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Utah Governor Signs Utah Consumer Privacy Act

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The European Council and the European Parliament Reach an Agreement on Digital Markets Act (DMA)

美国和欧盟就数据传输达成重要协议

The United States and the European Union Commit a New Agreement on Data Transfer

美国参议员提出一项法案，建议通过实时监控处置以加强网络安全

U.S. Senators Introduce a New Bill to Strengthen Cybersecurity through Real-time Monitoring



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法国数据保护执法机关（CNIL）发布数据保护官指引

The CNIL Publishes a Guide for DPOs

知识产权 Intellectual Property

国家知识产权局：关于专利侵权纠纷行政裁决案件中区块链电子证据效力的批复

CNIPA issued the “Reply on the Validity of Blockchain Electronic Evidence in Administrative Rulings on Patent Infringement Disputes”

“葵花宝典”商标案再审宣判，最高院：商品化权益受保护

Retrial judgment of the "Kuihua Baodian" trademark case was issued, the Supreme People's Court: Commercialization rights shall be protected

最高院提审“金银花”商标案，中止原判决执行

The Supreme People's Court issue a writ of certiorari for the trademark case of “Gold and Silver Flower” to retrial

虎牙直播《琅琊榜》，法院认定构成帮助侵权判赔23万元

The court ruled that Huya's livestreaming of TV series constituted assisting infringement and awarded damages of RMB 230,000

“巴赫厨具”对“苏泊尔”进行商业诋毁，法院判赔300万元

The court ordered Bahe to pay damages of RMB 3 million for commercial defamation of malicious dissemination of Supor's imitation patents without evidence

美国专利商标局（USPTO）发布《第三版知识产权和美国经济报告》

USPTO issued “The Third Edition of the Report on Intellectual Property and U.S. Economy”

美国说唱歌手利尔·亚蒂起诉Opulus商标侵权

American rapper Lil Yati sued Opulus for trademark infringement

立方竞争法周报 Weekly Competition Law News

云南省四家驾培企业因达成垄断协议共被罚近50万元

2022年3月18日，国家市场监督管理总局发布了云南省市场监督管理局（“云南省市监局”）对云南省大姚县4家驾驶培训单位垄断协议案作出的行政处罚决定书。根据调查，当事人于2020年7月30日做出约定，明确自2020年8月1日起统一机动车驾驶培训费收取标准，构成了垄断协议。云南省市监局对当事人分别处以2020年销售额3%的罚款，共计人民币452212.42元。（[查看更多](#)）

Four Driving Schools in Yunnan Province Fined Nearly CNY 500 thousand for Reaching Monopoly Agreement

On March 18, 2022, the State Administration of Market Regulation released administrative penalty decisions issued by the Yunnan Administration of Market Regulation (“Yunnan AMR”) against four driving schools in Dayao County, Yunnan Province. According to the investigation, the parties signed an agreement on June 30, 2021, and unified the standard for the price of driving training from August 1, 2020, which constituted a monopoly agreement. The Yunnan AMR imposed a fine of 3% of their sales in 2020 respectively, totaling CNY 452,212.42. ([More](#))

Google Play将允许Spotify用户使用第三方支付系统

2022年3月24日，流媒体音乐服务商Spotify发布公告称，已与谷歌达成将允许Spotify用户自由选择支付方式的协议。从 Google Play商店下载 Spotify的用户将可以选择使用 Spotify的支付系统或 Google Play的计费系统进行支付，这是第一次两个支付选项同时存在于应用中。此前，Spotify曾指控苹果和谷歌的应用程序的支付和更新规则扼杀竞争对手。（[查看更多](#)）

Google Play Allows Spotify Users to Use Third-Party Payment Systems

On March 24, 2022, streaming music provider Spotify announced that it has reached an agreement with Google, which will allow Spotify users to freely choose their payment method. Users who download Spotify from the Google Play store will have the option to pay using either Spotify's payment system or Google Play's billing system. It is the first time that both payment options exist in the app. Spotify has previously accused Apple and Google of stifling competitors with their app's payment and update rules. ([More](#))

英国反垄断执法机构发布年度工作计划，强调后疫情时代竞争保护

2022年3月24日，英国竞争和市场管理局（“CMA”）发布年度工作计划。2022年至2023年，CMA将重点做好以下工作：（1）在新冠流行期和后期保护消费者免受企业的不公平行为影响；（2）促进竞争以推动英国各地的创新、推动生产力和经济水平长期增长；（3）促进数字市场的有效竞争；（4）支持向低碳增长过渡，包括促进可持续产品和服务市场的健康竞争；（5）加强CMA作为国际竞争和消费者保护机构的地位。（[查看更多](#)）

CMA Publishes its Annual Plan, Enhancing Competition Protection Beyond the Pandemic

On March 24, 2022, the U.K. Competition and Markets Authority (“CMA”) published its annual plan. From 2022 to 2023, the CMA will focus on the following themes: protecting consumers from unfair behavior by businesses, during and beyond the COVID-19 pandemic; fostering competition to promote innovation, productivity, and long-term growth right across the UK; promoting effective competition in digital markets; supporting the transition to low carbon growth, including through the development of healthy competitive markets in sustainable products and services; delivering CMA’s new responsibilities and strengthening our position as global competition and consumer protection authority. ([More](#))

苹果向荷兰反垄断机构提交解决非苹果支付方式的新提案

2022年3月21日，荷兰反垄断监管机构ACM表示，苹果公司向其提交了新的救济方案，试图解决该公司因不允许约会应用程序开发商在荷兰使用非苹果支付方式引起的长期争端。ACM没有透露具体的补救措施，并表示本周已经对该公司处以500万欧元（约合3500万人民币）的罚款，这是一月以来荷兰针对苹果违规行为的连续第九周罚款。（[查看更多](#)）

Apple Sends New Proposals to Dutch Antitrust Watchdog on Non-Apple Payment Method

On March 21, 2022, The Dutch Authority for Consumers and Markets (“ACM”) said Apple had sent it new proposals to resolve a long-running dispute over the company’s failure to make it possible for dating app developers to use non-Apple payment methods in the Netherlands. ACM did not disclose Apple’s proposed remedy and said it had imposed a EUR 5 million (around CNY 35 million) fine on the company, the ninth such weekly penalty Apple has received in the dispute since January. ([More](#))

亚马逊在华盛顿州的反垄断诉讼被驳回

2022年3月19日，据媒体报道，美国一位高等法院法官驳回了美国华盛顿特区对亚马逊提起的一项反垄断诉讼，认为没有证据支持亚马逊存在对消费者抬高价格的行为。华盛顿特区总检察长 Karl Racine 指控亚马逊提高了面向消费者的商品的整体价格，同时阻止其商家在其他平台以更低价出售商品。但高等法院法官认为，目前并没有充足的证据表明亚马逊抬高了商品价格，因此驳回了该起诉。（[查看更多](#)）

Amazon Antitrust Lawsuit in D.C. Dismissed by Judge

On March 19, 2022, a Superior Court judge dismissed Washington, D.C.’s lawsuit accusing Amazon of anticompetitive behavior, saying there wasn’t evidence supporting the claim that the e-commerce giant inflated prices for consumers. Washington D.C.’s Attorney General Karl Racine alleged that Amazon encourages higher-than-necessary consumer prices while discouraging the site’s merchants from offering their products at lower prices elsewhere. However, the judge found a lack of evidence to support the assertion that Amazon inflated prices for consumers. ([More](#))

美国司法部就玻璃钢墙板市场两大竞争对手合并交易提起诉讼

2022年3月17日，美国司法部对Verzatec3.6亿美元收购其最大的竞争对手Crane Composites的交易提起诉讼，两家公司都是美国的卵石玻璃钢墙板制造商。美国司法部认为这项交易将对玻璃钢墙板生产和销售中的竞争造成损害，限缩消费者选择的空间并阻碍这一领域的创新。美国司法部还称，Verzatec的高层希望通过此次收购，获得对玻璃钢墙板的定价权和市场控制权，实现在相关市场的支配地位。（[查看更多](#)）

DOJ Sues to Block Two Competitors' Merger in FRP Wall Panels

The Department of Justice ("DOJ") filed a lawsuit to stop Verzatec from acquiring its biggest competitor, Crane. Both companies are the producers of pebbled fiberglass reinforced plastic (FRP) wall panels. DOJ thinks that the proposed transaction would harm competition in the production and sale of pebbled FRP wall panels, leaving American businesses facing reduced choices and innovation. DOJ further alleged that Verzatec's senior management wanted to acquire Crane to gain "pricing and market control" and to achieve "FRP dominance" in FRP wall panels. ([More](#))

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

国家发改委就“数据基础制度观点”征集意见

2022年3月21日，国家发展改革委就“数据基础制度观点”征集意见，梳理汇总了关于构建数据基础制度的总体思路、数据产权、流通交易、收益分配、安全治理等制度规则方面的若干观点，其中包括充分实现数据要素价值、探索建立现代数据产权制度、进一步完善和规范数据流通规则、允许并鼓励各类企业依托公共数据开发提供公益服务等。（[查看更多](#)）

The National Development and Reform Commission Solicits Public Comments for the *Opinions on Data Basic System Opinions*

On 21 March 2022, the National Development and Reform Commission ("NDRC") solicited public comments for the *Opinions on Data Basic System*. The NDRC aims to collect and sort comments in relation with systems and regulations of the Opinions. The Opinions involves aspects such as the general idea, data property rights, circulation and transaction, income distribution, security management. The Opinions also covers the aim to fully achieve the value of data element, to explore the establishment of modern data property rights system, to further complete and regulate the circulation rules of data, to permit and encourage different enterprises to develop and provide charity service based on public data. ([More](#))

科技部就《人类遗传资源管理条例实施细则（征求意见稿）》征求意见

2022年3月22日，中华人民共和国科学技术部发布了《人类遗传资源管理条例实施细则（征求意见稿）》（“《细则》”），《细则》适用于采集、保藏、利用、对外提供我国人类遗传资

源,《细则》规定,境外组织、个人及其设立或者实际控制的机构不得在我国境内采集、保藏我国人类遗传资源,也不得向境外提供我国人类遗传资源。同时,《细则》也规定了在利用我国遗传资源开展国际合作科学研究过程中应建立合作数据共享备份制度。([查看更多](#))

The Ministry of Science and Technology of the People's Republic of China Releases the Implementation Rules of the Regulations on the Administration of Human Genetic Resources (Exposure Draft)

On 22 March 2022, the Ministry of Science and Technology of the People's Republic of China released *the Implementation Rules of the Regulations on the Administration of Human Genetic Resources (Exposure Draft)* (the Rules) to solicit public comments. The Rules applies to the collection, storage, utilization, and similar situations where human genetic resources within China's border are provided overseas areas. According to the Rules, foreign organizations, individuals, and institutions set up by or controlled by foreign organizations or individuals shall not collect and store personal genetic resources within China's border, nor shall they provide Chinese human genetic resources abroad. The Rules also stipulates that a sharing and backup system of data shall be built during the international cooperative science research with Chinese genetic resources. ([More](#))

中央网信办等12部门联合印发IPv6技术创新和融合应用试点名单

2022年3月23日,中央网信办秘书局、国家发展改革委办公厅、工业和信息化部办公厅、教育部办公厅、科技部办公厅、公安部办公厅、财政部办公厅、住房和城乡建设部办公厅、水利部办公厅、中国人民银行办公厅、国务院国资委办公厅、广电总局办公厅联合印发通知,确定IPv6技术创新和融合应用试点名单,确定了22个综合试点城市和96个试点项目,试点方向包括IPv6技术创新与产业发展、IPv6单栈部署应用、IPv6与5G建设应用同步实施、物联网IPv6部署应用等。([查看更多](#))

CAC and Other 11 Ministries Jointly Issued the Pilot List of IPv6 Innovation and Fusion Application

On 23 March 2022, the Office of the Central Cyberspace Affairs Commission, the National Development and Reform Committee, the Ministry of Industry and Information Technology, the Ministry of Education, the Ministry of Science and Technology, the Ministry of Public Security, the Ministry of Finance, the Ministry of Housing and Urban-Rural Development, the Ministry of Water Resources, the People's Bank of China, the State-owned Assets Supervision and Administration Commission of the State Council and the National Radio and Television Administration jointly issued the pilot list of IPv6 innovation and fusion application. 22 pilot cities and 96 pilot programs were confirmed. The pilot contents include IPv6 innovation and industrial development, IPv6 single stack deployment and application, simultaneous performance of the construction and application of IPv6 and 5G, and IPv6 deployment and application in IoT. ([More](#))

深圳市市场监督管理局就《深圳经济特区消费者权益保护条例（征求意见稿）》公开征求意见，强调保护消费者个人信息

2022年3月23日，深圳市市场监督管理局发布《深圳经济特区消费者权益保护条例（征求意见稿）》（“《条例》”）。《条例》强调保护消费者隐私权，要求经营者对消费者个人登记的信息进行加密处理，保障信息的安全、完整，不侵犯消费者个人信息和隐私，并规定未经消费者本人明示同意，互联网经营者不得借助技术手段变相强制收集消费者信息或采集消费者生物识别信息、个人身份信息以及医疗健康、消费者行踪、家庭住址等个人隐私和敏感信息。（[查看更多](#)）

Shenzhen Market Supervision Administration Solicits Public Comments on the Regulations of Shenzhen Special Economic Zone on the Protection of Consumers' Rights and Interests (Exposure Draft), Attaching Emphasis to the Protection of Consumers' Personal Information

On 23 March 2022, Shenzhen Administration For Market Regulation issued the *Regulations of Shenzhen Special Economic Zone on the Protection of Consumers' Rights and Interests (Exposure Draft)*. The Regulations attached significance to the protection of the consumers' privacy, requiring the operators to encrypt the information registered by consumers and to protect the security and integrity of the information from infringement concerning the consumers' personal information and privacy. The Regulations also stipulated that, without the consumers' express consent, Internet operators shall not force to collect consumer information in disguised form using technical means, nor shall the operators collect consumer biometric information, personal identity information, medical and health care, consumer whereabouts, home address, or other likewise personal privacy information and sensitive information. ([More](#))

广东华兴银行未经同意查询个人信息被罚

据中国经济网报道，2022年3月16日，中国人民银行江门市中心支行对广东华兴银行作出两项行政处罚决定，其中，广东华兴银行股份有限公司江门分行未经同意查询个人信息，处以罚款人民币3万元。萧康年（时任广东华兴银行股份有限公司江门分行业务六部团队长）为广东华兴银行股份有限公司江门分行未经同意查询个人信息的违法行为直接负责，处以罚款人民币0.5万元。（[查看更多](#)）

PBC Fines Guangdong Huaxing Bank for Inquiring about Personal Information without Consent

According to the report of www.ce.cn, on 16 March 2022, Jiangmen Central Branch of the People's Bank of China imposed two administrative penalties upon Guangdong Huaxing Bank. Jiangmen branch of Guangdong Huaxing Bank Co., Ltd inquired personal information without consent of the involved individuals and was fined 30,000 YUAN. XIAO Kangnian, the group leader of the sixth business department of the Jiangmen branch of Guangdong Huaxing Bank Co., Ltd, was directly responsible for the illegal activities of the bank and was fined 5 thousand YUAN. ([More](#))

北京市通信管理局下架16款侵害用户权益的APP

2022年3月21日，北京市通信管理局通报了16款侵害用户权益的APP，并做出下架处理，根据通报，下架APP存在的主要问题包括违规收集个人信息、强制、频繁、过度索取权限、强制用户使用定向推送功能等。（[查看更多](#)）

Beijing Communication Administration Removes 16 APPs that Infringes Users' Rights and Interests

On 21 March 2022, Beijing Communication Administration made a notice of the removal of 16 APPs that infringes users' rights and interests. According to the notice, the main problems of the removed APPs include illegal collection of personal information, forced, frequent, excessive requests for permission, forced users to use directional push function, etc. ([More](#))

东方航空：旅客名单属于受法律保护的隐私信息

2022年3月25日，据新华社报道，在3月25日的“3·21”东航MU5735航空器飞行事故国家应急处置指挥部第五场新闻发布会上，东航集团宣传部部长刘晓东回应网上“尚未看到航班旅客的名单和相关信息”的讨论称，所有航班的旅客名单都属于受法律保护的隐私信息，不属于主动公开的范畴。目前，东航已经向调查组提供了完整的旅客名单，并在事发后24小时内与所有旅客的家属取得联系。（[查看更多](#)）

Eastern Airlines Announces that the Passengers Name Lists are Privacy Information Protected by Law

On 25 March 2022, according to the report of Xinhua News, during the fifth press conference held by the National Emergency Response Headquarters of the "3.21" China Eastern Airlines MU5735 aircraft flight accident, LIU Xiaodong, head of the Publicity Department of China Eastern Airlines Group, responded to the discussion that "the list and relevant information of flight passengers have not been seen" on the Internet, which was that the passengers' name lists of all flights are private information protected by law and are beyond the scope of active disclosure. At present, China Eastern Airlines provided the investigation team with a complete passenger list and contacted the families of all passengers within 24 hours after the incident. ([More](#))

欧盟发布《网络安全条例》提案

2022年3月22日，欧盟委员会发布了在欧盟内共同的网络安全和信息安全措施提案，以实施横跨欧盟中所有机构、团体、办公室和代理机构共同的网络安全和信息安全措施。在全球范围内的恶意网络活动日益活跃的背景下，提案旨在增强欧盟各机构抵御网络威胁和事件的恢复能力和应对能力，确保欧盟公共行政部门的灵活性和安全性。拟议的网络安全条例将建立起网络安全领域的治理、风险管理和控制的框架，建立欧盟机构间的网络安全委员会，以提高网络安全能力。条例还规定了定期的网络成熟度评估，促进建立一个清朗的网络空间。条例延长了欧盟

各机构团队（CERT-EU）的任期，使它们成为威胁情报、信息交换和事件处理的协调中心、中央咨询机构和服务提供商。（[查看更多](#)）

EU Releases the Proposal of the Regulations of Cybersecurity

On 22 March 2022, the European Commission proposed new rules to establish common cybersecurity and information security measures across the EU institutions, bodies, offices, and agencies. The proposal aims to bolster their resilience and response capacities against cyber threats and incidents, as well as to ensure a resilient, secure EU public administration, amidst rising malicious cyber activities in the global landscape. The proposed Cybersecurity Regulation will put in place a framework for governance, risk management, and control in the cybersecurity area. It will lead to the creation of a new inter-institutional Cybersecurity Board, boost cybersecurity capabilities, and stimulate regular maturity assessments and better cyber-hygiene. It will also extend the mandate of the Computer Emergency Response Team for the EU institutions, bodies, offices, and agencies (CERT-EU), as a threat intelligence, information exchange, and incident response coordination hub, a central advisory body, and a service provider. ([More](#))

美国犹他州通过消费者隐私法案

2022年3月24日，美国犹他州政府签署通过了参议院法案227号：消费者隐私法案。法案适用于以下主体：（1）在犹他州控制或开展业务的主体；或控制或开展针对犹他州居民消费者的产品或服务的生产的主体。（2）年收入超过2500万美元的主体；（3）在一年内控制或处理10万或以上消费者个人数据的主体；或通过销售个人数据并控制或处理25000以上消费者的个人数据所获得的收入占实体总收入50%以上的主体。此外，法案规定了消费者作为数据主体的权利，如访问、更正、删除的权利，以及有权拒绝个人数据被收集并用于定向广告推送和个人数据销售。（[查看更多](#)）

Utah Governor Signs *Utah Consumer Privacy Act*

On 24 March 2022, The Utah State Governor signed the Senate Bill ('SB') 227 for the Consumer Privacy Act ('UCPA'), thereby enacting the legislation. SB 227 would apply to the following aspects: (1) any controller or processor who conducts businesses in Utah; or any controller or processor who produces a product or service that is targeted to consumers who are Utah residents. (2) the Act applies to ones who have annual revenue of \$25 million or more; and (3) the Act also applies to ones who, either during a calendar year, control or processes personal data of 100,000 or more consumers; or ones who derive over 50% of the entity's gross revenue from the sale of personal data and controls or process personal data of 25,000 or more consumers. Moreover, SB 277 would provide consumers with data subject rights, such as the right of access, rectification, deletion, and the right to opt-out of the collection and use of personal data for targeted advertising and the sale of personal data. ([More](#))

欧洲理事会和欧洲议会就《数字市场法》达成一致

2022年3月25日，欧洲理事会和欧洲议会就《数字市场法》（DMA）达成了一项临时的政治协议，旨在使数字行业更公平、更具竞争力，目前，在完成最终的技术性工作后，DMA可能在未来

几天内定稿。DMA为大型在线平台定义了明确的规则。它的目的是确保作为大量用户“看门人”的大型在线平台不会滥用其地位，进而损害希望使用此类平台的企业利益。（[查看更多](#)）

The European Council and the European Parliament Reach an Agreement on Digital Markets Act (DMA)

On 25th March 2022, the European Council and the European Parliament reached a provisional political agreement on the Digital Markets Act (DMA), which aims to make the digital sector fairer and more competitive. After finishing final technical work, DMA, may, possibly finalize the draft in the coming days. The DMA defines clear rules for large online platforms. It aims to ensure that no large online platform that acts as a ‘gatekeeper’ for a large number of users abuses its position to the detriment of companies wishing to access such users. ([More](#))

美国和欧盟就数据传输达成重要协议

2022年3月25日，美国和欧盟就新的“跨大西洋数据隐私框架”达成协议，这一新的框架将会促进跨大西洋的数据流动，解决欧盟法院在推翻欧盟-美国隐私保护框架下的委员会充分性决定时所提出的担忧，并重建从欧盟向美国传输个人数据的重要法律框架。美国已承诺实施新的保障措施，以确保美国所开展的通信情报活动对于既定的国家安全目标时是必要的，并与之相称的，这一承诺保护了欧盟个人数据的隐私性，并且当欧盟的个人认为自己被确定为非法通信情报活动的目标的话，可以寻求相应的救济。（[查看更多](#)）

The United States and the European Union Reach a New Agreement on Data Transfer

On 25 March 2022, the United States and the European Commission have reached an agreement on new Trans-Atlantic Data Privacy Framework, which will foster trans-Atlantic data flows and reestablish an important legal mechanism for the transfers between EU personal data and to the United States. The United States has committed to implement new safeguards to ensure that signals intelligence activities are necessary and proportionate in the pursuit of defined national security objectives, which will ensure the privacy of EU personal data and create a new mechanism for EU individuals to seek redress if they believe they are unlawfully targeted by signals intelligence activities. ([More](#))

美国参议员提出一项法案，建议通过实时监控处置以加强网络安全

2022年3月22日，美国两名参议员提出了一项通过持续性的诊断和缓解以推进网络安全的法案，该法案将革新并增强联邦机构的网络安全，并向州和地方政府提供额外的网络防御资源。此前，国土安全部的网络安全和基础设施安全局开展了“持续性的诊断和缓解”项目，目的是对联邦机构的网络进行实时、持续的监控。参议员提出的这一法案将使该项目永久化，并建立试点项目，以提高该项目的能力，帮助联邦各州和地方政府加强网络安全。（[查看更多](#)）

U.S. Senators Introduce a New Bill to Strengthen Cybersecurity through Real-time Monitoring

On 23 March 2022, two U.S. Senators introduced the bipartisan *Advancing Cybersecurity Through Continuous Diagnostics and Mitigation Act*, which would update and improve federal agencies' cybersecurity, and make additional cyber defense resources available to state and local governments. The Continuous Diagnostics and Mitigation ("CDM") Program, which is run through the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency, is meant to provide a suite of cyber capabilities to provide real-time, continuous monitoring of the networks of federal agencies. The Senators' bill would make the program permanent and establish a pilot program to extend the program's capabilities to help state and local governments strengthen their cybersecurity. ([More](#))

法国数据保护执法机关（CNIL）发布数据保护官指引

2022年3月15日，法国数据保护执法机关发布了一项有关数据保护官（DPO）的指引，囊括了DPO的相关知识以及帮助组织指定并支持DPO工作的最佳实践。该指引包括了DPO的角色，DPO的指定，DPO的职能履行，以及CNIL如何支持DPO等，旨在清晰地说明如何确保DPO能够独立、高效、不发生任何利益冲突地执行任务。（[查看更多](#)）

The CNIL Publishes a Guide for DPOs

On 15 March 2022, the National Commission on Informatics and Liberty of French ("CNIL") published a guide for data protection officers ("DPO") that combines useful knowledge and best practices to help organizations in appointing and supporting DPOs. The guide includes the role of DPO, the designating of DPO, performing the function of DPO, how CNIL supports DPO, etc., aiming to provide clear information on how to ensure that the DPO can carry out their tasks independently, without any conflict of interest and with real efficiency for the organization. ([More](#))

知识产权 Intellectual Property

国家知识产权局：关于专利侵权纠纷行政裁决案件中区块链电子证据效力的批复

3月18日，国家知识产权局对浙江省知识产权局提出的《关于专利行政裁决案件中区块链电子证据效力的请示》进行了批复。批复指出，在行政裁决中，如有当事人提交区块链等相关电子证据，可参照《专利侵权纠纷行政裁决办案指南》以及《最高人民法院关于互联网法院审理案件若干问题的规定》等司法解释的相关规定进行认定。

来源：国家知识产权局

CNIPA issued the "Reply on the Validity of Blockchain Electronic Evidence in Administrative Rulings on Patent Infringement Disputes"

On March 18, 2022, the China National Intellectual Property Administration (CNIPA) issued the "Reply on the Validity of Blockchain Electronic Evidence in Administrative Rulings on Patent Infringement Disputes" ("Reply"). According to the Reply, if a party submits blockchain or other relevant electronic evidence in administrative rulings, such evidence can be identified by the relevant pro-

visions of the “Guidelines for Handling Administrative Rulings on Patent Infringement Disputes” and the “Provisions of the Supreme People's Court on Several Issues Concerning the Hearing of Cases by Internet Courts” and other judicial interpretations.

Source: The China National Intellectual Property Administration

“葵花宝典”商标案再审宣判，最高院：商品化权益受保护

近日，最高人民法院对上海游奇网络科技有限公司（下称游奇公司）与国家知识产权局、完美世界控股集团有限公司（下称完美世界公司）商标权无效宣告请求行政纠纷一案做出再审判决。

2015年，商标评审委员会做出第17732号裁定支持完美世界公司对诉争商标的无效宣告请求，肯定了金庸先生、完美世界对“葵花宝典”名称享有在先的“商品化权”。后一审、二审法院判决均否定了该裁定。最高院经审理，撤销一审、二审判决，对第17732号裁定予以维持。

最高院肯定了商品化权益受法律保护，认为《商标授权确权司法解释》将符合特定条件的“作品名称、作品中的角色名称等”纳入“在先权利”给予保护，并不属于在现有法律体系之外创设新的权益。更重要的是，将《商标授权确权司法解释》第22条第2款中的对象从作品名称、作品中的角色名称，扩大至作品中的其他特有名称。作为全国第一案，这一认定和法律解释，拓宽了作品的保护范围，扩大了作品的商业利益，并且对恶意注册商标予以有效打击，意义重大。

来源：最高人民法院

Retrial judgment of the "Kuihua Baodian" trademark case was issued, the Supreme People's Court: Commercialization rights shall be protected

Recently, the Supreme People's Court issued the retrial judgment on case between Shanghai Youqi Network Co., Ltd. and the China National Intellectual Property Administration and Perfect World Holdings Group Co., Ltd. ("Perfect World") over the invalidation request of the trademark. In 2015, the Trademark Review and Adjudication Board made Ruling No. 17732 ("Ruling"), which supported the request to declare the trademark invalid and affirmed that Mr. Jin Yong and Perfect World enjoyed the prior "commercialized rights" of "Kuihua Baodian". The courts of first instance and second instance rejected the Ruling. However, the Supreme People's Court revoked the two judgments and upheld Ruling.

The Supreme People's Court affirmed that commercialized rights shall be protected, and held that the "Judicial Interpretation of Trademark Authorization" ("Interpretation") included "the names of works and roles and others" that satisfy specific conditions into the "prior rights" for protection, which did not create new rights beyond the existing legal system. More importantly, the object in the Interpretation is expanded from the name of works and roles to other unique names in works.

Source: The Supreme People's Court

最高院提审“金银花”商标案，中止原判决执行

3月24日，最高人民法院裁定对上海碧丽化妆品有限公司（下称碧丽公司）与江苏苏州诗妍生物日化有限公司（下称诗妍公司）、长丰润发商贸公司侵害商标权纠纷一案进行提审，再审期间中止原判决的执行。

此前，“金银花”商标权人碧丽公司将诗妍公司起诉至法院，一审、二审法院均认定被告构成侵权，二审法院判决被告赔偿12万元。此外，据报道，全国有上百家花露水企业因生产“金银花”花露水遭碧丽公司起诉，总索赔金额高达上千万元，且已判案例几乎都以被告败诉并赔偿告终。

来源：最高人民法院

The Supreme People's Court issue a writ of certiorari for the trademark case of “Gold and Silver Flower” to retrial

On March 24, 2022, the Supreme People's Court decided to bring the case of “Gold and Silver Flower” to retrial and suspended the execution of the original judgment.

Before that, the courts of first instance and second instance both held that the defendant constituted trademark infringement, even though the defendant claimed that gold and silver flower is but the generic name of the elements of the floral water products, and the court of second instance ruled the defendant to pay damages of RMB 120,000. In addition, it is reported that there are hundreds of floral water enterprises have been sued by the plaintiff for producing "Gold and Silver Flower" floral water, with the total amount of damages for tens of millions of RMB, and almost all the case ended up with defendants' paying damages.

Source: The Supreme People's Court

虎牙直播《琅琊榜》，法院认定构成帮助侵权判赔23万元

3月22日，北京知识产权法院公开北京爱奇艺科技有限公司（下称爱奇艺公司）与广州虎牙信息科技有限公司（下称虎牙公司）不正当竞争纠纷二审判决书，判决书显示，二审维持原判，此前一审法院判决虎牙公司构成帮助侵权，赔偿爱奇艺公司经济损失和合理开支共计23万元。

在认定平台是否需要负侵权责任时，二审法院认为，首先，涉案作品位于涉案平台的热门分类“一起看”频道，从标题上看，可知其中存在大量的影视作品，具有侵权可能性，同时，涉案主播提供的是专业制作且内容完整的影视作品，按常理普通网络用户享有权利的可能性较低；第二，虎牙公司对“一起看”频道进行了特定分类；第三，涉案直播间位于频道首页，处于可被明显感知的位置，且涉案直播间人气量最高可达50余万；第四，涉案网帖标题上明确载明了涉案作品字样，结合其知名度，虎牙公司很容易发现该直播间中含有侵权可能性较高的作品；第五，虎牙公司就主播直播所得分成比例较高。综上，虎牙公司对涉案网络用户利用涉案直播间侵害爱奇艺公司著作权的行为构成应知，应承担帮助侵权责任。

来源：北京知识产权法院

The court ruled that Huya's livestreaming of TV series constituted assisting infringement and awarded damages of RMB 230,000

On March 22, 2022, the Beijing Intellectual Property Court issued the judgment of the unfair competition dispute between IQiyi Technology Co., Ltd. ("IQiyi") and Huya Information Technology Co., Ltd.

("Huya"). The court upheld the original judgment, which ordered Huya to pay damages of RMB 230,000.

When determining whether the platform shall be liable for copyright infringement, the court of second instance held the following: firstly, the works were located in the "Watch Together" channel which displayed a lot of movies and TV programs, with the possibility of infringement. Moreover, the works provided by the hosts were professionally made and complete, which were not likely for ordinary internet users to be entitled to the rights; secondly, Huya made a specific classification of the channel; thirdly, the live studio was located on the front page of the channel, where it could be easily seen, and the studio had up to 500,000 fans; fourthly, the title of the online post clearly stated the words of the work, and combined with its popularity, Huya could easily find that there were works with a high possibility of infringement in the studio; fifthly, Huya obtained a high percentage of income from the livestreaming. In conclusion, Huya shall have known the infringement of IQiyi's copyright, and shall bear the liability for assisting infringement.

Source: Beijing Intellectual Property Court

“巴赫厨具”对“苏泊尔”进行商业诋毁，法院判赔300万元

浙江省高级人民法院对浙江苏泊尔股份有限公司（下称苏泊尔公司）与浙江巴赫厨具有限公司（下称巴赫厨具）、浙江中康厨具有限公司商业诋毁纠纷一案做出二审裁判，维持一审法院关于责令巴赫厨具刊登声明并消除影响、赔偿原告经济损失及合理开支共计300万元的判决，还支持了原告关于改判巴赫厨具立即停止传播、编造虚假信息或误导性信息的上诉请求。

二审法院认为，判定某一行为是否构成商业诋毁，其标准是该行为是否属于捏造、散布虚伪事实，对竞争对手的商业信誉或商品声誉造成了损害。而虚伪事实既包括无中生有的编造，对真实情况的恶意歪曲，也包括不公正、不正确、不全面地陈述客观事实的行为。本案中巴赫公司将未定论的状态作为已经定论的事实来进行宣传散布，在没有相关证据支持的情况下，宣称苏泊尔公司模仿其专利，误导公众对苏泊尔公司产品品质产生误解，造成苏泊尔公司商誉贬损，超出正当维权范畴，属于捏造、散布虚伪事实。

来源：浙江省高级人民法院

The court ordered Bahe to pay damages of RMB 3 million for commercial defamation of malicious dissemination of Supor's imitation patents without evidence

Zhejiang Higher People's Court made the judgment of second instance in the commercial defamation dispute between Supor Company ("Supor") and Bahe Kitchenware Company ("Bahe") and Zhongkang Kitchenware Company. The court upheld the original judgment, which ordered Bahe to publish statements to eliminate the adverse effects and pay damages of RMB 3 million, and also supported the appeal request of ordering Bahe to stop disseminating and fabricating false or misleading information.

According to the court of second instance, the standard for determining whether a behavior constitutes commercial defamation is whether the behavior constitutes fabrication and dissemination of false facts, causing damage to the competitor's business reputation or product reputation. False facts include fabrication made up out of thin air, malicious distortion of true situations, and also the act of unfairly, incorrectly or incomplete statement of objective facts.

In this case, Bach propagated the inconclusive state as the conclusive facts. Without the support of relevant evidence, it claimed that Supor imitated its patent and misled the public to misunderstand the quality of Supor's products, causing the degradation of Supor's business reputation, which is beyond the scope of legitimate rights protection, and thus constitutes fabricating, spreading false facts.

Source: Zhejiang Higher People's Court

美国专利商标局（USPTO）发布《第三版知识产权和美国经济报告》

2022年3月17日，美国专利商标局（USPTO）发布《第三版知识产权和美国经济报告》，该报告更新了截止2019年的数据，重点研究知识产权密集型产业与美国产出、就业和收入等经济指标的持续关系。

据报告显示，2019年，知识产权密集型产业为美国创造了约7.76万亿美元的生产总值，占其GDP的41%，共提供6300万个就业岗位，直接支持就业数量占美国岗位总量33%，间接支持就业数量占岗位总量11%。其中商标密集型产业对国民产出和就业的贡献最大（提供就业数量占知识产权密集型产业全部就业的90%），其次是外观设计专利和发明专利密集型产业，版权密集型产业贡献较小。收入方面，知识产权密集型产业员工收入比其他产业员工高60%。

来源：美国专利商标局

USPTO issued “The Third Edition of the Report on Intellectual Property and U.S. Economy”

On March 17, 2022, USPTO issued “The Third Edition of the Report on Intellectual Property and U.S. Economy”, which updates data through 2019 and focuses on the ongoing relationship between IP intensive industries and U.S. economic indicators such as output, employment and income.

According to the report, in 2019, IP intensive industries generated about USD 7.76 trillion, accounting for 41 percent of GDP in the US, and provided 63 million jobs, directly supporting 33 percent and indirectly supporting 11 percent of the total jobs in the US. Among them, trademark intensive industries contributed the most to output and employment (the number of jobs provided 90% by it accounted for 90% of all jobs in IP intensive industries), followed by design patent and invention patent intensive industries, and copyright intensive industries contributed less. In terms of income, employees in IP intensive industries earn 60% more than those in other industries.

Source: USPTO

美国说唱歌手利尔·亚蒂起诉Opulus商标侵权

音乐公司Ditto Music的首席执行官李·帕森斯（Lee Parsons）创立了一个名为“Opulous”的平台。这个去中心化的融资平台旨在为众多有趣的粉丝资助项目提供支持。搭建在Algor软件和区块链技术之上的Opulous与名为“Republic”的非同质化代币（NFT）平台合作，让音乐爱好者通过Security NFT（S-NFT）对艺术家的音乐版权进行投资。

去年6月，Opulous发布公告称它正在与加密平台Binance合作，旨在创建和销售说唱歌手利尔·亚蒂（Lil Yachty）和凯尔（Kyle）等几位艺术家的独家NFT。随后利尔·亚蒂在美国正式起诉Opulous未经任何形式的许可使用他的名字和肖像作为发布产品的一部分的行为，侵犯其商标权。Opulous回应称其对利尔·亚蒂姓名和肖像的使用均由利尔·亚蒂及其代表授权。本案将围绕NFT领域对知识产权的影响展开。

来源：[中国保护知识产权网](#)

American rapper Lil Yati sued Opulus for trademark infringement

Opulous, a decentralized financing platform which is designed to support numerous interesting fan funded projects. Built on Algor software and blockchain, Opulous partnered with an NFT platform named Republic to allow music lovers to invest in musical copyrights to artists via Security NFT ("S-NFT").

Last June, Opulous announced that it was partnering with Binance to create and sell exclusive NFTs for several artists including Lil Yachty and Kyle. Then Lil Yachty filed a lawsuit against Opulous for trademark infringement for using his name and portraits as part of the published products without permission. Opulous responded that it was authorized by Lil Yachty and his representatives. This case will center on the impact of the NFT on intellectual property rights.

Source: [Intellectual Property Protection in China](#)

立方律师事务所编写《立方观评》的目的仅为帮助客户及时了解中国法律及实务的最新动态和发展，上述有关信息不应被看作是特定事务的法律意见或法律依据，上述内容仅供参考。

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