, Germany enacted the *Second Patent Law Modernisation Act*, which amends previous patents law and intellectual property procedures at the German Patent and Trademark Office (DPMA). The new law has been published in the *Federal Law Gazette*. The three main amendments are the online provision of evidence by videoconference, the extension of public holidays, and the extension of the national phase of PCT applications from 30 to 31 months. The three amendments will enter into force on 1 May 2022.

Source: [Chinese Academy of Sciences IP Information](#)

Overseas News

Shaanxi AMR Fines a Tap-water Company for Abusing of Dominant

On August 25, 2021, the Administration for Market Regulation of Shaanxi Province ("Shaanxi AMR") issued an administrative punishment decision on the case of abuse of dominant by Jingyang County Water Supply Co., Ltd. of Shaanxi Water Group. After investigation, it is found that the water supply company abused its dominant position in the regional public tap water supply service market of Jingyang County and imposed additional unreasonable transaction conditions to some resident users without justified reasons. Considering the nature, degree and duration of the illegal acts, Shaanxi AMR ordered the company to stop the illegal behavior and imposed a total fine of CNY 190,806.24. ([More](#))

Fujian AMR Issues Two Cases of Correcting the Governmentally Abusive Behaviors

On August 25, 2021, the Administration for Market Regulation of Fujian Province (“**Fujian AMR**”) issued two notices relating to the rectification of governmentally abusive behaviors of local government. It is found by Fujian AMR that the administrative documents issued by the two involved authorities included content of excluding and restricting the competition. These behaviors violate Article 37 of the *Anti-Monopoly Law* and Article 9 of the *Interim Provisions on Preventing the Abuse of Administrative Power Excluding and Restricting Competition*. However, due to the initiative of stopping the relevant behaviors and eliminating the relevant consequences, the Fujian AMR decided to end the investigation. ([More](#))

Zhejiang AMR Issues the *Competitive Compliance Guidelines for Platform Operators in Zhejiang Province*

On August 24, 2021, the Administration for Market Regulation of Zhejiang Province issued the *Competitive Compliance Guidelines for Platform Operators in Zhejiang Province* (“**Guidelines**”). The *Guidelines*, which all platform operators registered in Zhejiang should comply with, mainly stipulates the regulations relating to competitive compliance commitment and management, risk identification, compliance operation, compliance warrants and other aspects. The *Guidelines* specifically suggests that the concentration of undertakings involving the agreement control (VIE) architecture falls in the scope of review. In the meantime, the acquisitions of startups or emerging platforms, which may not satisfy the legal threshold, cloud also face substantive investigation by antitrust authority. ([More](#))

Indian Biggest Carmaker Fined USD 27 Million for Discount Policies

On August 23, 2021, it was reported that the Competition Commission of India (“**CCI**”) fined Maruti Suzuki, the country’s biggest carmaker, USD 27 million for anti-competitive practices. The authority started looking into allegations in the July of 2019 and has found that the company forced its dealers to limit the discounts they offer, effectively stifling competition among them and harming consumers. ([More](#))

Spain Fines Twelve Engineering Firms EUR 61 Million for Rigging Road Work Tenders

On August 20, 2021, it was reported that the Spanish anti-trust authority (“**CNMC**”) said it fined the country's twelve engineering firms a combined EUR 61 million for rigging the market of road construction and maintenance. CNMC found that these companies had created a cartel to align their bids in government tenders to build and maintain roads between 2014 and 2018. Officials from these different companies would hold meetings, officially "to have coffee", but actually to discuss and coordinate the conditions of each bid and who would eventually win the contract through a "sophisticated" mechanism. The companies involved in the cartel won 71 out of the 101 tenders held by the transport ministry during the period and the contracts they won were worth a combined EUR 530 million. ([More](#))

CMA Finds Competition Concerns with NVIDIA’s Purchase of ARM

Recently, the Competition and Markets Authority (“**CMA**”) has found that NVIDIA’s purchase of Arm raises serious competition concerns and it is necessary to launch an in-depth investigation into the deal. Arm’s IP is used by companies that produce semiconductor chips and related products, in competition with NVIDIA. Should the deal go ahead, CMA is concerned that the merged business would have the ability and incentive to harm the competitiveness of NVIDIA’s rivals by restricting access to Arm’s intellectual property. Ultimately, CMA is concerned this loss of competition could stifle innovation across

a number of markets, which would result in more expensive or lower quality products for businesses and consumers. Therefore, CMA found that the merger should be progressed to an in-depth Phase 2 investigation. ([More](#))

Cybersecurity and Data Protection

CAC Seeks Public Comments on the *Regulations on the Administration of Algorithmic Recommendation of Internet Information Services (Draft for Comments)*

On August 27, 2021, the Cyberspace Administration of China (“CAC”) publicly solicited comments on the *Regulations on the Administration of Algorithmic Recommendation of Internet Information Services (Draft for Comments)* (“**Draft Regulation**”). The *Draft Regulation* proposes that the algorithm recommendation service providers should provide users with options that do not target their personal characteristics, or provide users with a convenient option to turn off the algorithm recommendation service. If the user chooses to turn off the algorithm recommendation service, the algorithm recommendation service provider should immediately stop providing relevant services. At the same time, the *Draft Regulation* also points out that algorithm recommendation service providers should implement the main responsibility for algorithm security, establish and improve the management system of user registration, information release approval, algorithm mechanism audit, security assessment monitoring, security incident emergency response, data security protection and personal information protection, etc., develop and publish algorithm recommendation-related service rules, be equipped with professional personnel and technical support appropriate to the scale of the algorithm recommendation service. Algorithm recommendation service providers shall not use algorithms to falsely register accounts, illegal trading accounts, manipulate user accounts, or falsely likes, comments, retweets, navigate webpages, etc., to implement traffic falsification or traffic hijacking; they shall not use algorithms to block information, over-recommend, manipulate the ranking or search results sorting, control hot search or selection, and interfere the information presentation, implement self-preferential treatment, unfair competition, influence the network public opinion or circumvent regulation. ([More](#))

***Regulations on the Promotion of Digital Economy Industry in Shenzhen Special Economic Zone (Draft)* Submitted to the Third Meeting of the Standing Committee of the Seventh Municipal People's Congress for Consideration**

On August 29, 2021, the *Regulations on the Promotion of Digital Economy Industry in Shenzhen Special Economic Zone (Draft)* (“**Regulations (Draft)**”) was submitted to the third meeting of the Standing Committee of the Seventh Municipal People's Congress for consideration. The *Regulations (Draft)* propose to strengthen the application of digital products protection, not only to establish a rapid pre-trial mechanism for digital intellectual property rights, but also to relax market access for digital products, support market players to jointly develop group standards in the field of digital products that do not yet have national standards, and allow digital products that meet group standards to be sold and registered in the city. The *Regulations (Draft)* clarify that industrial digitization will be the mainline of action, to support the digital transformation and digital transformation and upgrading in the industrial, service and agricultural sectors, and promote the deep integration of digital technology and the real economy. At the same time, it encourages the consumption of digital products, incorporates high-quality digital products developed and produced by Shenzhen enterprises into the Shenzhen souvenir, list of Shenzhen time-honored brands, making quality digital products a golden sign for Shenzhen consumption and supporting eligible products in the sales process. ([More](#))

Reply Letter From the MIIT on the Proposal to Accelerate the Improvement of Supporting Legal System of “Marketization of Data Production Elements”

On August 25, 2021, the Ministry of Industry and Information Technology (“MIIT”), in its letter on the response to proposal No. 3087 (No. 131 of Politics & Law Section) of the Fourth Session of the 13th National Committee of the Chinese People's Political Consultative Conference, reported on the market-oriented construction of data elements, and responded to the proposals of “reconstructing the data property rights system”, “establishing data behavior order” and “creating data competition rules”. MIIT pointed out that the next step is to promote the establishment of data resources property rights, transaction circulation, data supervision and other basic systems and standards; organize research on data trading technology system, supervision system, pricing mechanism, etc.; explore the main issues in the construction of data property rights system; support Guiyang and other places to build and improve the data trading platform; continue to strengthen the industry network data security management, and actively promote the introduction of the *Personal Information Protection Law* and other basic legal systems; establish and improve the system standards such as data classification and grading protection, important data directory protection, sharing and utilization, and algorithm regulation in telecommunications and Internet industries; promote the establishment of a certification and evaluation mechanism for the level of data security capacity, and promote the construction of nationwide technical means for monitoring industry data security; accelerate the promotion of perfect data competition rules, develop a framework for assessing the value of data elements and assessment guide, improve the data asset evaluation system, and promote the establishment of market pricing, government supervision of data elements market mechanism; develop data asset evaluation, registration and settlement, transaction aggregation, dispute arbitration and other market operation system; encourage enterprises of all types of ownership to participate in the construction of the elements trading platform, and explore various forms of data trading model, etc. ([More](#))

Notice of the State Press and Publication Administration on Further Strictly Enhance Management to Effectively Prevent Minors From Being Addicted to Online Games

On August 30, 2021, the State Press and Publication Administration issued a notice to further strict management measures for minors' excessive use of and even addiction to online games. The notice requires that online game enterprises shall strictly limit the time of online game services to minors, and may only provide online game services to minors for one hour from 20:00 to 21:00 daily on Fridays, Saturdays, Sundays and legal holidays, and shall not provide online game services to minors in any format other times; strictly implement the requirements of real-name registration and login of online game user accounts, and shall not provide game services in any form (including visitor mode); the publishing management departments at all levels shall strengthen the supervision and inspection of the implementation of measures to prevent minors from being addicted to online games, and shall seriously deal with online game enterprises that fail to implement such measures in accordance with the law strictly. ([More](#))

CAC Launches Qinglang Action of Commercial Website Platforms and Self Media on Irregularities in the Collection and Publication of Financial News

On August 27, 2021, the CAC launched Qinglang Action of commercial website platforms and self media on irregularities in the collection and publication of financial news. The action focuses on four types of online communication entities: financial "self-media" accounts, major public account platforms, financial sections of major commercial website platforms and major financial news platforms. It focuses on combating eight types of irregularities: (1) random commentary and delusion, distorted interpretation of China's financial policies and macroeconomic data, malicious underestimate China's economics; (2) reprint foreign reports and comments that distort and interpret China's financial hotspots without stand-

point and without judgment; (3) spread rumors and hearsay by so-called inside information, exclusive news, etc.; (4) maliciously falsify, garble quote out of context, partially misinterpret news when reproducing; (5) maliciously short-sell or inflate stock price, speculate on regional property market, disrupting the normal market order; (6) speculate on negative information to threaten and intimidate the relevant parties, and extort and blackmailing, seeking illegal benefits; (7) speculate social malevolence, negative extreme events, stir up sadness, anxiety, panic and other negative emotions, to promote the so-called "financial business class" and insurance products, etc.; (8) fails to strictly perform the authentication procedures, fraudulently use the name of the personnel of financial authorities or experts and scholars to open financial columns, accounts, etc. ([More](#))

MIIT Reports and Remove 67 APPs Infringing Rights of Users

On August 25, 2021, the MIIT informed that 67 Apps infringing the rights of users were taken down. Recently, MIIT reviewed the problems of Apps' illegally requesting and harassing users with pop-up information on the opening screen, and made a public report of Apps that still had problems (the 6th and 7th batches in 2021). Up to now, 67 Apps have not completed the rectification within the time limit. MIIT removed these 67 Apps according to the *Network Security Law* and other legal requirements. ([More](#))

Ali Cloud Computing Co., Ltd. Leaks the Retained Registration Information of Users to Third-party Without Consent

Recently, a reply letter issued by the Zhejiang Provincial Communications Administration in response to a complaint is circulated on the Internet. The reply letter said that on November 11, 2019 Ali Cloud Computing Co., Ltd. ("Ali Cloud") leaked retained registration information of users to third-party without the consent of the user, in violation of the provisions of Article 42 of the *Network Security Law*. Zhejiang Provincial Communications Administration has informed the company to rectify. On August 24, the relevant person in charge of the authority said the response letter numbered [2021] No. 483 was true. On the same day, Ali Cloud responds to the matter on Weibo, saying that it is personal behavior of an Ali Cloud telemarketing employee. Ali Cloud strictly prohibits employees from disclosing user registration information to third parties. The company has dealt with the matter seriously according to the corporate management and actively rectify upon the requirement of Zhejiang Provincial Communications Administration. ([More](#))

EDPS Opinion on the Proposal for a Directive on Consumer Credits

On August 26, 2021, the European Data Protection Supervisor ("[EDPS](#)") opinions to the European Commission on the proposal for a Directive on Consumer Credits, requesting to clarify the types of data to be used for credit assessment. EDPS says that personal data such as search queries and Internet browsing data should not be used for citizen credit collection and related assessments. Also, the EDPS suggests that financial and credit service providers should also refrain from using health data, such as cancer data, and any special categories of personal data under Article 9 of the GDPR to calculate credit scores. ([More](#))

Korea Fines Facebook and Netflix over Privacy Infringement

On August 25, 2021, the Korea Personal Information Protection Commission ("PIPC") levied fined 6.5 billion and 220 million on Facebook and Netflix, respectively, and required the two companies to take corrective measures. PIPC said that Facebook collected facial information without the user's agreement, to create face recognition templates. In addition, other illegal activities by Facebook included illegally collecting social security numbers, not notifying the users when changing the personal data management entity, not disclosing information when consigning personal data processing work to a third party, not

disclosing information regarding the overseas transfer of personal data, and failure to submit reference materials when asked by the PIPC. Netflix was fined about 220 million for illegally collecting personal data before the users complete their subscription procedures, and transferring personal information outside South Korea without disclosure. ([More](#))

SEC requires additional risk disclosure for US-listed Chinese companies

On August 24, 2021, Reuters reported that the U.S. Securities and Exchange Commission (“SEC”) has begun to impose new disclosure requirements on Chinese companies seeking to list in the United States, including disclosing their use of variable interest entities (VIEs) in initial public offerings (IPOs), the impact of VIE structures on investors, and the risk of Chinese regulators intervening with company data security policies. ([More](#))

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