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立方要闻周报

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被告拒绝提交实际销量账簿及合同，法院全额判赔280万元

The defendant refused to submit the actual sales account books and contracts, and the court supported the full claimed damages of RMB 2,8 million by the plaintiff

“优选锯”侵害技术秘密纠纷案二审宣判

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赛百味起诉印度税务部门

Subway sues Indian Tax Department to Court over GST on Intellectual Property Right

欧洲议会有关委员会通过限制互联网巨头不正当竞争的《数字市场法》建议案

EU Parliament's key Committee passes Proposal for the Digital Market Act



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立方竞争法周报 Weekly Competition Law News By Lifang & Partners

《国务院关于开展营商环境创新试点工作的意见》发布

The Opinions of the State Council on Carrying out Innovational and Pilot Work of Business Environment Formally Issued

广州知产法院集中宣判一批不服反垄断行政处罚诉讼案件

Guangdong Intellectual Property Court Dismisses 13 Litigations against Monopolistic Penalty Decisions

FTC就Nvidia400亿美元收购Arm交易提起诉讼

FTC Sues to Block USD 40 Billion Semiconductor Chip Merger

欧盟委员会针对外汇现货交易市场卡特尔行为开出3.44亿欧元罚单

EU Commission Fines UBS, Barclays, RBS, HSBC and Credit Suisse EURO 344 Million for Participating in a Foreign Exchange Spot Trading Cartel

英国反垄断监管机构强制要求Facebook出售Giphy

CMA Directs Facebook to Sell Giphy

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

工信部印发《“十四五”大数据产业规划》

MIIT Issued the "14th Five-Year Plan" for the Big Data Industry

全国金融标准化技术委员会发布《金融数据安全 数据安全评估规范（征求意见稿）》

CFSTC Issued the *Financial Data Security Data Security Assessment Specification (Draft for Comments)*

中国信通院发布《2020年网络安全威胁信息研究报告（2021年）》

CAICT Released *Cybersecurity Threat Information Research Report 2020 (2021)*

海淀区检察院发布《网络安全保护检察白皮书（2016-2021）》

Haidian District Procuratorate Releases White Book of Cyber Security Protection Procuratorate (2016-2021)



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辽宁首例个人信息保护民事公益诉讼案件宣判

Liaoning's First Public Interest Litigation Case on Personal Information Protection Declared

北京银行因发生重要信息系统突发事件未向监管部门报告，被罚40万

Bank of Beijing Fined ¥400,000 for Failing to Report an Important Information System Emergency

国家网信办依法约谈处罚豆瓣网

CAC Talked and Fined Douban in Accordance with Law

滴滴：即日起启动美股退市工作，并启动在香港上市的准备工作

DiDi: To Launch the US delisting and preparations for Hong Kong listing

欧盟委员会达成数据治理法案协议

EU Parliament and Council of the EU Reach Agreement on Data Governance Act

ICO宣布拟对 Clearview AI罚款超过1700万英镑

UK: ICO announces provisional intent to fine Clearview AI over £17 million

德国电信数据隐私法生效

Germany: TTDSG Enters into Force

法国数据保护机构发布在线多要素认证使用指南

France: CNIL Publishes Guidance for Use of Multi-Factor Authentication Online

知识产权 Intellectual Property

国知局发布《中国商标法律保护和执法指南》

2021年11月23日，中国国家知识产权局局长申长雨与英国知识产权局局长蒂姆·摩斯以视频方式举行会见。会后，两局共同发布了中英两国知识产权保护指南。中国国家知识产权局编译的《中国商标法律保护和执法指南》详细介绍了中国的商标保护制度，涵盖注册申请、审查、异议、侵权与救济等全流程内容，并提供网上检索、网上申请、商标保护策略性建议等实用性信息。英方编译的《英国知识产权保护指南》涵盖版权、专利、商标等主要知识产权领域，并介绍了脱欧对英国知识产权制度的影响。

来源：国家知识产权局

The National Intellectual Property Administration issues *The Guidance for the Legal Protection and Enforcement of Trademarks of China*

On November 23, 2021, the directors of the National Intellectual Property Administration of China and the UK held a video meeting. After the meeting, both administrations issued guidance on the protection of intellectual property rights. The Guidance of China detailly introduces China's trademark protection system, covering the entire process of registration application, review, opposition, infringement, and relief, and provides online search, online application, trademark Protect practical information. The Guidance of UK covers major intellectual property areas such as copyrights, patents, and trademarks, and introduces the impact of exiting from the EU on the UK's intellectual property system.

Source: CNIPA

最高法采取“三步法”认定标的合同系虚假通谋

就江苏中关村科技产业园控股集团有限公司（下称“中关村公司”）诉斯太尔动力（江苏）投资有限公司（下称“斯太尔公司”）技术秘密许可使用合同纠纷案，最高人民法院作出二审判决，维持了江苏省高级人民法院做出的一审判决：斯太尔公司于该判决生效之日起十日内返还中关村公司2亿元；中关村公司于该判决生效之日起十日内返还斯太尔公司《技术许可协议三款非道路柴油发动机EM12，M14UI及M16UI》交付物清单所载物品。

法院审理认为，首先，结合涉案证据及原被告签订合同后的会议记录内容来看，各方并无将涉案技术实施效果与资金监管相关联的安排，被告对涉案2亿元技术许可费并无支配权，且协议中技术许可与回购事项的约定并不相符；其次，在案证据可以证明原被告就涉案技术许可协议存在隐藏意思表示，原被告之间签订技术许可协议另有其他真实意图；最后，结合在案证据，原告与被告均没有签署技术许可协议的真实意思表示，双方所隐藏的拟获得政府投资奖励的真实意图并不构成另一种隐藏的民事法律行为，本案既不存在以隐藏的民事法律行为认定行为效力的问题，也不存在中关村公司所在地政府向被告子公司兑现投资奖励的事实基础。故涉案技术

许可合同构成以虚假意思表示实施的民事法律行为，应予以无效。被告应当返还原告支付的2亿元款项。

立方简评：该案中，原告中关村公司主张其与被告签订的涉案技术许可协议系第三人斯太尔股份公司为了提前获取当地政府2亿元投资奖励而签订，双方并无技术许可的意思表示。最高人民法院据此提出了“三步法”：即根据主给付义务的真实情况，当事人订立合同前后的情况（特别是双方缔约背景）和履约行为等相关事实以及前两种情形是否能够排除合理怀疑进行等三步进行判定。此方法对于签订特定类型合同是否存在虚假意思表示的认定具有普遍的指导意义。

来源：知产宝

The Supreme People's Court of China proposed a "three-step method" to determine whether the contract is signed with fake intention

Recently, the Supreme People's Court of China made a second-instance judgment on a dispute over a trade secret license contract. The plaintiff claimed that the contract was signed with fake intention of both parties. The court proposed a "three-step method": based on the true situation of the main payment obligation, the conditions before and after the parties signing the contract (especially the background of both parties), the performance of the contract and other relevant facts, and whether the first two situations can be carried out without reasonable doubt.

Based on this method, the court found there is a hidden true intention behind the trade secret license contract. Therefore, the trade secret license contract is signed with fake intention, and shall be invalidated. The defendant shall return the RMB 200 million paid by the plaintiff.

Lifang & Partners Comments:

It is usually difficult to identify whether the contract was signed with fake intention, which will lead to the invalidity of the contract, especially that the contract was performed with formality, and one of the parties of the contract claimed the invalidity of the contract. To solve this issue, SPC proposed the "three-step method", which can be applicable across China for the same type of cases, thus making a more explicit criteria for recognizing the invalidity of contract based on fake intention.

Source: IPHOUSE

《拳皇》游戏及角色名称构成知名商品名称，获反不正当竞争法保护

近日，北京知识产权法院对乐玩新大地（北京）科技有限公司诉合肥鼎兴影视制作有限公司侵害著作权及不正当竞争纠纷案作出二审判决，维持了判令被告合肥鼎兴影视制作有限公司停止侵权、消除影响并赔偿原告经济损失75万元及合理开支104989.45元的一审判决。

法院认为，涉案《拳皇》游戏中的角色形象属于作品，受我国著作权法保护。被告未经许可，在《皇拳2017之京归来》电影中将原告享有著作权的角色形象采用近乎“原样照搬”或略有变化式的使用，并通过优酷网对电影进行传播，侵犯了原告享有的摄制权与信息网络传播权。涉案游戏名称与游戏角色名称在相关公众中具有较高的知名度，享有反不正当竞争法保护的权益，被告在电影的预告片中直接使用与原告游戏角色名称相近的角色名称，并分别使用包含

《拳皇》游戏名称的《拳皇2017之京归来》、《拳皇2017之草稚京归来》作为电影名称、预告片名称，具有明显的混淆故意，足以导致相关公众产生混淆，误导公众观看其电影并从中牟取不正当利益。违反《反不正当竞争法》第六条第一项的规定，构成不正当竞争行为。

立方简评：游戏IP影视化是时下热潮，未经IP权利人许可进行改编行为的，通常会侵犯权利人对游戏角色形象享有的著作权。一直以来，网络游戏名称、角色名称等由于表达过于简单、缺乏独创性等因素难以构成著作权法保护的作品，随着《反不正当竞争法》的不断完善，游戏名称、角色名称等网络游戏构成元素，符合条件的，可能构成知名商品或服务名称，他人未经许可进行使用并可能导致混淆的，可能构成不正当竞争行为，须承担侵权责任。

来源：知产宝

The game and character names of "The King of Fighters" constitute well-known product names, and protected by the Anti-Unfair Competition Law

Recently, the Beijing Intellectual Property Court made a second-instance judgment on the infringement of the copyright of the "King of Fighters" game and unfair competition disputes, which upheld the first-instance judgment, ordering the defendant to stop the infringement, eliminate the impact, and compensate the plaintiff for economic losses of RMB 750,000 and reasonable expenses of RMB 104,989.45.

The court held that, the defendant used the plaintiff's copyrighted character image in the film and spread the film through the Internet without permission, infringing the plaintiff's copyright. The names of "The King of Fighters" and the characters have a high reputation, and the defendant used characters' name similar to the name of the plaintiff's game characters in the movie trailer, and used "King of Fighters" in the movie name and trailer name, which had obvious intention of confusing the public, and will cause confusion, and obtain illegitimate benefits from it. The court held that such acts of the defendant constitutes act of unfair competition.

Lifang & Partners Comments:

The adaptation of game IP into film and television is very popular. Adaptation without the permission of the IP owners usually infringes copyright of the game character image. However, the copyright law could not protect online game names, character names, and etc., as they can hardly works that can be protected by copyright law, due to limited expression and lack of originality. However, under context of Anti- Unfair Competition Law, game names and character names and other elements in the online games may constitute well-known names for goods or services. If the unauthorized use by others may cause confusion, it could constitute an act of unfair competition, and shall bear tort liability.

Source: IPHOUSE

被告拒绝提交实际销量账簿及合同，法院全额判赔280万元

近日，北京市高级人民法院就圣奥科技股份有限公司（下称“圣奥公司”）诉北京远明国景伟业家具有限公司（下称“远明国景伟业公司”）、迪欧家具集团有限公司（下称“迪欧公司”）侵害外观设计专利权纠纷一案二审判决对一审判决予以维持。此前，北京知识产权法院就该案一审判决：迪欧公司立即停止制造、销售侵权产品，并从经销商处回收并销毁被控侵权产品；远明国景伟业公司立即停止销售侵权产品；迪欧公司赔偿圣奥公司经济损失二百八十万

元。远明国景伟业公司在五十万元内承担连带赔偿责任；迪欧公司赔偿圣奥公司合理开支四万九千七百八十元，远明国景伟业公司在在一万四千六百一十八元限度内承担连带赔偿责任。

法院认为，二被告未经许可，使用与原告外观设计专利相近似的外观设计，生产、制造、销售侵权产品，被告主张的现有技术抗辩与合法来源均不成立的情况下，二被告共同侵害了原告的外观设计专利权。在确定侵害损害赔偿方面，真实销量情况仅由迪欧公司、远明国景伟业公司单方掌握的前提下，法庭已向其释明提交实际销量账簿及合同的必要性，二被告均不提交上述证据，如果以实施侵权行为人自己陈述自相矛盾为由而否定了权利人的举证，不符合诚信诉讼的原则。故法院最终以原告提交的被告侵权获利证据计算侵权损害赔偿金额。

来源：知产财经

The defendant refused to submit the actual sales account books and contracts, and the court supported the full claimed damages of RMB 2,8 million by the plaintiff

Recently, the Beijing Higher People's Court issued a second-instance judgment on a dispute over infringement of design patent rights, and the judgment upheld the first-instance judgment. Earlier, the Beijing Intellectual Property Court had decided in the first instance of the case: the defendants shall compensate the plaintiff for economic losses of RMB 2.8 million.

In this case, the two defendants jointly infringed the plaintiff's design patent. As the real sales data are only in the hand of the defendants, the court ordered the defendants to submit the actual sales account book and contract. But the two defendants refuse to submit. The court held that the amount of infringement damages shall be determined based on evidence submitted by the plaintiff, and fully support the claimed damages of RMB 2.8 million by the plaintiff.

Source: IP Economy

“优选锯”侵害技术秘密纠纷案二审宣判

优铠（上海）机械有限公司（下称“优铠公司”）诉李某某、上海路启机械有限公司（以下简称“路启公司”）等侵害技术秘密纠纷案，最高人民法院二审判决被告赔偿原告优铠公司500万元经济损失及100万元合理开支。

该案中，由于被诉侵权产品体积庞大无法运输，最高人民法院合议庭成员进行了现场勘验，根据比对结果，查明了技术事实，推翻了一审的鉴定结论，认定被诉侵权产品使用了涉案技术秘密。在涉及多种型号的被诉侵权产品，权利人已经尽力举证，且权利人调查被诉侵权产品的销量存在客观困难的情况下，二审合议庭根据权利人申请，调取了路启公司出口数据、进项和销项数据等相关证据，最终判决路启公司赔偿优铠公司500万元经济损失及100万元合理开支。

来源：中国审判

In a trade secret infringement case, Supreme Court of China extract financial information of the defendant to affirm the damages of RMB 5 million plus RMB 1 million reasonable expenses

In the case of the "Optimal Saw" infringement of trade secrets, the Supreme People's Court ruled in second instance that the defendant shall compensate the plaintiff Youkai Company for economic losses of RMB 5 million and reasonable expenses of RMB 1 million.

Due to the large size of the alleged infringing product that could not be transported, the collegiate panel of the Supreme People's Court conducted an on-site inspection, the results of the inspection overturned the appraisal conclusion of the first instance. The court determined that the accused infringing product used the plaintiff's trade secrets.

Since the plaintiff has exhausted for the evidences of infringement, the court extract financial information of the defendants from different government agencies, including defendant's export data, the financial information, and etc., and made the above decision.

Source: [China Trial](#)

泄露公司商业秘密造成损失1656余万元，三人被判刑并处罚金

河南省信阳市浉河区法院于2021年10月15日上午公开审理了被告人田某等侵犯商业秘密犯罪案件，该案中，信阳某新型材料有限公司与被告人韩某签订劳动合同，韩某负责公司的研发工作，并签订了保密协议。田某为获取信阳某公司的生产技术，经徐某介绍与韩某认识后，以工作职位和高薪利诱韩某。韩某利用工作便利，违反保密约定，分别向被告人田某、刘某邮箱发送涉信阳某公司商业秘密的文件，并协同二人进行研发。后田某安排刘某以该生产技术进行实用新型专利申请。同年12月底，韩某从信阳某公司离职，随后到安徽某公司工作。经司法鉴定认定：2017年10月28日-2021年1月31日期间，安徽某公司因侵权行为给权利人信阳某公司造成的销售利润损失金额为16561462.61元。

法院一审判决三被告人田某犯侵犯商业秘密罪，分别判处有期徒刑、缓刑并处罚金。

来源：河南省高级人民法院

Leaking the company's business secrets, three suspects were criminally sentenced and fined

The Xihe District Court of Xinyang City, Henan Province publicly closed a criminal case of infringement of trade secrets on October 15, 2021. The defendant was in charge of R & D of the victim, and sent confidential files of the victim to the other two defendants, and cooperated with the two to conduct research and development. According to Judicial appraisal, it was found that the loss of the victim was RMB 16,561,462.61. The court ruled that the three defendants guilty of infringement of commercial secrets were sentenced to fixed-term imprisonment, suspended sentence and criminally fined.

Source: [Higher People's Court of Henan Province](#)

赛百味起诉印度税务部门

近日，美国快餐连锁店赛百味将印度间接税部门告上法院，指控其在未发出任何通知之前强迫其缴纳差异性的商品和服务税。其提交的起诉状中称，印度税务部门已经就知识产权课税问题向公司高层发送了多张传票，该纠纷源于知识产权和特许权使用费的征税问题。

来源：www.latestlaws.com

Subway sues Indian Tax Department to Court over GST on Intellectual Property Right

Recently, American fast food chain Subway has sued the indirect tax department to court over allegedly forcing it to pay differential Goods and Services Tax (GST) on services before issuing any notices. In its writ petition filed in the High Court of Punjab and Haryana Subway Systems India said that the tax department had issued multiple summonses to top management over taxability of intellectual property rights.

Source: www.latestlaws.com

欧洲议会有关委员会通过限制互联网巨头不正当竞争的《数字市场法》建议案

近日，欧洲议会内部市场和消费者保护委员会通过了旨在限制国际互联网巨头不正当竞争行为的《数字市场法》建议案，这项建议案将市值超过800亿欧元，在欧洲年营业额超过80亿欧元的社交网络、搜索引擎、操作系统及电子商务运营商定性为“核心平台服务提供商”或“看门人”公司（gatekeeper），其中显然包括了谷歌、脸书、亚马逊等国际互联网巨头。建议案规定，这类公司在欧盟范围内不允许利用数据优势向用户投放指向性广告，除非获得用户明确许可。同时这类公司在欧盟范围内的同行业并购也将受到限制和监管，并购意向必须在事前获得欧盟委员会许可。如果这类公司有违反上述规定的行为，将被处以年营业额4%至20%的罚款。

欧洲议会全会计划在12月对《数字市场法》进行表决，如获通过将与欧盟各国政府展开进一步磋商，法案最终有望在明年上半年法国担任欧盟轮值主席国期间在欧洲落地实施。

来源：央视新闻

EU Parliament's key Committee passes Proposal for the Digital Market Act

Recently, the European Parliament's Internal Market and Consumer Protection Committee passed the "Digital Market Act" proposal aimed at restricting the unfair competition of international Internet giants. This proposal will have a market value of more than 80 billion euros and an annual turnover in Europe of more than 80 Social networks, search engines, operating systems, and e-commerce operators with billions of euros are classified as "core platform service providers" or "gatekeepers", which obviously include international Internet giants such as Google, Facebook, and Amazon. The proposal stipulates that such companies are not allowed to use data advantages to place targeted advertisements to users within the European Union unless they obtain explicit permission from users. At the same time, mergers, and acquisitions of such companies in the same industry within the EU will also be restricted and supervised, and the intention of mergers and acquisitions must be approved by the European Commis-

sion in advance. If such companies violate the above regulations, they will be fined 4% to 20% of their annual turnover.

The plenary session of the European Parliament plans to vote on the "Digital Market Law" in December. If it is passed, further consultations will be held with the governments of the European Union. The bill is expected to be implemented in Europe during the first half of next year during the French presidency of the European Union.

Source: CCTV.COM

立方竞争法周报 Weekly Competition Law News By Lifang & Partners

《国务院关于开展营商环境创新试点工作的意见》发布

2021年11月25日，《国务院关于开展营商环境创新试点工作的意见》正式发布。全文共包含十七条，其中在“维护公平竞争秩序”中着重强调加强和改进反垄断与反不正当竞争执法。清理规范涉企收费，健全遏制乱收费、乱摊派的长效机制，着力纠正各类中介垄断经营、强制服务等行为。（[查看更多](#)）

The Opinions of the State Council on Carrying out Innovational and Pilot Work of Business Environment Formally Issued

On November 25, 2021, the Opinions of the State Council on Carrying out Innovational and Pilot Work of Business Environment formally issued. The whole document contains 17 articles. In the Article of “protecting fair competition order”, it is specially mentioned that relevant authorities shall strengthen and improve the enforcement of antitrust, eliminate enterprise-related fees and rectify intermediary agencies’ monopolistic operation and mandatory services. ([More](#))

广州知产法院集中宣判一批不服反垄断行政处罚诉讼案件

近日，广州知产法院对广东13家混凝土企业提起的13起不服行政处罚决定纠纷案进行一审宣判。2020年6月1日，广东省市监局对具有竞争关系的19家企业，达成并实施横向垄断协议的行为分别作出行政处罚决定。其中13家企业不服该决定，向广州知产法院提起13起行政诉讼。广州知产法院经审理认为该行政处罚决定事实清楚，适用法律正确，符合法定程序，处理适当，驳回了相关请求。一审判决后，13家企业已提起上诉。（[查看更多](#)）

Guangdong Intellectual Property Court Dismisses 13 Litigations against Monopolistic Penalty Decisions

Recently, Guangzhou Intellectual Property Court issued its first instance judgements against 13 cases filed by 13 concrete companies who were fined by the Administration for Market Regulation for Guangdong Province on June 1, 2020 for reaching and implementing horizontal monopoly agreement. These 13 companies did not agree with the penalty decisions and filed administrative litigations before the court. Upon hearing, it was found by the court that the applications of law contained in the penalty

decisions were right and in consistent with judicial procedures. Therefore, the court dismissed all the claims, and these companies has appealed. ([More](#))

FTC就Nvidia400亿美元收购Arm交易提起诉讼

2021年12月2日，美国联邦贸易委员会（Federal Trade Commission，以下简称“FTC”）在其官网发布新闻称，其已就Nvidia400亿美元收购英国芯片设计供应商Arm的交易提起诉讼，目的在于阻止这一交易的进行。这一纵向并购交易被认为将会导致最大的芯片公司之一控制竞争对手研发竞争芯片赖以依靠的计算技术以及设计。FTC在起诉状中明确，合并后的公司有方法且有动机扼杀下一代创新技术。与此同时，FTC还披露，FTC已就这一交易与欧盟、英国、日本以及韩国的竞争机构展开了紧密合作。（[查看更多](#)）

FTC Sues to Block USD 40 Billion Semiconductor Chip Merger

On December 2, 2021, the Federal Trade Commission sued to block U.S. chip supplier Nvidia Corp.'s USD 40 billion acquisition of U.K. chip design provider Arm Ltd. The proposed vertical deal would give one of the largest chip companies control over the computing technology and designs that rival firms rely on to develop their own competing chips. The FTC's complaint alleged that the combined firm would have the means and incentive to stifle innovative next-generation technologies, including those used to run datacenters and driver-assistance systems in cars. Throughout the investigation, FTC staff has cooperated closely with staff of the competition agencies in the European Union, United Kingdom, Japan, and South Korea. ([More](#))

欧盟委员会针对外汇现货交易市场卡特尔行为开出3.44亿欧元罚单

2021年12月2日，欧盟委员会针对瑞银集团、英国巴克莱银行、苏格兰皇家银行、汇丰银行以及瑞信银行在外汇现货交易市场的卡特尔行为开出了3.44亿欧元（约合人民币24.8亿元）罚单。欧盟委员会经调查发现，一些代表被处罚银行且负责G10国家货币外汇现货交易的交易员相互交换敏感信息以及交易计划，并不时通过一个专业的网络聊天室协调其交易策略。值得注意的是，在本案中瑞银集团因主动披露了涉案的卡特尔行为而免于处罚。（[查看更多](#)）

EU Commission Fines UBS, Barclays, RBS, HSBC and Credit Suisse EURO 344 Million for Participating in a Foreign Exchange Spot Trading Cartel

On December 2, 2021, EU Commission adopted a decision imposing a total fine of EURO 261 million on the four banks that decided to settle the case, namely UBS, Barclays, RBS and HSBC. EU Commission has also fined Credit Suisse € 83 million under the ordinary procedure. EU Commission's investigation revealed that some traders in charge of the Forex spot trading of G10 currencies, acting on behalf of the fined banks, exchanged sensitive information and trading plans, and occasionally coordinated their trading strategies through an online professional chatroom called Sterling Lads. Under EU Commission's 2006 Leniency Notice, UBS received full immunity for revealing the existence of the cartels, thereby avoiding the fine. ([More](#))

英国反垄断监管机构强制要求Facebook出售Giphy

2021年11月30日，英国竞争与市场管理局（Competition and Markets Authority，以下简称“CMA”）发布消息称，Facebook公司（现Meta Platforms公司）收购社交媒体动画图像公司Giphy的交易将减少社交媒体平台之间的竞争。利用这次收购，Facebook可以通过拒绝或限制其他平台访问Giphy的GIF库来增加其原本已很强大的市场力量。因此CMA要求Facebook出售Giphy。（[查看更多](#)）

CMA Directs Facebook to Sell Giphy

On November 30, 2021, the Competition and Markets Authority (“CMA”) concluded that Facebook’s acquisition of Giphy would reduce competition between social media platforms and concluded that Facebook would be able to increase its already significant market power in relation to other social media platforms by denying or limiting other platforms’ access to Giphy GIFs. Therefore, CMA concluded that its competition concerns can only be addressed by Facebook selling Giphy in its entirety to an approved buyer. ([More](#))

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

工信部印发《“十四五”大数据产业规划》

2021年11月30日，工业和信息化部（简称“工信部”）印发了《“十四五”大数据产业规划》（简称《规划》），在延续“十三五”规划关于大数据产业定义和内涵的基础上，进一步强调了数据要素价值。该《规划》提出了六项重点任务，包括：加快培育数据要素市场；发挥大数据特性优势；夯实产业发展基础；构建稳定高效产业链；打造繁荣有序产业生态，以及筑牢数据安全保障防线。（[查看更多](#)）

MIIT Issued the "14th Five-Year Plan" for the Big Data Industry

On 30 November 2021, the Ministry of Industry and Information Technology (MIIT) issued the "14th Five-Year Plan" for the Big Data Industry" (the "Plan"), which further emphasizes the value of data elements on the basis of the definition and connotation of the Big Data Industry in the 13th Five-Year Plan. The Plan puts forward six key tasks, including: accelerating the cultivation of the data element market; making use of the advantages of big data characteristics; consolidating the foundation for industrial development; building a stable and efficient industrial chain; creating a prosperous and orderly industrial ecology; and building a firm line of defense for data security. ([More](#))

全国金融标准化技术委员会发布《金融数据安全 数据安全评估规范（征求意见稿）》

2021年12月3日，全国金融标准化技术委员会官网发布了中国人民银行起草的行业标准文件《金融数据安全 数据安全评估规范（征求意见稿）》（简称《规范》）并公开征求意见。该《规范》规定了金融数据安全评估触发条件、原则、参与方、内容、流程及方法，明确了数据安全

管理、数据安全保护、数据安全运维三个主要评估域及其安全评估主要内容和方法，明确适用于金融业机构开展金融数据安全评估使用，并为第三方安全评估机构等单位开展金融数据安全检查与评估工作提供参考。 ([查看更多](#))

CFSTC Issued the *Financial Data Security Data Security Assessment Specification (Draft for Comments)*

On 3 December 2021, China Financial Standardization Technical Committee (CFSTC) published a news release announcing the industry standard document *Financial Data Security Data Security Assessment Specification (Draft for Comments)* (hereinafter referred to as the "Specification") drafted by the People's Bank of China for public comments. The Specification stipulates the triggering conditions, principles, participants, contents, processes and methods for financial data security assessment, specifies the three main assessment domains of data security management, data security protection and data security operation and maintenance, as well as the main contents and methods of its security assessment, specifies data security assessment for financial industry institutions, and provides reference for third-party security assessment agencies and other units in conducting financial data security inspection and assessment. ([More](#))

中国信通院发布《2020年网络安全威胁信息研究报告（2021年）》

2021年12月3日，中国信息通信研究院安全研究所联合北京微步在线科技有限公司共同研究编制了《2020年网络安全威胁信息研究报告（2021年）》（简称《报告》）。《报告》从定义内涵、应用价值、标准化进展、政策和产业支撑等多个方面阐述了网络安全威胁信息的概念和发展现状。结合2020年全球网络安全威胁信息，从网络环境安全现状、常见网络攻击手法、受攻击行业和地域分布、国内较严重网络威胁及攻击事件等多维度系统性分析了2020年国内外网络安全形势。阶段性梳理了网络安全威胁信息在国内重点行业的典型应用案例。最后，围绕发展中存在的标准化落地不足、共享机制缺失、产业成熟度较低等诸多问题进行了探索性思考，结合产业现状提出了针对性的意见和建议。 ([查看更多](#))

CAICT Released *Cybersecurity Threat Information Research Report 2020 (2021)*

On December 3, 2021, China Academy of Information and Communication Technology (CAICT) and Threatbook Jointly released the *Cybersecurity Threat Information Research Report 2020 (2021)* (the "**Report**"). The Report elaborates on the concept and development status of cybersecurity threat information from various aspects such as definition connotation, application value, standardization progress, policy and industrial support. Combined with the global cyber security threat information in 2020, the report systematically analyses the domestic and international cyber security situation in 2020 from the current situation of cyber environment security, common cyber-attack techniques, the distribution of attacked industries and regions, and the serious domestic cyber threats and attacks. The report also sorts out the typical application cases of cyber security threat information in key industries in China in stages. Finally, exploratory thinking is conducted around many problems found in the development, such as the lack of implementation of standardization, the lack of sharing mechanism and the low maturity of the industry, and targeted opinions and suggestions are put forward in conjunction with the current situation of the industry. ([More](#))

海淀区检察院发布《网络安全保护检察白皮书（2016-2021）》

2021年12月2日，海淀区人民检察院发布《网络安全保护检察白皮书（2016-2021）》（简称《白皮书》），该《白皮书》首先从案件数量、所涉罪名和涉案人员角度介绍了网络科技犯罪案件总体情况，然后就电信网络诈骗、网络黄赌毒、网络侵犯公民个人信息犯罪、数字经济新业态伴生的窃骗犯罪、涉企数据安全犯罪和涉虚拟货币犯罪等六个具体领域分析了网络科技犯罪特点与趋势。为了应对网络科技犯罪带来的挑战，该报告创新性地提出网络科技检察“四十”工作模式，分别是“检察官+数据审查员”的办案模式、“跨界融合+数据合规”的治理模式、“定制普法+海检极客”的法宣模式和“实践积累+前沿研究”的育才模式。最后，该报告展望了网络科技情景下检察业务的转型与发展。（[查看更多](#)）

Haidian District Procuratorate Releases White Book of Cyber Security Protection Procuratorate (2016-2021)

On 2 December 2021, the Haidian District People's Procuratorate released the *White Book of Cyber Security Protection Procuratorate (2016-2021)* ("The White Book"), which first introduced the overall situation of cyber technology crime cases from the perspective of the number of cases, crimes involved and persons involved, and then analysed the characteristics and trends of cyber technology crimes in six specific areas, including telecommunications network fraud, cyber pornography, gambling and drugs, cyber crimes of personal information infringement, theft crimes arising from the new digital economy, crimes related to enterprise data security and crimes related to virtual currency. In order to address the challenges posed by cyber-technology crimes, The White Book innovatively proposes the "Four Plus" working model of cyber-technology prosecution, namely the "Prosecutor + Data Examiner" case-handling model, the "Cross-border Integration + Data Compliance" governance model, the "Customized Legal Teach + Prosecution Geeks" legal publicity model and the "Practice Accumulation + Cutting-Edge Research" talent cultivation model. At the end of white book it looks forward to the transformation and development of prosecution services in a cyber-technology scenario. ([More](#))

辽宁首例个人信息保护民事公益诉讼案件宣判

2021年12月1日，由沈阳市人民检察院依法提起的全省首例侵犯公民个人信息民事公益诉讼案件开庭审理并当庭宣判。2021年3月，沈阳市人民检察院接到案件线索，宁某等六人以免费领取游戏装备引诱玩家，套取微信帐号、登录密码、绑定的手机号码及支付密码后出售，非法获利数额较大。沈阳市检察院依法就该案提起民事公益诉讼。合议庭当庭宣判，支持了检察机关的全部诉讼请求。（[查看更多](#)）

Liaoning's First Public Interest Litigation Case on Personal Information Protection Declared

On December 1, 2021, the first civil public interest litigation case of Liaoning province for infringement of personal information, brought by the Shenyang People's Procuratorate in accordance with the law, was heard and adjudicated. In March 2021, the Shenyang City People's Procuratorate received a case tip that Ning and six other people lured players with free game equipment to obtain their WeChat accounts, login passwords, bound mobile phone numbers and payment passwords and then sold those infor-

mation, making a large amount of illegal profit. Shenyang City Procuratorate filed a civil public interest lawsuit by law, and the court pronounced the judgment on the spot, upholding all the litigation requests of the procuratorial authorities. ([More](#))

北京银行因发生重要信息系统突发事件未向监管部门报告，被罚40万

2021年11月29日，根据中国银行保险监督管理委员会北京监管局官网公布的行政处罚信息公开表，北京银行因“发生重要信息系统突发事件但未向监管部门报告，严重违反审慎经营规则”，被罚款40万元。针对该问题，《银行业重要信息系统突发事件应急管理规范（试行）》第三十五条第（五）款规定：“银行业金融机构应在重要信息系统突发事件发生后60分钟之内将突发事件相关情况上报银监会或其派出机构信息系统应急管理部门，并在事件发生后12小时内提交正式书面报告”。

这并非近年来银保监部门对金融机构因信息和网络安全问题开出的第一张罚单。在今年1月，银保监会对中国农业银行股份有限公司开出了420万元的罚单，违法违规事实包括“发生重要信息系统突发事件未报告”“制卡数据违规留存”“网络信息系统存在较多漏洞”等。（[查看更多](#)）

Bank of Beijing Fined ¥400,000 for Failing to Report an Important Information System Emergency

On 29 November 2021, the official website of the Beijing Supervisory Bureau of the China Banking and Insurance Regulatory Commission (“CBIRC”) published an administrative punishment notice, showing that Bank of Beijing was fined RMB 400,000 for "failing to report to the regulators the occurrence of an important information system emergency, which is a serious violation of prudent operation". In response to the issue, Article 35(5) of the *Emergency Management Rules on Important Information Systems in Banking Industry (for Trial Implementation)* stipulates that "A banking financial institution shall report the conditions about an emergency to the information system emergency management department of the CBIRC or the local CBIRC dispatched office within 60 minutes after the emergency occurs to an important information system, and shall submit a formal written report within 12 hours after the emergency occurs".

This is not the first fine issued by the CBIRC to a financial institution in recent years for information and network security issues. In January of 2021, the CBIRC issued a fine of RMB 4.2 million to Agricultural Bank of China Limited for violations including "failure to report important information system emergencies", "irregular retention of card production data", "vulnerabilities in network information systems", etc. ([More](#))

国家网信办依法约谈处罚豆瓣网

2021年12月1日，国家互联网信息办公室（简称“国家网信办”）负责人约谈豆瓣网主要负责人、总编辑，针对近期豆瓣网及其账号屡次出现法律、法规禁止发布或者传输的信息，情节严

重，依据《中华人民共和国网络安全法》等法律法规，责令其立即整改，严肃处理相关责任人。北京市互联网信息办公室即对豆瓣网运营主体北京豆网科技有限公司依法予以共计150万元罚款的行政处罚。2021年1月至11月，国家网信办指导北京市互联网信息办公室，对豆瓣网实施20次处置处罚，多次予以顶格50万元罚款，共累计罚款900万元。（[查看更多](#)）

CAC Talked and Fined Douban in Accordance with Law

On 1 December 2021, the head of the Cyberspace administration of China (“CAC”) talked with the person in charge & chief editor of Douban.com, in response to the recent severe infringement cases that Douban.com and its user accounts repeatedly publish and spread information that prohibited by laws and regulations, and ordered it to immediately rectify the situation and deal with those responsible in accordance with the *Network Security Law of the People's Republic of China* and other laws and regulations. The Beijing Cyberspace administration immediately imposed administrative penalties totaling RMB 1.5 million in fines on its operating entity, Beijing Douban.com Technology Co. From January to November 2021, the CAC instructed the Beijing Cyberspace administration to impose 20 disposal penalties on Douban.com, repeatedly imposing top-level fines of RMB 500,000, for a total cumulative fine of RMB 9 million. ([More](#))

滴滴：即日起启动美股退市工作，并启动在香港上市的准备工作

2021年12月3日，“滴滴出行”官方微博发文称：“经认真研究，公司即日起启动在纽交所退市的工作，并启动在香港上市的准备工作。”此前，7月2日晚间，网络安全审查办公室对“滴滴出行”实施网络安全审查，审查期间“滴滴出行”停止新用户注册。7月4日，国家网信办称，经检测核实，“滴滴出行”APP存在严重违法违规收集使用个人信息问题，并要求滴滴参照国家有关标准进行整改，下架滴滴旗下25款APP。7月16日，国家网信办会同公安部等部门联合进驻滴滴开展网络安全审查。（[查看更多](#)）

DiDi: To Launch the US delisting and preparations for Hong Kong listing

On December 3, 2021, the official Weibo post of "DiDi" said, "After thorough consideration, the company starts the work of delisting from the New York Stock Exchange as of today and started the preparatory work for listing in Hong Kong." Previously, on the evening of 2 July, 2021, the Network Security Review Office initiated a network security review of DiDi, during which DiDi stopped registering new users. On July 4, the CAC said that after testing and verification, the "DiDi" app had serious illegal and irregular collection and use of personal information, and requested DiDi to make rectification with reference to the relevant national standards and take down 25 APPs under DiDi. On 16 July, 2021, the CAC together with the Ministry of Public Security and other departments, jointly stationed DiDi to carry out a network security review. ([More](#))

欧盟委员会达成数据治理法案协议

2021年11月30日，欧盟委员会发布新闻稿，表示欧洲议会和欧盟理事会就《欧盟数据治理法》达成政治协议。现在，该政治协议将取决于欧洲议会和欧盟理事会的最终批准。

在其新闻稿中，欧盟委员会强调了《数据治理法》的主要内容，主要包括：

- 增强数据共享信任；
- 欧盟关于中立性的新规则，允许数据中介机构作为数据共享的可信赖组织者发挥作用；
- 采取措施促进公共部门持有数据的再利用。例如，在一定条件下，健康数据的再利用可以推动研究，以找到罕见或慢性疾病的治疗方法；
- 加强公众控制数据使用的工具。（[查看更多](#)）

EU Parliament and Council of the EU Reach Agreement on Data Governance Act

On November 30, 2021, the European Commission issued a press release indicating that the European Parliament and the Council of the EU reached political agreement on the proposed *EU Data Governance Act*. The political agreement now will be subject to final approval by the European Parliament and the Council of the EU.

In its press release, the European Commission highlights the main elements of the *Data Governance Act*, which include:

- Measures to increase trust in data sharing;
- New EU rules on neutrality to allow novel data intermediaries to function as trustworthy organisers of data sharing ;
- Measures to facilitate the reuse of certain data held by the public sector. For example, the reuse of health data, under clear conditions, could advance research to find cures for rare or chronic diseases;
- Tools to give Europeans control over the use of the data. ([More](#))

ICO宣布拟对 Clearview AI 罚款超过1700万英镑

2021年11月29日，英国信息专员办公室（“ICO”）宣布拟对Clearview AI Inc处以超过1700万英镑的潜在罚款，向其发出停止进一步处理英国人个人数据的临时通知，要求其删除违规数据。

ICO的初步意见是，Clearview AI涉嫌在以下几个方面违反英国数据保护法，包括：

- 未能以符合公众预期或合理的方式处理个人信息；
- 未能制定合理的存储期限以阻止数据被无限期保留；
- 未能提供收集信息的合法理由；
- 欧盟《通用数据保护条例》和《英国通用数据保护条例》将生物识别数据设定为特殊类别数据，Clearview AI Inc未能达到前述法律所设定的更为严格的数据保护标准；
- 未能告知公众其数据处理情况；以及
- 要求公众提供包括照片在内的额外个人信息。（[查看更多](#)）

UK: ICO announces provisional intent to fine Clearview AI over £17 million

On 29 November 2021, the Information Commissioner's Office (ICO) announced, its provisional intent to impose a potential fine of just over £17 million on Clearview AI, Inc., as well as having issued a provisional notice to stop further processing of the personal data of people in the UK and to delete it following alleged serious breaches of the UK's data protection laws.

The ICO's preliminary view is that Clearview AI appears to have failed to comply with UK data protection laws in several ways including by:

- failing to process the information of people in the UK in a way they are likely to expect or that is fair;
- failing to have a process in place to stop the data being retained indefinitely;
- failing to have a lawful reason for collecting the information;
- failing to meet the higher data protection standards required for biometric data which is classed as special category data under the GDPR and the UK GDPR;
- failing to inform people in the UK about what is happening to their data; and
- asking for additional personal information, including photos. ([More](#))

德国电信数据隐私法生效

2021年12月1日，德国《电信和电信媒体数据保护和隐私监管联邦法》（“TTDSG”）生效。TTDSG对使用电信服务和电信媒体服务（如网站、邮件、或智能家居设备）时的保密性和隐私保护进行了规定，并改变了使用cookie和类似技术的法律框架，将《隐私和电子通信指令》(Directive 2002/58/EC)的要求纳入了德国法律。此外，TTDSG对GDPR的规定进行了补充。 ([查看更多](#))

Germany: TTDSG Enters into Force

On 1 December 2021, the *Federal Act on the Regulation of Data Protection and Privacy in Telecommunications and Telemedia* (TTDSG) entered into force. The TTDSG regulates the protection of confidentiality and privacy when using telecommunications services and telemedia services, such as websites, messengers, or smart home devices, and also changes the legal framework for the use of cookies and comparable technologies, implementing the requirements of the *Directive on Privacy and Electronic Communications* (Directive 2002/58/EC) into national law. Moreover, the TTDSG applies in addition to the GDPR. ([More](#))

法国数据保护机构发布在线多要素认证使用指南

2021年12月1日，法国数据保护机构（“CNIL”）于发布了关于在线使用多要素认证的指南。该指南描述了多要素认证的内容，并建议用户在在线服务提供者提供的所有情况下都应选择多要素认证。此外，该指南概述了单要素认证带来的风险，并要求银行和支付服务提供商对大多数在线支付、远程访问银行账户以及任何此类敏感性质的操作实施多要素认证。 ([查看更多](#))

France: CNIL Publishes Guidance for Use of Multi-Factor Authentication Online

On 1 December 2021, the French data protection authority (CNIL) published guidance on the use of multi-factor authentication online. In particular, the guidance describes what multi-factor authentication consists of and recommends that it should be chosen by users at all instances where it is offered by an online service provider. More specifically, the guidance outlines that single factor authentication poses risks as data security depends upon merely one aspect, the guidance recalls that banks and payment services providers are required to implement multi-factor authentication for the majority of online payments, remote access to bank accounts, and for any such operation of a sensitive nature. ([More](#))

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