



# NEWSLETTER

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2022.03

### 立方要闻周报

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CPPCC members suggest establishing a "data bank" to protect key data and national security to the maximum extent

美国证券交易委员会（SEC）发布新规，规范上市公司在数据泄露事件中的披露机制

SEC Proposes Rules on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure by Public Companies

英国DCMS公布有关电子身份数据的立法提案

DCMS Releases New Legislation Set to Make Digital Identities More Trustworthy and Secure

英国信息专员办公室（ICO）公布了《匿名、假名和隐私增强技术指导意见》草案并征求意见

ICO Call for Views: Anonymization, Pseudonymization and Privacy Enhancing Technologies Guidance

拜登签署行政令，强调确保负责任地发展数字资产

President Biden to Sign Executive Order on Ensuring Responsible Development of Digital Assets



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意大利监管机构对面部识别公司Clearview AI处以2000万欧元的罚款

Italian SA Fines Clearview AI EUR 20 million

澳大利亚四大监管机构组成数字平台监管论坛

Four Leading Australian Watchdogs Form Digital Platform Regulators Forum

## 知识产权 Intellectual Property

国知局批复：外观设计专利权评价报告不能证明被控侵权设计与现有设计是否相同或实质相同

China National Intellectual Property Administration responded: The design patent evaluation report cannot prove whether the alleged infringing design is identical or substantially identical to the existing design

法院对涉车前雾灯总成发明专利侵权案作出一审判决，原告获赔535万元

Shanghai IP Court made a judgment in patent infringement case for the famous automobile component producer, the plaintiff was awarded damages of RMB 5.35 million

浙江高院对侵害驰名商标“大润发”纠纷案判赔100万余元

Zhejiang Higher People's Court ordered the defendant to compensate more than RMB 1 million for the infringement on the well-known trademark "RT-Mart"

最高法院在一起技术秘密纠纷中对反向工程与相应保护措施作出界定

The Supreme People's Court defines reverse engineering and corresponding protection measures in a trade secret litigation

美国农机巨头迪尔公司起诉天鹅股份专利侵权，索赔1000万元

American agricultural machinery giant John Deere sued a Chinese list company for patent infringement, claiming damages of RMB 10 million

欧盟采取措施以保护乌克兰知识产权

EU takes measures to protect Ukrainian intellectual property

## 立方竞争法周报 Weekly Competition Law News

### 市场监管总局回应知网是否涉嫌垄断：正在核实研究

2022年3月10日，据报道，国家市场监督管理总局（“市场监管总局”）正在核实研究中国知网是否涉嫌行业垄断问题。”对这一问题，市场监管总局相关司局去年12月16日给出的答复是：“市场监管总局将予以核实研究。”2022年全国两会期间，九旬中南财经政法大学教授赵德馨状告中国知网维权一事同样引起多位代表委员关注。（[查看更多](#)）

### SAMR Responses to Whether CNKI is Suspected of Monopoly

On March 10, 2022, it was reported that the State Administration for Market Regulation (“SAMR”) is investigating whether CNKI is conducting monopolistic behaviors. The relevant division of SAMR once responded to this issue on December 16, 2021, saying that SAMR will investigate this issue. During the 2022 National People's Congress, Zhao Dexin, a ninety-year-old professor at Zhongnan University of Economics and Law, sued CNKI to defend his rights, which likewise drew the attention. ([More](#))

### 最高法院工作报告发布，加强完善反垄断司法裁判规则

2022年3月8日，十三届全国人大五次会议举行第二次全体会议，听取和审议了最高人民法院（“最高法院”）工作报告。最高人民法院工作报告中提到：2021年审结垄断案件49件。2022年，最高人民法院将完善反垄断裁判规则。（[查看更多](#)）

### Report on the Work of SPC Released, Strengthening Anti-Monopoly and Anti-Unfair Competition Justice

On March 8, 2022, the fifth session of the 13th National People's Congress held its second plenary session to hear and review the report on the work of the Supreme People's Court (“SPC”). The report of the SPC mentioned that 49 monopoly cases were concluded in 2021 and SPC will improve the anti-monopoly judgement rules in 2022. ([More](#))

### 政府工作报告：2022年将深入推进公平竞争政策实施，加强反垄断

2022年3月5日，十三届全国人大五次会议在京开幕，国务院总理李克强代表国务院向大会作政府工作报告（“报告”）。报告强调，2022年将深入推进公平竞争政策实施，加强反垄断和反不正当竞争，维护公平有序的市场环境。（[查看更多](#)）

### Report on the Work of the Government: Further Promoting the Implementation of Fair Competition Policy and Strengthening Anti-Monopoly

On March 5, 2022, the Fifth Session of the 13th National People's Congress held in Beijing, and Premier of State Council Li Keqiang delivered the Government Work Report (“Report”). The Report emphasized that, in 2022, the government will deepen the implementation of fair competition policies, strengthen anti-monopoly and anti-unfair competition, and maintain a fair and orderly market environment ([More](#))

## 涉嫌妨碍反垄断调查，亚马逊或面临刑事指控

2022年3月9日，美国众议院司法委员会致函美国司法部，要求司法部调查亚马逊涉嫌妨碍反垄断调查的行为，称亚马逊在调查中拒绝说明其如何使用属于第三方卖家数据的商业记录，并指责其高管在此前向陪审团作证时做了“虚假和误导性陈述”，涉嫌构成“潜在犯罪行为”。联邦检察官最近表示，尽管公司面临刑事指控的情形极为罕见，但他们仍有可能对涉嫌垄断的案件提起刑事诉讼。（[查看更多](#)）

### Stonewalling Antitrust Investigation, Amazon May Face Criminal Charges

On March 9, 2022, House Judiciary Committee addressed a letter to Department of Justice, claiming that Amazon has refused to articulate how it uses data belonging to third-party sellers and accusing executives of making "false and misleading statements" in previous testimony before the panel. That amounts to "potentially criminal conduct". Federal prosecutors suggested that it's exceedingly rare for companies to face criminal charges, but they are willing to bring criminal cases for alleged monopolies. ([More](#))

## 首尔高级法院暂停KFTC对谷歌作出的2249亿处罚决定

近日，据相关媒体报道，首尔高级法院就谷歌起诉韩国公平交易委员会（“KFTC”）一案作出裁定，暂停KFTC对谷歌作出的处罚。去年，就谷歌强迫智能手机制造商使用安卓移动操作系统一事，KFTC对谷歌开出了巨额罚单并要求其采取补救措施，谷歌随后对此提起诉讼并向首尔高级法院申请了禁令。首尔高级法院裁定暂停KFTC的处罚直至2022年8月31日，以避免对谷歌造成不可弥补的损害，但维持了KFTC对谷歌开出的2249亿韩元（约合人民币11.6亿元）的罚款。

（[查看更多](#)）

### Seoul High Court Suspends Validity of FTC's Order Against Google

Recently, it is reported that, Seoul High Court ruled that Korean Fair Trade Commission (“KFTC”)’s fine on Google is suspended. KFTC last year ordered corrective measures and imposed fines on Google for forcing smartphone makers to only use its Android mobile operating system. Google then filed the lawsuit to overturn that decision and separately applied for an injunction with the Seoul High Court. The court has decided to suspend the FTC's order until August 31 to prevent irreparable damage to the plaintiffs. The court did rule, however, that the KWR 224.9 billion (around CNY1.16 billion) fine imposed on Google remains valid. ([More](#))

## 网络安全与数据合规 Cybersecurity and Data Protection

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### 工信部印发《车联网网络安全和数据安全标准体系建设指南》

2022年3月7日，国家工业和信息化部发布了《车联网网络安全和数据安全标准体系建设指南》（“《指南》”）。《指南》提出到2023年底，初步构建起车联网网络安全和数据安全标准体

系。重点研究基础共性、终端与设施网络安全、网联通信安全、数据安全、应用服务安全、安全保障与支撑等标准，完成50项以上急需标准的研制。到2025年，形成较为完善的车联网网络安全和数据安全标准体系。完成100项以上标准的研制，提升标准对细分领域的覆盖程度，加强标准服务能力，提高标准应用水平，支撑车联网产业安全健康发展。（[查看更多](#)）

## MIIT Issues the Guideline on Construction of Cybersecurity and Data Security Standard System of Internet of Vehicle

On 7th March 2022, the Ministry of Industry and Information Technology of the People's Republic of China issued the *Guideline on Construction of Cybersecurity and Data Security Standard System of Internet of Vehicles* ("the Guideline"). According to the Guideline, by the end of 2023, the standard system of cybersecurity and data security of Internet of vehicles will be preliminarily established. The Guideline requires focus on basic commonness, terminal and facility cybersecurity, cyber communication security, data security, application service security, security guarantee and support, and complete the development of more than 50 urgently needed standards. By 2025, a relatively complete cybersecurity and data security standard system for Internet of vehicles shall be established. Related parties shall complete the development of more than 100 standards, improve the coverage of standards in subdivided fields, strengthen the standard service capacity, improve the standard application level, and support the safety and healthy development of the Internet of vehicles industry. ([More](#))

## 《未成年人网络保护条例》再次公开征求意见

2022年3月14日，国家互联网信息办公室就《未成年人网络保护条例（征求意见稿）》（“《条例》”）再次公开征求意见，意见反馈截止日期为2022年4月13日。相较于2016年发布的《条例》草案征求意见稿，对网络运营者、智能终端产品制造者、监护人及网信等各部门在未成年人网络保护的职责做了更加详细的规定，此外，《条例》结合《个人信息保护法》，专章规定了未成年人的个人信息保护，旨在营造健康、文明、有序的网络环境，保护未成年人身心健康，保障未成年人在网络空间的合法权益。（[查看更多](#)）

## The Regulations of Minor Cyber Protection Solicits Public Comments for the second time

On 14th March 2022, the Cyberspace Administration of China solicited public comments for *The Regulations of Minor Cyber Protection* (Exposure Draft) ("the Draft") for the second time. The deadline for feedback is 13th April 2022. Compared with the first exposure draft released in 2016, the Draft further elaborates regulations on minor cyber protection concerning the duties of network operators, intelligent terminal product manufacturers, guardians of the minors, network information departments and other departments. Additionally, the Draft combines with the Personal Information Protection Law, stipulating the protection of minor's personal information in a special chapter. The Draft aims to create a healthy, civilized and ordered network environment, to protect the physical and mental health of minors and to safeguard the legitimate rights and interests of minors in cyberspace. ([More](#))

## 《智能网联汽车数据安全评估指南》公开征求意见

2022年3月9日，中国汽车工业协会就《智能网联汽车数据安全评估指南》公开征求意见（“《指南》”），意见反馈截止日期为2022年4月8日。《指南》给出了智能网联汽车数据安全风险评估和数据安全合规性评估的实施流程和评估方法，适用于智能网联汽车相关组织自行开展数据安全评估工作，也可为主管部门、第三方测评机构等组织开展智能网联汽车数据安全检查、评估、监督等工作提供参考。（[查看更多](#)）

## The Guideline for Data Security Assessment of Intelligent Network Vehicles Solicits Public Comments

On 9th March 2022, China Automobile Industry Association solicited public comments on the *Guideline for Data Security Assessment of Intelligent Network Vehicles* ("the **Guideline**"), and the deadline for feedback is 8th April 2022. The guideline illustrated the implementation process and evaluation method of data security risk assessment and data security compliance assessment concerning intelligent connected vehicles, which is also suitable for relevant organizations within the intelligent connected vehicles industry to carry out data security assessment by themselves. The Guideline can also provide reference for competent departments, third-party evaluation institutions and other organizations to carry out data security inspection, assessment, and supervision of intelligent connected vehicles. ([More](#))

## 工信部通报2022年2批存在侵害用户权益行为的APP

2022年3月14日，国家工业和信息化部发布了2022年第2批关于APP侵害用户权益整治“回头看”发现问题的通报（“**通报**”）。通报包括了360手机卫士在内的14款APP，主要问题涉及弹窗信息骚扰用户、超范围收集个人信息、应用分发平台上的APP信息明示不到位、APP强制、过度、频繁索取权限等。上述APP应在3月21日前完成整改，逾期不整改或整改不到位的，工业和信息化部将依法依规严厉处置。（[查看更多](#)）

## MIIT Notifies the Second Batches of APPs that Infringe on Users' Rights and Interests in 2022

On 14th March 2022, the Ministry of Industry and Information Technology of the People's Republic of China ("MIIT") released the *Notification of the second batches of APPs that infringe on users' rights and interests in 2022* ("the **Notification**"). The Notification contained fourteen APPs such as 360 Mobile Phone Guard. The primary problems include popping up information that harasses users, collecting personal information beyond authorization, vague information provided on the APP distribution platform, requesting for permission from the users forcibly, excessively, and frequently, etc. The notified APPs shall be rectified before March 21. If the above APPs fail to rectify within the time limit or the rectification do not satisfy the standard, MIIT will deal with it severely in accordance with the law and regulations. ([More](#))

## 国家计算机病毒应急处理中心监测发现17款存在隐私不合规行为的APP

2022年3月4日，据新华社报道，国家计算机病毒应急处理中心近期通过互联网监测发现17款移动应用存在隐私不合规行为，违反《网络安全法》《个人信息保护法》相关规定，涉嫌超范围采集个人隐私信息，主要问题包括：（1）在App首次运行时未通过弹窗等明显方式提示用户阅读隐私政策等收集使用规则，或以默认选择同意隐私政策等非明示方式征求用户同意；（2）未向用户明示申请的全部隐私权限；（3）在征得用户同意前就开始收集个人信息；（4）未提供有效的更正、删除个人信息及注销用户账号功能，或注销用户账号设置不合理条件；（5）未建立并公布个人信息安全投诉、举报渠道，或超过承诺处理回复时限。（[查看更多](#)）

## CVERC Finds 17 APPs with Privacy Non-compliance

On 4th March 2022, according to the report of the Xinhua News Agency, National Computer Virus Emergency Response Center recently monitored and found 17 APPs with privacy non-compliance, in breach of the Cybersecurity Law, the Personal Information Protection Law. The major problems of the above APPs include: (1) When the APP runs for the first time, it does not prompt users to read the personal information collection and use rules such as privacy policy through pop-up windows, or seek the user's consent in nonexplicit ways such as a default choice to privacy policies; (2) All privacy rights are not explicitly applied to users; (3) Start collecting personal information before obtaining users' consent; (4) Failure to provide effective ways to correct, delete personal information and ways to cancel users' account, or set unreasonable conditions for cancellation of users' account; (5) Failure to establish and publish channels for personal information security complaints and reports, or exceeding the promised time limit for handling and reply. ([More](#))

## 最高人民法院发布第三十五批指导性案例，其中包括儿童猥亵案牵出短视频APP违法收集使用儿童个人信息的案例

2022年3月7日，最高人民法院发布了最高人民法院第三十五批指导性案例，主题为“未成年人保护检察公益诉讼”。其中，检例第141号“浙江省杭州市余杭区人民检察院对北京某公司侵犯儿童个人信息权益提起民事公益诉讼，北京市人民检察院督促保护儿童个人信息权益行政公益诉讼案”是由儿童猥亵案牵出短视频APP违法收集使用儿童个人信息的案例，在该案中，涉案App在未以显著、清晰的方式告知并征得儿童监护人明示同意的情况下，允许儿童注册账号，并收集、存储儿童网络账户、位置、联系方式，以及儿童面部识别特征、声音识别特征等个人敏感信息。在未再次征得儿童监护人明示同意的情况下，运用后台算法，向具有浏览儿童内容视频喜好的用户直接推送含有儿童个人信息的短视频。该App未对儿童账号采取区分管理措施，默认用户点击“关注”后即可与儿童账号私信联系，并能获取其地理位置、面部特征等个人信息。2018年1月至2019年5月，徐某某收到该App后台推送的含有儿童个人信息的短视频，通过其私信功能联系多名儿童，并对其中3名儿童实施猥亵犯罪。（[查看更多](#)）

## The Supreme People's Procuratorate of the People's Republic of China ("SPP") Published the 35th Batch of Guiding Cases, including A Child Molestation Case



## Leading to Illegal Collection and Use of Children's Personal Information through Short Video APP

On 7<sup>th</sup> March 2022, the Supreme People's Procuratorate published the 35<sup>th</sup> batch of guiding cases, with the topic of “minor protection procuratorial public interest litigation”. Among the cases, NO. 141 case named “Administrative public interest litigation where people’s procuratorate of Yuhang district of Hangzhou raised a public interest litigation against a Beijing company in breach of child’s personal information interests. People’s procuratorate of Beijing supervised the protection of children's personal information rights and interests” was a child molestation case leading to illegal collection and use of children's personal information through short video APP. In NO. 141 case, the APP involved allowed the child to register an account and collect and store the child's information, including location, contact information, as well as the child's facial recognition features, voice recognition features and other personal sensitive information without informing in a significant and clear way, and without the explicit consent of the child's guardian. Without the explicit second consent of the child's guardian, the APP used background algorithm to directly push short videos containing children's personal information to users who have the preference of browsing children's content videos. The app does not take differentiated management measures for children's accounts. By default, users can click "register" and send messages to children's accounts and obtain their geographical location, facial features, and other personal information. From January 2018 to May 2019, Mr.XU, after receiving a short video containing children's personal information pushed by the APP, he then contacted multiple children through private messages, and committed indecent crimes against three of them. ([More](#))

## 《河南省数据条例(草案)》（征求意见稿）公开征求意见

2022年3月7日，河南省大数据管理局发布了《河南省数据条例(草案)》的征求意见稿（“《草案》”），征求意见时间为2022年3月7日至2022年4月6日。《草案》适用于河南省内的数据处理、利用、监管与安全。《草案》分别以专章规定了公共数据及非公共数据的数据处理要求，并对河南省内的数据开发利用、数据安全及法律责任做了详细规定，旨在保护自然人、法人和非法人组织与数据有关的权益，规范数据处理活动，保障数据安全，培育数据要素市场，促进数据开发利用，服务经济社会发展和数字强省建设。（[查看更多](#)）

## Henan Data Regulations (Draft) Solicits Public Comments

On 7<sup>th</sup> March 2022, Henan Big Data Administration issued the exposure draft of *Henan Data Regulations (Draft)* (“**the Draft**”). The consultation time is from 7 March 2022 to 6 April 2022. The Draft applies to data processing, using, supervision and security inside Henan Province. The Draft sets special chapters to stipulate processing requirements of public data and non-public data. Additionally, the Draft makes detailed provisions on data development and utilization, data security and legal liability, aiming to protect the rights and interests of natural persons, legal persons and unincorporated organizations related to data, to standardize data processing activities, to ensure data security, to cultivate data factor market, to promote data development and utilization, and to serve economic and social development and the construction of a strong digital province. ([More](#))

## 政协委员建议设立“数据银行”，最大程度保障关键数据安全和国家安全

2022年3月11日，据《人民政协报》报道，政协委员谈剑锋在今年的全国两会上提交提案，建议国家设立“数据银行”，提案中指出，对唯一性、不可再生性数据，比如：生物特征（人脸、指纹、虹膜等）数据、DNA数据、医疗和健康档案数据，必须由国家统一管理，市场不得自行采集、存储和使用，国家统一管理的这些敏感数据，通过脱敏、加密、标识后，才能返回市场做应用。谈剑峰指出，“便捷不等于安全，互联网发展带来生活、学习、工作等的便捷，但大数据也在一定程度上侵犯了隐私，甚至有人完全是在互联网上“裸奔”。点点滴滴的个人隐私安全，汇聚起来就会是国家安全问题。”（[查看更多](#)）

## CPPCC members suggest establishing a "data bank" to protect key data and national security to the maximum extent

On 11th March 2022, according to the report of *Journal of the Chinese People's Political Consultative Conference*, CPPCC member TAN Jianfeng submitted a proposal at this year's two sessions (NPC and CPPCC), suggesting that the state should establish a "data bank". The proposal pointed out that the unique and non-renewable data, such as biometric (face, fingerprint, iris, etc.), DNA data, medical and health file data, must be uniformly managed by the nation. The market shall not collect, store, and use these sensitive data under the unified management of the state. These sensitive data can only be returned to the market after desensitization, encryption and identification. TAN Jianfeng pointed out that "Convenience is not equal to security. The development of the Internet brings convenience to our life, study, and work. However, big data also infringes privacy to a certain extent, and some people surf on the Internet without any privacy protection. The accumulation of personal privacy security issues is a national security issue."（[More](#)）

## 美国证券交易委员会（SEC）发布新规，规范上市公司在数据泄露事件中的披露机制

2022年3月9日，美国证券交易委员会（SEC）提议提出一项修正案，以加强和规范上市公司网络安全风险管理、战略、治理和事件报告方面的披露。除其他事项外，拟议修正案将要求上市公司对重大网络安全事件进行及时的报告，并定期报告有关该公司网络安全事件的最新信息。该提案还要求上市公司定期报告识别和管理网络安全风险的政策和程序；要求董事会对网络安全风险的监督；以及要求管理层评估和管理网络安全风险以及实施网络安全政策和程序方面的作用和专业性知识。该提案还要求对董事会的网络安全专业知识进行年度报告或代理披露。拟议修正案旨在更好地告知投资者上市公司的风险管理、战略和治理方案，并及时向投资者通报重大网络安全事件。（[查看更多](#)）

## SEC Proposes Rules on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure by Public Companies

On 9th March 2022, the Securities and Exchange Commission (SEC) proposed amendments to its rules to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance,

and incident reporting by public companies. The proposed amendments would require, among other things, current reporting about material cybersecurity incidents and periodic reporting to provide updates about previously reported cybersecurity incidents. The proposal also would require periodic reporting about a registrant's policies and procedures to identify and manage cybersecurity risks; the registrant's board of directors' oversight of cybersecurity risk; and management's role and expertise in assessing and managing cybersecurity risk and implementing cybersecurity policies and procedures. The proposal further would require annual reporting or certain proxy disclosure about the board of directors' cybersecurity expertise, if any. The proposed amendments are intended to better inform investors about a registrant's risk management, strategy, and governance and to provide timely notification to investors of material cybersecurity incidents. ([More](#))

## 英国DCMS公布有关电子身份数据的立法提案

2022年3月10日，英国数字、文化、媒体和体育部发布了一项新的立法提案，旨在使数字身份更加可信和安全。在听取了公众意见后，英国政府宣布将进行立法，使电子身份与护照和驾驶执照等官方文件一样可信和安全。在新的立法中，数字身份处理组织将需要获得新的信任标志，以表明他们能够以安全、一致的方式处理人们的身份数据。 ([查看更多](#))

## DCMS Releases New Legislation Set to Make Digital Identities More Trustworthy and Secure

On 10th March 2022, Department for Digital, Culture, Media & Sport released a new legislation set to make digital identities more trustworthy and secure. Following a public consultation, the government has announced it will introduce legislation to make digital identities as trusted and secure as official documents such as passports and driving licenses. In the new legislation, organizations will need to gain a new Trustmark to show they can handle people's identity data in a safe and consistent way. ([More](#))

## 英国信息专员办公室（ICO）公布了《匿名、假名和隐私增强技术指导意见》草案并征求意见

英国信息专员办公室正在就其《关于匿名化、假名化和隐私增强技术的最新指南（草案）》（“草案”）征求意见。草案共分四章。第一章是“匿名化简介”，概述了数据保护法背景下匿名化应用的法律、政策和治理问题。第二章是“可识别性”，重点介绍如何在可识别性的背景下评估匿名化。第三章是“假名化”，解释了假名化和匿名化之间的关键区别。第四章是“问责与治理”，解释了数据处理者对个人数据进行匿名时应对其采取的管理方法。 ([查看更多](#))

## ICO Call for Views: Anonymization, Pseudonymization and Privacy Enhancing Technologies Guidance

The ICO is calling for views on its updated draft guidance on anonymization, pseudonymization and privacy enhancing technologies (“the Draft”). The Draft includes four chapters. The first chapter is ‘Introduction to Anonymization’, which outlines the legal, policy and governance issues around the

application of anonymization in the context of data protection law. The second chapter is ‘Identifiability’, which focuses on how to assess anonymization in the context of identifiability. The third chapter is ‘Pseudonymization’, which explains the key differences between pseudonymization and anonymization. The fourth chapter is ‘Accountability and Governance’, which explains the governance approach to be taken when people anonymize personal data. ([More](#))

## 拜登签署行政令，强调确保负责任地发展数字资产

2022年3月9日，根据白宫的报道，美国总统拜登将签署行政令，以强调确保负责任地发展数字资产。数字资产的崛起为加强美国在全球金融体系和技术前沿的领导地位创造了机会，但也对消费者保护、金融稳定、国家安全和气候风险产生了重大影响。因此，拜登将签署该项行政令，概述政府有史以来第一次采取全面措施来应对数字资产及其基础技术的风险，并对其潜在好处加以利用。具体而言，行政令要求采取以下措施：1) 保护美国消费者、投资者和企业；2) 保护美国 and 全球金融稳定，降低系统性风险；3) 缓和非法使用数字资产带来的非法金融和国家安全风险；4) 促进美国在技术和经济竞争力方面的领导地位，以加强美国在全球金融体系中的领导地位；5) 促进国民公平地获得安全、实惠的金融服务；6) 支持技术进步，确保负责任地开发和使用数字资产；7) 探索建立美国中央银行数字货币系统 (CBDC)。 ([查看更多](#))

## President Biden to Sign Executive Order on Ensuring Responsible Development of Digital Assets

On 9th March 2022, according to report of the White House, President Biden will sign an executive order on ensuring responsible development of digital assets. The rise in digital assets creates an opportunity to reinforce American leadership in the global financial system and at the technological frontier, but also has substantial implications for consumer protection, financial stability, national security, and climate risk. Therefore, President Biden will sign an Executive Order outlining the first ever, whole-of-government approach to addressing the risks and harnessing the potential benefits of digital assets and their underlying technology. Specifically, the Executive Order calls for measures to: 1) Protect U.S. Consumers, Investors, and Businesses; 2) Protect U.S. and Global Financial Stability and Mitigate Systemic Risk; 3) Mitigate the Illicit Finance and National Security Risks Posed by the Illicit Use of Digital Assets; 4) Promote U.S. Leadership in Technology and Economic Competitiveness to Reinforce U.S. Leadership in the Global Financial System; 5) Promote Equitable Access to Safe and Affordable Financial Services; 6) Support Technological Advances and Ensure Responsible Development and Use of Digital Assets; 7) Explore a U.S. Central Bank Digital Currency (CBDC). ([More](#))

## 意大利监管机构对面部识别公司Clearview AI处以2000万欧元的罚款

2022年3月10日，欧洲数据保护委员会发布消息称，意大利监管机构于2022年2月10日对Clearview AI处以2000万欧元的罚款。在媒体报道了Clearview AI公司提供的人脸识别产品存在的几个问题后，意大利监管机构启动了调查程序。此外，意大利数据保护局在2021年收

到了两个组织针对Clearview AI公司提出了四项投诉和两项警告，这两个组织活跃于保护隐私和个人基本权利免受Clearview AI公司的侵害。监管调查经调查评估后发现，Clearview AI公司存在多起侵权行为。该公司在没有法律依据的情况下，非法处理持有的个人数据，包括生物特征和地理位置信息。此外，该公司违反了GDPR的几个基本原则，如透明度、目的限制和存储限制；它未能提供GDPR第13-14条要求的信息，未能在适当的时间范围内提供关于根据第15条的要求采取的行动的信息，也未根据GDPR的要求在欧盟指定一名代表人。（[查看更多](#)）

### **Italian SA Fines Clearview AI EUR 20 million**

On 10th March 2022, the European Data Protection Board released the news that a EUR 20 million is imposed to Clearview AI by the Italian SA on 10th February 2022. The Italian SA launched an own volition proceeding following press reports on several issues in connection with facial recognition products which were offered by the Clearview AI Inc. Moreover, the Garante received, during 2021, four complaints and two alerts by two organizations that are active in the field of protecting privacy and the fundamental rights of individuals against Clearview. The inquiries and assessment by the Italian SA found several infringements by Clearview AI Inc. The personal data held by the company, including biometric and geolocation information, were processed unlawfully without an appropriate legal basis. Additionally, the company infringed several fundamental principles of the GDPR, such as transparency, purpose limitation, and storage limitation; it failed to provide the information set out by Article 13-14, to provide information on an action taken on a request under Article 15 within the due timeframe, and to designate a representative in the EU. ([More](#))

### **澳大利亚四大监管机构组成数字平台监管论坛**

2022年3月13日，据techbusinessnews.com.au报道，澳大利亚四大监管机构已经成立了数字平台监管机构论坛（DP-REG），以在数字平台监管方面开展更广泛的合作和信息共享。目前，DP-REG共同审查互联网搜索引擎、社交媒体服务、私人消息服务、电子市场和其他平台。随着澳大利亚联邦政府就如何更好地规范数字平台开展各种调查，DP-REG作为统领性的平台，将探索出竞争、消费者保护、隐私、在线安全和数据覆盖的最佳途径。（[查看更多](#)）

### **Four Leading Australian Watchdogs Form Digital Platform Regulators Forum**

On 13th March 2022, according to techbusinessnews.com.au, four major Australian watchdogs have formed the Digital Platform Regulators Forum (DP-REG) initiative to create greater collaboration and information sharing regarding the regulation of digital platforms. The Digital Platform Regulators Forum has been formed to jointly scrutinize internet search engines, social media services, private messaging services, electronic marketplaces, and other platforms. As the federal government conducts various reviews on how best to regulate digital platforms, the DP-REG will provide an overarching focus to consider the best approach to competition, consumer protection, privacy, online security, and data overlays. ([More](#))

## 知识产权 Intellectual Property

### 国知局批复：外观设计专利权评价报告不能证明被控侵权设计与现有设计是否相同或实质相同

近日，国家知识产权局对《浙江省知识产权局关于专利侵权纠纷案件中可否直接将请求人提供的专利权评价报告作为现有设计抗辩证据的请示》作出批复，批复中明确，根据我国相关规定，在被控侵权人未提出抗辩主张的情况下，管理专利工作的部门不能主动适用现有设计抗辩。而且外观设计专利权评价报告由请求人提交，不符合现有设计证据提交主体的要求。

外观设计专利权评价报告是对外观设计专利是否符合专利法及其实施细则规定的授予专利权条件的评价，包括反映对比文件与被评价专利相关程度的表格部分，以及被评价专利是否符合授予专利权的条件的说明部分。因此，外观设计专利权评价报告不能证明被控侵权设计与现有设计是否相同或实质相同。

来源：国家知识产权局

### CNIPA responded: The design patent evaluation report cannot prove whether the alleged infringing design is identical or substantially identical to the existing design

Recently, CNIPA issued a reply to the "Zhejiang Intellectual Property Administration's Request for Instructions on Whether the Patent Evaluation Report Provided by the Requester Can Be Directly Used as the Existing Design Defense Evidence". The reply clearly stated, local IPO cannot proactively apply the existing design defense, if the accused infringer does not raise such defense.

In addition, the design patent right evaluation report is an evaluation of whether the design patent complies with the conditions for granting patent. Therefore, the design patent right evaluation report cannot prove whether the alleged infringing design is the same or substantially the same as the existing design.

Source: China National Intellectual Property Administration

### 法院对涉车前雾灯总成发明专利侵权案作出一审判决，原告获赔535万元

近日，上海知识产权法院对法雷奥公司诉珠海某车灯公司、上海某汽车销售公司发明专利侵权案作出一审判决，判决被告赔偿原告535万元。

法院认为，法雷奥公司系世界知名汽车配件制造公司，为发明专利“光束发射装置以及特别是用于机动车的包括该装置的灯”的专利权人，经比对，两被告生产销售的被诉侵权产品均落入原告涉案专利权要求的保护范围，构成侵权。由于在案证据不能反映被诉侵权产品的营业利润，综合考虑涉案专利情况、被诉侵权产品销售数量及销售金额、被告公司毛利率及营业利润、同行业公司产品毛利率、涉案专利在被诉侵权产品中的贡献率、被告的侵权期间等，酌定被告赔偿原告经济损失500万元，合理开支35万元。

来源：上海知识产权法院

## **Shanghai IP Court made a judgment in patent infringement case for the famous automobile component producer, the plaintiff was awarded damages of RMB 5.35 million**

Shanghai Intellectual Property Court made a first-instance judgment on an invention patent infringement case. The plaintiff, Valio, is a world-renowned automobile components manufacturer. The court held that the accused products produced and sold by the two defendants all fall into the protection scope of the plaintiff's patent claims, and constitute infringement.

Since the evidences cannot reflect the infringing profit of the defendant, the court considered the patent, the sales volume and sales amount of the accused infringing product, the defendant's gross profit rate and operating profit, the gross profit rate of the products of the same industry, and the contribution rate of the patent to the infringing product, the period of the infringement acts, and etc., and affirmed that the defendant shall compensate the plaintiff for economic losses of RMB 5.35 million.

Source: Shanghai Intellectual Property Court

## **浙江高院对侵害驰名商标“大润发”纠纷案判赔100万余元**

在“大润发”商标侵权案中，法院经审理认为，“大润发”商标经过康成公司的长期使用和宣传，已为国内相关公众广泛知晓，在本案被诉侵权行为发生时已构成在第35类服务项目上的驰名商标。虽然被诉侵权的冰箱商品与原告“大润发”商标核定使用的第35类“推销（替他人）”服务不构成类似，但考虑到大润发超市在实际经营中亦会销售自有品牌的商品，且亦销售冰箱等家电类商品，两者在日常生活中存在一定关联，消费对象也存在一定重叠。二被告在冰箱商品上使用被诉侵权标识，弱化了相关公众对康成公司与涉案“大润发”商标已有联系的认识，损害了康成公司的合法权益。因此二被告均构成对康成公司涉案“大润发”驰名商标的侵害，依法应承担相应的法律责任。由于康成公司因侵权行为遭受的实际损失或二被告因侵权所获得的利益均难以确定，亦无合理的商标许可使用费可供参照，故法院适用法定赔偿判决二被告赔偿康成公司经济损失100万元及合理开支108000元。

**立方短评：**本案中，法院对于驰名商标“大润发”使用的场景与被诉侵权产品使用的冰箱商品的联系做出了详细论述，最终认定被告在冰箱等商品上使用被诉侵权标识的行为会弱化原告与其驰名商标之间的联系，损害原告的合法权益，该判决有效维护了权利人的合法权益。本案同时也表明，驰名商标的跨类保护存在边界，并非是涵盖所有类别的全类保护，跨类保护的范围受到行业属性、消费对象等多种因素制约，并且应以足以引起消费者对商品的提供者和服务的来源产生混淆、误认，或者减弱驰名商标显著性、不正当利用驰名商标市场声誉等为判断依据。

来源：浙江省高级人民法院

## **Zhejiang Higher People's Court ordered the defendant to compensate more than RMB 1 million for the infringement on the well-known trademark "RT-Mart"**

The court held that, after the plaintiff's long-term use and publicity, the trademark "RT-Mart" had constituted a well-known trademark in China in class 35 for services of "promotion (for others)", when the alleged infringement occurred. Although the alleged infringing products are not similar to the services of the "RT-Mart" trademark, considering that RT-Mart Supermarket sells both its own brand products and other household appliances, such as refrigerators, there is a certain relationship between the products and services, and the target consumers of the products and services also overlap.

The use of the accused infringing logo by the two defendants on the refrigerator diluted the relevant public's understanding of the relationship between the plaintiff and the trademark "RT-Mart", and also cause prejudice to the plaintiff. Therefore, the court ordered the two defendants to compensate the plaintiff for economic losses of RMB 1 million and reasonable expenses of RMB 108,000.

**Lifang & Partners comment:** In this case, the court made a detailed discussion on the connection between the scenario of use of the well-known trademark "RT-Mart" and the accused infringing products, and finally affirmed that the defendant's use of the accused infringing logo on refrigerators and other products would dilute the connection of the plaintiff and the well-known trademark, and cause prejudice to the plaintiff. This judgment effectively safeguards the legitimate rights and interests of the owner of the well-known trademarks. This case also shows that the cross-class protection of well-known trademarks has boundaries, and it is not a full-class protection covering all classes. Dilution of the well-known trademark, or the improper use of the reputation of the well-known trademark is the basis for protection.

Source: [Zhejiang Higher People's Court](#)

## 最高法院在一起技术秘密纠纷中对反向工程与相应保护措施作出界定

近日，最高人民法院在思克公司与兰光公司侵害技术秘密纠纷案中作出二审判决，该案中，思克公司主张兰光公司的产品使用了思克公司自主研发并采取保密措施的技术秘密，构成不正当竞争。最高人民法院经审理认为，“反向工程”是指通过技术手段对从公开渠道取得的产品进行拆卸、测绘、分析等而获得该产品的有关技术信息。本案中，涉案技术秘密的载体为涉案产品，涉案产品一旦售出进入市场流通，就在物理上脱离思克公司的控制，故区别于可始终处于商业秘密权利人控制之下的技术图纸、配方文档等内部性载体。鉴于涉案技术秘密载体为市场流通产品，属于外部性载体，故思克公司为实现保密目的所采取的保密措施，应能对抗不特定第三人通过反向工程获取其技术秘密。但思克公司对涉案产品采取的保密措施不足以对抗他人进行反向工程，因此应认定思克公司并未采取符合反不正当竞争法规定的“相应保密措施”，不构成反不正当竞争法所保护的商业秘密。

**立方短评：** 本案中，最高人民法院明确了反向工程的定义，并指出，反向工程产品的获取应具备合法性，即经过市场流通取得产品的行为人对产品进行拆解、分析，系基于所有权得对产品行使处分权，不受商业秘密权利人单方声明的约束，此种反向工程行为并不侵犯产品所载商业秘密。同时法院亦明确：对于此类市场流通的产品，商业秘密权利人应当采取相应保密措施对抗反向工程，如不足以对抗的，则认定商业秘密权利人并未采取符合相应保密措施，产品所载信息也就不构成反不正当竞争法所规定的商业秘密。



来源：最高人民法院

## SPC defines reverse engineering and corresponding protection measures in a trade secret litigation

Recently, Supreme People's Court made a second-instance judgment on a dispute over infringement of trade secret. The plaintiff claimed that the defendant's products used trade secrets, which constituted unfair competition.

SPC held that "reverse engineering" refers to the disassembly, surveying, mapping and analysis of products obtained from public channels through technical means to obtain technical information of the products. The carrier of the plaintiff's technical secret is the products, and once the products enters the market, the products will be physically separated from the plaintiff's control, which are different from the internal carrier, such as technical drawings, and formula documents, which can always be under the control of the trade secret owner.

Therefore, the confidentiality measures taken by the plaintiff shall be able to prevent others from obtaining their technical secrets through reverse engineering. However, the confidentiality measures taken by the plaintiff are not sufficient so. The court affirmed that the plaintiff has not taken "corresponding confidentiality measures" in accordance with the provisions of the Anti-Unfair Competition Law.

**Lifang & Partners comments:** SPC clarified the definition of reverse engineering, and pointed out that the acquisition of reverse engineering products shall be legal, i.e., those who obtained the product on the market, could disassemble and analyzes the product, which is based on the ownership to exercise the right to dispose of the product, and shall not be bound by the unilateral declaration of the owner of the trade secret. Such reverse engineering will not infringe on the trade secrets in the product. Meanwhile, the court also made it clear that for such products on the market, the owner of the trade secret shall take corresponding confidentiality measures to counter reverse engineering. If not, the owner of the trade secret shall be deemed as not taken corresponding confidentiality measures, and the information in the product does not constitute trade secret under the Anti-Unfair Competition Law.

Source: [The Supreme People's Court](#)

## 美国农机巨头迪尔公司起诉天鹅股份专利侵权，索赔1000万元

近日，科创板上市企业山东天鹅棉业机械股份有限公司发布公告称，天鹅股份及下属全资子公司新疆天鹅现代农业机械装备有限公司遭美国农机巨头迪尔公司起诉，索赔1000万元。

美国迪尔公司是一家创立时间近200年的著名农机巨头，市值高达1100亿美元，常年上榜《财富》世界500强排名。美国迪尔公司以天鹅股份生产的三行、六行打包采棉机产品侵害了其ZL200410085674.2号发明专利权，严重侵占了其市场份额为由，将天鹅股份及天鹅现代农装诉至法院，请求法院“判令二被告立即停止侵权行为，即立即停止制造、许诺销售、销售该发明专利的侵权产品；判令二被告立即销毁库存的尚未售出的侵权产品；判令二被告赔偿原告经济损失和合理开支共计1000万元人民币”。

来源：上海证券交易所

## **American agricultural machinery giant John Deere sued a Chinese list company for patent infringement, claiming damages of RMB 10 million**

Recently, the listed company Shandong Swan Cotton Machinery Co., Ltd. announced that, it and its wholly-owned subsidiary were sued by the American agricultural machinery giant John Deere for patent infringement, claiming damages of RMB 10 million.

John Deere is a well-known agricultural machinery giant with a market value of USD 110 billion. John Deere sued Swan and its subsidiaries on the grounds that the cotton picker product produced by Swan infringed its invention patent, and requesting the court to order the two defendants to stop infringement acts, and destroy the unsold infringing products in stock, and order the two defendants to compensate the plaintiff's economic losses and reasonable expenses totaling RMB 10 million.

Source: [Shanghai Stock Exchange](#)

## **欧盟采取措施以保护乌克兰知识产权**

近日，欧盟委员会和欧洲知识产权局共同出台了一套措施，以保护乌克兰的知识产权。具体措施包括：1. 在正常通讯受阻的情况下，欧洲知识产权局将向乌克兰地区的客户提供全力支持，以维护乌克兰在欧盟的知识产权。该局从2月24日起将居住地和注册地在乌克兰的所有当事人的诉讼时限延长一个月，并将根据情况决定是否进一步延期或采取其它措施。2. 欧洲知识产权局将暂停所有与俄罗斯和白俄罗斯知识产权部门的技术合作，也暂停与欧亚专利组织的技术合作。3. 此外，该局将确保源自克里米亚的知识产权不会被错误地标注为来自俄罗斯。

同时，根据欧盟委员会的要求，该局还将与有关国家和地区的知识产权部门协调，采取措施共同帮助乌克兰人民，防止其知识产权失效，并暂停与俄罗斯和白俄罗斯知识产权部门的合作。

来源: [europa.com](#)

## **EU takes measures to protect Ukrainian intellectual property**

Recently, the European Commission and the European Intellectual Property Office jointly introduced a set of measures to protect intellectual property rights in Ukraine. The specific measures include: 1. In the event that normal communication is blocked, the European Intellectual Property Office will provide full support to customers in Ukraine to safeguard Ukraine's intellectual property rights in the EU. From February 24, the bureau has extended the time limit for litigation by one month for all parties whose place of residence and registration is in Ukraine, and will decide whether to extend further or take other measures depending on the situation. 2. The European Intellectual Property Office will suspend all technical cooperation with the Russian and Belarusian intellectual property authorities, as well as technical cooperation with the Eurasian Patent Organization. 3. Furthermore, the Office will ensure that intellectual property originating in Crimea is not erroneously marked as originating in Russia.

At the same time, according to the request of the European Commission, the Office will also coordinate with the intellectual property authorities of the relevant countries and regions, take measures to jointly help the Ukrainian people, prevent the invalidation of their intellectual property rights, and suspend cooperation with the Russian and Belarusian intellectual property authorities.

Source: [europa.com](#)

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