



## No.280

2021.12

### 立方要闻周报

### Weekly News By Lifang & Partners

### NO.21

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A company was fined 4 million for selling pirate chips

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“特效道具”被认定构成视听作品



# NEWSLETTER

LIFANG & PARTNERS **立方观评**



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"Special effects props" were identified as audiovisual works

华纳要求苹果下架虎牙APP，构成“不当投诉”

Warner asking Apple to remove Huya APP, which constitutes an "improper complaint"

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The United States Patent and Trademark Office made a sanction against Shenzhen Huanyee Intellectual Property Company, and more than 1.5w US trademarks were invalidated

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北京将加强医药、建材、教育培训等领域反垄断执法力度

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市场监管总局竞争政策与大数据中心组建成立

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CMA中期报告：苹果和谷歌的双头垄断限制了市场竞争和消费者选择权

CMA's Interim Report: Apple and Google Duopoly Limits Competition and Choice

韩国现代重工20亿美元收购大宇造船交易恐生变故

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

全国首部网络安全和信息化地方性法规：《湖南省网络安全和信息化条例》将于2022年1月1日施行

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China's First Local Regulations on Cybersecurity and Informatization: *Regulations on Cybersecurity and Informatization in Hunan Province* Will Come into Force on January 1, 2022

《App违法违规收集使用个人信息监测分析报告》发布

*The Monitoring and Analysis Report on Apps' Illegal Collection and Use of Personal Information* was Released

金标委就《金融数据安全 数据安全评估规范》征求意见

the CFSTC Solicits Comments on *Financial Data Security - Data Security Assessment Specification*

广州海珠出台全国首份数据经纪人试点工作方案

Guangzhou Haizhu Introduces China's First Pilot Work Program for Data Brokers

工信部通报下架106款侵害用户权益APP名单

The MIIT Has Removed 106 Apps That Violate the Rights of Users

中国信通院联合60余企业单位，共同发起“数据安全共同体”计划

CAICT and More Than 60 Enterprises plan to Jointly Launch The "Data Security Community" Plan

美国和英国承诺深化数据合作关系

US and UK Commit to Deepen the Data Partnership

爱尔兰数据保护委员会提交对Instagram的决定调查草案

Irish DPC Submits Draft Decision Inquiry into Instagram

荷兰数据保护委员会对税务和海关总署罚款275万欧元

Dutch DPA Fines Tax Authority 2.75M Euros

## 知识产权 Intellectual Property

### 《关于进一步加强海外知识产权纠纷应对机制建设的指导意见》发布

近日，国家知识产权局、中国国际贸易促进委员会发布《关于进一步加强海外知识产权纠纷应对机制建设的指导意见》（以下简称《意见》）。

《意见》提出了总体要求，并设立了工作目标。力争到2025年，横向互联、纵向互通、央地协同、合作共享的海外知识产权纠纷应对机制基本建立，便捷高效的国际知识产权风险预警和应急机制初步形成，知识产权涉外风险防控体系更加健全，海外知识产权纠纷应对指导服务网络更为完善。《意见》要求健全工作体系，丰富海外知识产权纠纷应对工作网络；加强指导服务，提升海外知识产权纠纷应对水平；强化信息服务，优化海外知识产权动态发布机制；加强专业建设，提升市场主体应对海外纠纷能力；加强组织保障，夯实海外纠纷应对机制建设基础。

来源：国家知识产权局

### *“Guiding Opinions on Further Strengthening the Construction of Overseas Intellectual Property Disputes Coping Mechanism” is released*

Recently, Chinese National Intellectual Property Administration and China Council for the Promotion of International Trade issued the "Guiding Opinions on Further Strengthening the Construction of Overseas Intellectual Property Disputes Coping Mechanisms" (hereinafter, "Opinions").

"Opinions" put forward overall requirements and set work goals. By 2025, a coping mechanism for overseas intellectual property disputes featuring horizontal interconnection, vertical intercommunication, central-local coordination, cooperation and sharing is to be established, a convenient and efficient early warning and emergency mechanism of international intellectual property risk is to be initially formed, the foreign intellectual property risk prevention and control system is to be more complete, and the guidance service network for handling overseas intellectual property disputes is to be improved. "Opinions" require to improve the work system, and enrich the overseas intellectual property dispute coping network; strengthen the guide services, and improve the coping capability for overseas intellectual property disputes; strengthen information services, and optimize the overseas intellectual property dynamic release mechanism; strengthen professional construction, and improve the capability for market players coping with overseas dispute; strengthen organizational guarantees and consolidate the foundation for the establishment of overseas dispute response mechanisms.

Source: Chinese National Intellectual Property Administration

### 专利权利要求解释和共同侵权的认定及责任划分

近日，最高人民法院知识产权法庭审结了一起名称为“一种触摸屏及其多路采样的方法”的发明专利侵权纠纷案，判决各被诉侵权人赔偿专利权人292.6万元经济损失和20万元合理开支。

一审法院认为，被诉侵权产品没有落入涉案专利权的保护范围，专利权人华欣公司的主张不能成立。华欣公司不服，向最高人民法院提起上诉，主张一审法院关于权利要求解释存在错误，

错误认定“一种触摸屏”及“触摸检测区”必须为实体屏结构，进而错误认定被诉侵权产品没有落入涉案专利权的保护范围。二审中，经审理查明，被告五公司之间存在股权交叉，且各被告有不同的分工等情况。

最高人民法院经审理认为：关于权利要求解释问题，被诉侵权产品具有“触摸屏”“触摸检测区”的技术特征及其他技术特征，被诉侵权产品落入涉案专利权保护范围；关于共同侵权问题，被告诚科公司、君海公司和兆科公司存在信息互通、分工合作，共同实施侵害涉案专利权的行为，且无其他实质性生产经营活动，应认定为完全以侵权为业，被告峻凌公司和厦欣公司仅是代加工性质且并无证据显示两公司具有故意侵权，但各自行为仍存在较大过失和一定过失；关于侵权责任承担，法院根据各被告的不同情况，分别确定了赔偿额及合理支出的承担份额。

来源：[最高人民法院知识产权法庭](#)

### **Patent claim interpretation and joint infringement determination and liability division**

Recently, the intellectual property tribunal of the Supreme People's Court concluded an invention patent infringement dispute in which the patent is named "a touch screen and a multi-channel sampling method thereof", and judged that accused infringers should compensate the patentee 2.926 million yuan for economic losses and 200,000 yuan for reasonable expenses.

The court of first instance held that the accused infringing product did not fall into the protection scope of the subject patent, and the claim of the patentee Huaxin Company could not be supported. Huaxin Company filed an appeal with the Supreme People's Court, claiming that the court of first instance had an error in the interpretation of the claims and wrongly determined that "a touch screen" and "touch detection area" must be physical screen structures, and then wrongly determined that the accused infringing product did not fall into the protection scope of the patent. In the second instance, the court found that the five defendant companies had cross-shareholdings, and each defendant had a different division of labor.

The Supreme People's Court held that: regarding the interpretation of claims, the accused infringing product has the technical features of "touch screen", "touch detection area" and other technical features, and the accused infringing product falls into the protection scope of the subject patent; regarding the issue of joint infringement, the defendants Chengke Company, Junhai Company and Zhaoke Company had information exchange, division of labor and cooperation, and jointly carried out actions for infringing the subject patent rights, and had no other substantive production and operation activities, thus they should be deemed as totally rely on infringement. The defendants Junling company and Xiaxin company are only processing agents and there is no evidence proving that the two companies have intentional infringements, but their respective actions still have severe negligence and certain negligence; regarding liability for infringement, the court determined the compensation amount and share of reasonable expenses according to the different circumstances of each defendant.

Source: [Intellectual Property Tribunal of the Supreme People's Court](#)



## 2021年中美欧日韩外观设计五局及商标五局合作联合声明发布

2021年11月1日至2日、3日至5日，中国国家知识产权局以视频方式分别主办了2021年中美欧日韩外观设计五局合作年度会议和2021年中美欧日韩商标五局合作年度会议。会上，五局代表分别就两份声明内容达成共识。两份声明目前均已通过各局审批程序，并正式对外发布。

两份声明反映了五国在数字经济和新兴技术发展及新冠肺炎疫情对知识产权体系产生巨大影响的背景之下，各国进一步加强合作的意向和决心。各方的合作主要聚焦于数字和新兴技术方面的合作，调整和完善合作机制，并继续加强与WIPO的合作，致力于知识产权生态体系良好运转。

来源：国家知识产权局

## Joint Statements on Cooperation among Fifth Design Offices and Fifth Trademark Offices of China, the United States, Europe, Japan and South Korea for 2021 are released

From November 1st to 2nd and 3rd to 5th, 2021, Chinese National Intellectual Property Administration hosted the 2021 China-US-Europe-Japan-Korea Five Design Offices Cooperation Annual Meeting and the 2021 China-US-Europe-Japan-Korea Five Trademark Offices Cooperation Annual meeting online respectively. At the meeting, representatives of the five offices reached consensus on the content of two statements. Both statements have passed the examination procedures of each office and have been officially released.

The two statements reflect the intention and determination of the five countries to further strengthen cooperation in the context of the digital economy and the development of emerging technologies and the huge impact of the COVID-19 epidemic on the intellectual property system. The cooperation between all parties mainly focuses on cooperation in digital and emerging technologies, adjusting and improving the cooperation mechanism, and continuing to strengthen cooperation with WIPO, and devoting to the smooth operation of the intellectual property ecosystem.

Source: Chinese National Intellectual Property Administration

## 奥克斯诉格力侵权判赔1.6亿+

2019年1月，奥克斯同时起诉格力两案专利侵权，两案历经管辖权异议及上诉、司法鉴定和无效宣告等，历经多次开庭，宁波中院于2021年12月对两案作出判决，分别确认专利侵权并判赔9600万、7060万等合计约1.6亿+。

原告向法院提交了关于损害赔偿额计算问题的专家辅助人报告并申请专家辅助人出庭。法院认为侵权产品的合理利润率既需要考察该行业同类产品的普遍利润率，更需要进一步考察侵权行为主体的个别利润率情况等等；具体专利技术衡量指标可包括专利性质、专利权有效期限、专利权利要求数、简单同族专利数和简单同族被引用专利总数等；专利应用的市场价值衡量等等。

来源：知产库

## **AUX v. Gree awarded 160 million+ compensation for infringement**

In January 2019, AUX sued Gree for patent infringement in two cases at the same time. The two cases went through the procedures of jurisdictional objection and appeal, judicial expertise, and invalidation. After many court sessions, Ningbo Intermediate People's Court made judgement on the two cases in December 2021, confirming the two patents are infringed and awarding 96 million and 70.6 million compensations totaling approximately 160 million+.

The plaintiff submitted to the court an expert supporter's report on the calculation of damages and applied for the expert supporter to attend the hearing. The court held that the reasonable profit rate of infringing products requires not only the general profit rate of similar products in the industry, but also the individual profit rate of the accused subject, etc.. Specifically, the patent technology measurement indicators may include patent type, patent validity term, claim numbers, the number of simple patent family members, the total number that simple patent family members being cited, market value measurement of patent applications, etc..

Source: [IP database](#)

## **7000万元起拍！酒业中国驰名商标“红楼梦”等司法拍卖**

2022年1月4日至1月5日，四川省内江市中级人民法院将在淘宝网司法拍卖网络平台上，对宜宾红楼梦酒业股份有限公司（宜宾红楼梦酒业）持有的“红楼梦”等26个商标进行公开拍卖，起拍价7000万元。

据悉，“红楼梦”系酒业中国驰名商标，是中国七大历史文化名酒之一，宜宾红楼梦酒业曾为拟上市企业。此次拍卖系原告浙江省浙商资产管理有限公司因金融借款合同纠纷，申请法院强制执行宜宾红楼梦酒业、四川宜宾兴业集团有限公司等债权。

来源：[上游新闻](#)

## **Chinese well-known trademark " Honglouloumeng" in the wine industry will be judicial auctioned starting from 70 million yuan**

From January 4th to January 5th, 2022, the Neijiang Intermediate People's Court of Sichuan Province will auction 26 trademarks including the "Honglouloumeng" etc. owned by Yibin Honglouloumeng Winery Co., Ltd. (Yibin Honglouloumeng Winery) on Taobao's judicial auction network platform with a starting price of 70 million yuan.

It is reported that " Honglouloumeng" is a well-known trademark of the wine industry in China, and it is one of Chinese seven historical and cultural wines. Yibin Honglouloumeng Winery was once a listed company. This auction was caused by the plaintiff Zhejiang Zheshang Asset Management Co., Ltd. applying for the court to enforce the creditor's rights of Yibin Honglouloumeng Winery, Sichuan Yibin Xingye Group Co., Ltd. due to financial loan contract disputes..

Source: [Upstream News](#)

## 武汉89岁教授起诉知网获赔70多万元

中南财经政法大学89岁退休教授赵德馨对中国知网擅自收录他的100多篇论文打起了官司且近日全部胜诉，累计获赔70多万元。目前中国知网已经将赵德馨教授的文章全部下架。2020年8月开始，赵德馨方面陆续向北京互联网法院起诉知网运营公司“《中国学术期刊（光盘版）》电子杂志社有限公司”。2020年12月30日，北京互联网法院作出一审判决：被告《中国学术期刊（光盘版）》电子杂志社有限公司赔偿赵德馨经济损失2800元及维权合理开支534元，共计3334元。

“赵德馨教授的胜诉，既是为广大作者讨说法，也会影响有关期刊数据库的商业流程，促使他们更加重视对知识产权的保护。”中国人民大学法学院教授万勇表示。

来源：长江日报

## 89-year-old professor in Wuhan sued CNKI and received more than 700,000 yuan in compensation

Zhao Dexin, an 89-year-old retired professor of Zhongnan University of Economics and Law, filed lawsuits against CNKI for collecting more than 100 of his papers without authorization and has recently won all of them. He has received a total of more than 700,000 yuan in compensation. At present, CNKI has removed all the papers of Professor Zhao Dexin from the website. Beginning in August 2020, Zhao Dexin has successively filed lawsuits against CNKI operating company "Chinese Academic Journal (CD-ROM Version)" Electronic Magazine Co., Ltd. in Beijing Internet Court. On December 30, 2020, the Beijing Internet Court made a first-instance judgment: the defendant "China Academic Journal (CD-ROM Version)" Electronic Magazine Co., Ltd. compensated Zhao Dexin for economic losses of 2,800 yuan and reasonable expenses of 534 yuan, totaling 3334 yuan.

“Professor Zhao Dexin’s victory not only protects the rights of the majority of authors, but also affects the business process of relevant journal databases, prompting them to pay more attention to the protection of intellectual property rights,” said Wan Yong, a professor at Law School of Renmin University of China.

Source: Changjiang Daily

## 盗版芯片对外销售，公司被罚400万

2016年，G公司销售人员陶某，在进行市场调研和推广中发现CH340芯片销量大，遂从市场获取正版CH340芯片，在未获得授权许可的情况下，委托其他公司对CH340芯片各层电路布图进行破解，提取GDS文件，再生产掩模工具、生产晶圆、封装，后以G公司GC9034型号芯片名义对外销售。2016年9月至2019年12月，G公司共销售侵犯沁恒公司著作权的GC9034芯片共计830余万个，销售金额人民币730余万元，上述收益均归G公司单位所有。

经抽样鉴定，公安机关依法从G公司仓库等处扣押的侵权芯片相关软件代码、工艺类型、芯片顶层布图布局等与沁恒公司的CH340芯片基本相同，相似度100%或90%以上。前述行为属于典型的以单位名义实施犯罪、违法所得归单位所有的单位犯罪。



南京雨花台区法院判决，被告单位G公司、被告人许某、陶某，构成侵犯著作权罪。依法对被告单位G公司判处罚金人民币四百万元；判处被告人许某有期徒刑四年，并处罚金人民币三十六万元；判处被告人陶某有期徒刑三年二个月，并处罚金人民币十万元；扣押在案侵权产品。被告单位、被告人不服，上诉至南京中院。南京中院二审判决：驳回上诉，维持原判。

来源：南京市中级人民法院

### **A company was fined 4 million for selling pirate chips**

In 2016, Mr. Tao, a salesperson of company G, found that CH340 chips had a large sales volume during market research and promotion, so he obtained genuine CH340 chips from the market and entrusted other companies to crack the circuit layout of each layers of CH340 chips, extract the GDS files, reproduce the mask tools, produce the wafers, and package, and then sell it under the name of GC9034 chip of company G without authorization. From September 2016 to December 2019, Company G sold a total of more than 8.3 million GC9034 chips that infringed the copyright of Qinheng Company, with a sales amount of more than RMB 7.3 million. The above-mentioned income belongs to the company of G.

After sampling and authentication, the software code, process type, and top-level layout of the chip related to the infringing chip seized by the public security agency from the warehouse of company G are basically the same as those of the CH340 chip of Qinheng Company, and the similarity percentage is 100% or more than 90%. The aforementioned behavior is a typical crime committed in the name of a unit and the illegal income belongs to the unit.

The Nanjing Yuhuatai District Court ruled that the defendant company G and the defendants Mr. Xu and Mr. Tao constituted the crime of copyright infringement. In accordance with the law, the defendant company G was sentenced to a fine of RMB 4 million; the defendant Mr. Xu was sentenced to four years' imprisonment and a fine of RMB 360,000; the defendant Mr. Tao was sentenced to three years and two months' imprisonment and a fine RMB 100,000; and the infringing products are seized. The defendant company and the defendants refused to accept the result and appealed to the Nanjing Intermediate People's Court. Nanjing Intermediate People's Court made the second-instance judgment of rejecting the appeal request and upheld the original judgment.

Source: Nanjing Intermediate People's Court

### **全国首例游戏地图“换皮”侵权案终审宣判！腾讯获赔2500多万元**

2021年12月6日，广东高院对腾讯公司与畅游云端公司、英雄互娱公司等著作权侵权及不正当竞争纠纷上诉案公开宣判，判决被告等停止侵权行为，并赔偿腾讯公司经济损失2500多万元。

《穿越火线》由韩国公司开发，腾讯公司是其在在中国大陆地区的独家代理运营商。《全民枪战》是由两被告等运营推广的网络游戏。2017年，腾讯公司起诉两被告等著作权侵权及不正当竞争，索赔9800万元。

深圳市中级人民法院一审判决，认定《全民枪战》被诉六幅地图构成著作权侵权，判令各被告停止侵权，并判赔4500余万元。广东高院二审认为，游戏地图构建的虚拟空间在一定程度上是模拟现实世界的数字化表达，是实现虚拟与现实交互的重要平台，当游戏地图的空间布局结构足够具体，符合图形作品的特征，可以作为图形作品获得保护。法院同时认为，任何人只能就

自己独创的内容主张著作权，任何处于公共领域内的要素以及无独创性的内容都将被排除在著作权法保护范围之外。据此，法院最终认定四幅地图构成侵权，两幅不构成实质性相似。关于赔偿数额，法院按照“《全民枪战》获利×游戏地图对于游戏整体贡献率×侵权游戏地图在全部游戏地图中使用率”的方式计算，最终认定侵权游戏地图获利2500多万元。

来源：新华社

## **The first game map "swap skin" infringement case was finalized! Tencent received more than 25 million yuan in compensation**

On December 6, 2021, the Guangdong Higher People's Court publicly pronounced on Tencent vs. Changyou Yunduan, Hero Mutual Entertainment copyright infringement and unfair competition appeals. It ruled that the defendants should stop the infringement actions and compensate Tencent for more than 2,500 million yuan for economic losses. "Cross Fire" was developed by a South Korean company, and Tencent is its sole agency operator in mainland China. "Nationwide Gunfight" is an online game promoted by the two defendants. In 2017, Tencent sued the two defendants for copyright infringement and unfair competition, claiming 98 million yuan.

The Shenzhen Intermediate People's Court made the first-instance judgement, confirming that the six maps of "Nationwide Gunfight" accused constitute copyright infringement, and ordered the defendants to stop the infringement actions and compensate more than 45 million yuan in damages. In the second instance, Guangdong Higher People's Court held that the virtual space constructed by the game map is to a certain extent a digital expression that simulates the real world, and is an important platform for realizing the interaction between virtual and reality. When the spatial layout structure of the game map is sufficiently specific and conforms to the characteristics of graphic works, it can be protected as a graphic work. The court also held that anyone can only claim copyright for his own original content, and any elements in the public domain and non-original content should be excluded from the protection scope of the Copyright Law. Accordingly, the court finally determined that four maps constitute infringement, and two maps do not constitute substantial similarity. Regarding the amount of compensation, the court calculated the profit of "National Gunfight" × the overall contribution rate of the game map to the entire game × the utilization rate of the infringing game map in all game maps", and finally determined that the infringing game map earned more than 25 million yuan in profit.

Source: Xinhua News Agency

## **“特效道具”被认定构成视听作品**

2021年11月30日，杭州互联网法院对一起涉及短视频应用程序中提供特效道具的侵害作品信息网络传播权及不正当竞争纠纷一案进行宣判，判决被告停止侵权，赔偿经济损失及合理费用共计20万元。

本案的争议焦点是涉案特效道具是否构成视听作品。法院最终认定：窗花剪剪基础展示画面构成著作权法意义上的视听作品，被诉特效道具虽在元素的外观上与窗花剪剪内容高度相似，应当认定构成实质性相似，因此，被告在其应用程序提供被诉特效道具的行为侵害了原告的视听作品的信息网络传播权。

本案充分考虑“互联网+”背景下创新的需求和特点、从促进文化娱乐著作权保护事业的健康发展的角度认为应在二分思路的基础上对连续画面的独创性进行抽层分析，为人机互动视听作品的独创性判断和独创性来源认定提供了实践分析路径。

来源：[杭州互联网法院](#)

### **"Special effects props" were identified as audiovisual works**

On November 30, 2021, the Hangzhou Internet Court pronounced on a case involving infringement of the information network dissemination rights and unfair competition disputes due to the provision of special effects props in short video applications. The defendant was sentenced to stop the infringement and compensate for economic losses and reasonable expenses totaling 200,000 yuan.

The focus of the dispute in this case is whether the special effects props involved constitute audio-visual works. The court finally determined that the basic display screens of window flower shear constitute audio-visual works in the Copyright Law. The accused special effects props are highly similar in appearance to the content of window flower shear, they should be deemed as substantially similar. Therefore, the defendant's action of providing the accused special effects props in the application program infringes the plaintiff's information network dissemination rights of audio-visual works.

This case fully considers the needs and characteristics of innovation under the background of "Internet +", and from the perspective of promoting the healthy development of cultural and entertainment copyright protection, it is considered that the originality of the continuous picture should be analyzed on the basis of a dichotomy though, and provided a practical analysis path for the originality judgment and originality source identification of human-computer interactive audio-visual works.

Source: [Hangzhou Internet Court](#)

### **华纳要求苹果下架虎牙APP，构成“不当投诉”**

华纳公司称虎牙公司的虎牙直播平台上累计有215条短视频侵犯其音乐作品著作权，并自2021年4月8日起多次向第三方苹果公司投诉，要求苹果应用商店对该APP作下架处理。苹果公司收到投诉后即向虎牙公司转发。对此，虎牙公司以“确认不侵害著作权及不正当竞争纠纷”对华纳公司提起民事诉讼，请求法院裁定华纳公司立即停止向苹果公司投诉，并向法院提出行为保全申请。

广州互联网法院认为，虎牙公司所采取的删除措施已达到必要程度。华纳公司要求苹果公司下架涉案APP属于权利滥用。对于涉案侵权视频，即便如华纳公司所言，虎牙公司可从平台内容中获得直接经济利益，而不属于中立的网络服务提供者，构成直接侵权和帮助侵权，不能适用“通知-必要措施”规则，也仅意味着虎牙公司需要对侵权内容承担侵权责任。构成“错误通知”中的“错误”是针对通知行为而言，而非针对权利的描述。最终法院裁定，华纳公司的行为构成“错误通知”，应在收到裁定之日起立即停止针对申请人虎牙公司的应用程序“虎牙直播平台”向苹果应用商店的投诉行为。

来源：[第一财经](#)

## **Warner asking Apple to remove Huya APP, which constitutes an "improper complaint"**

Warner Company claimed that a total of 215 short videos on Huya's live broadcast platform infringed the copyright of its music works, and since April 8, 2021, it has repeatedly filing complaints with the third-party Apple, requesting the Apple App Store to remove huya's app. After Apple received the complaints, it forwarded them to Huya. In response, Huya Company filed a civil lawsuit against Warner Company with "confirmation of non-infringement of copyright and unfair competition disputes", requesting the court to rule that Warner Company should immediately stop complaining to Apple and filed a behavior preservation application to the court.

The Guangzhou Internet Court held that the deletion measures taken by Huya Company had reached the necessary level. Warner's request for Apple to remove huya's app involved in the case belongs to an abuse of rights. Regarding the infringing videos involved, even as Warner said, Huya can obtain direct economic benefits from the content of the platform and is not a neutral network service provider, which constitutes direct infringement and assistance in infringement, and the "notification-necessary measures" regulation cannot be applied, it only means that Huya Company needs to bear infringement liability for infringing content. The "error" that constitutes the "error notification" refers to the notification behavior, not the description of the right. In the end, the court ruled that Warner's actions constituted an "error notice" and the complaint behaviour against the Applicant Huya Company's application "Huya Live Platform" to the Apple App Store should be immediately stopped from the date of receiving the ruling decision.

Source: [China Business News](#)

## **美国专利商标局对深圳Huanyee知产公司作出制裁决定，1.5w余件美国商标被作废**

美国时间2021年12月10日，美国专利商标局 (USPTO) 在官网正式发布对深圳Huanyee知识产权公司和其执行董事作出的终局的制裁决定。由于该公司实施了包括非法代理、代签申请、提供虚假地址、共享申请账户等多项触犯USPTO底线的行为，导致其代理的15000多个美国商标全部被作废，以及永久禁止该公司、执行董事及公司的员工代表他人向USPTO提交申请。该命令立即生效。

来源: [USPTO](#)

## **The United States Patent and Trademark Office made a sanction against Shenzhen Huanyee Intellectual Property Company, and more than 1.5w US trademarks were invalidated**

On December 10, 2021, U.S. time, the United States Patent and Trademark Office (USPTO) announced on its official website the final sanction against Shenzhen Huanyee Intellectual Property Company and its executive directors. Due to the company's actions that violated the USPTO's bottom line, including illegal agency, signing application, providing false addresses, sharing application accounts, etc., more than 15,000 US trademarks it represented were all invalidated, and the company, executive directors and all employees of the company were permanently banned to submit applications to the USPTO on behalf of other people. The order takes effect immediately.

Source: [USPTO](#)



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

### 北京将加强医药、建材、教育培训等领域反垄断执法力度

2021年12月16日，包含12方面、362项举措的“创新+活力”营商环境5.0版改革正式发布，其中明确表示北京将重点围绕医药、公用事业、建材、生活消费品、教育培训等领域，加大反垄断监督执法力度。研究制定重点领域平台经济合规手册，进一步强化合规经营指导，促进平台经济规范、健康、可持续发展。（[查看更多](#)）

### Beijing Strengthens Antitrust Enforcement in Medicine, Building Materials, Education and Other Areas

On December 16, 2021, the version 5.0 of "Innovation + Vitality" business environment reform, with 12 aspects and 362 measures, was officially released, which clearly states that Beijing will focus on pharmaceutical, public utilities, building materials, education and other areas to strengthen anti-monopoly supervision and enforcement, formulate compliance manuals for platform economy in key areas, further strengthen compliance operation guidance, and promote standardized, healthy and sustainable development of platform economy. ([More](#))

### 市场监管总局竞争政策与大数据中心组建成立

2021年12月16日，国家市场监督管理总局（“市场监管总局”）宣布成立竞争政策与大数据中心。根据介绍，竞争政策与大数据中心的主要职责是开展反垄断、竞争政策、平台经济等领域政策理论研究，承担反垄断执法、市场监测、大数据分析等的技术支撑工作。（[查看更多](#)）

### SAMR Establishes Competition Policy and Big Data Center

On December 16, 2021, the State Administration for Market Regulation announced its establishment of Competition Policy and Big Data Center which serves the function of undertaking the study of policy and theory in antitrust, competition policy and platform economy areas and conducting technical support for antitrust enforcement, market supervision and big data analysis. ([More](#))

### 海南知产法院审理12宗反垄断行政处罚案件

2021年12月15日，海南自由贸易港知识产权法院（“海南知产法院”）公开开庭审理12家公司诉海南省市场监督管理局（“海南省市监局”）反垄断行政处罚案件。海南省市监局此前认定各原告与其他单位共同达成的协议排除、限制了相关市场的竞争，属于垄断协议，遂分别处以2018年度销售额百分之一罚款的行政处罚决定。各原告对上述行政处罚决定不服，分别提起行政诉讼，均请求撤销相应行政处罚决定。（[查看更多](#)）



## Hainan IP Court Hears 12 Antitrust Administrative Cases Brought against Hainan AMR

On December 15, 2021, the Intellectual Property Court of Hainan Free Trade Port (“Hainan IP Court”) publicly heard 12 cases brought against the Administration for Market Regulation of Hainan Province (“Hainan AMR”). Previously, Hainan AMR fined 12 plaintiffs of the current cases 1% of their respective sale amounts in 2018 for reaching monopoly agreement restricting market regulation. Now, these 12 companies filed the current cases to ask the court to withdraw these penalty decisions. ([More](#))

## 山东召开全省反垄断与公平竞争审查工作会议

近日，山东省市场监督管理局（“山东省市监局”）召开全省反垄断与公平竞争审查工作会议。在工作总结中指出2021年度省局共查办垄断案件16件，其中滥用市场支配地位案6件，垄断协议案4件，行政性垄断案6件，罚没金额 2.28 亿元。 ([查看更多](#))

## Shandong AMR Holds Antitrust and Fair Competition Review Meeting

Recently, the Administration for Market Regulation of Shandong Province (“Shandong AMR”) hold antitrust and fair competition review meeting, during which Shandong AMR announced that it had totally investigated 16 antitrust cases, with 6 abuse cases, 4 monopoly agreement cases and 6 administrative abuse cases, and with a totally fine and confiscation of CNY 228 million. ([More](#))

## CMA中期报告：苹果和谷歌的双头垄断限制了市场竞争和消费者选择权

2021年12月14日，英国竞争和市场管理局（CMA）公布，其对苹果和谷歌手机生态系统（Mobile Ecosystem）中期报告显示，苹果和谷歌的双头垄断限制了市场竞争和消费者选择权。CMA认为，苹果和谷歌利用他们的市场力量创造了自成一体的生态系统。因此，其他公司难以进入市场并与新系统竞争。CMA认为这导致了竞争的减少、限制了客户的选择。 ([查看更多](#))

## CMA’s Interim Report: Apple and Google Duopoly Limits Competition and Choice

On December 14, 2021, the Competition and Markets Authority (“CMA”)’s interim report into mobile ecosystem indicated that Apple and Google duopoly limits competition and choice. CMA found that Apple and Google have been able to leverage their market power to create largely self-contained ecosystems. As a result, it is extremely difficult for any other firm to enter and compete meaningfully with a new system. The CMA is concerned that this is leading to less competition and meaningful choice for customers. ([More](#))

## 韩国现代重工20亿美元收购大宇造船交易恐生变故

2021年12月12日，据报道，韩国现代重工（Hyundai Heavy Industries）对其竞争对手大宇造船（Daewoo）价值20亿美元的收购交易恐生变故，原因在于当事人拒绝提供救济措施以解决欧盟委员会的竞争担忧。知情人士透露，由于非正式的救济方案（包括出售一家造船厂的部分资

产) 未能达成, 而正式的方案也从未被提上议程, 因此不太可能出现欧盟委员会无条件批准这一交易的情况。而韩国现代重工方面则希望欧盟监管机构能够像中国、新加坡、哈萨克斯坦的监管机构一样, 对本次交易开设绿灯。 ([查看更多](#))

### **Hyundai and Daewoo Deal May Face EU Antitrust Veto**

On December 12, 2021, it was reported that South Korean shipbuilder Hyundai Heavy Industries' proposed acquisition of rival Daewoo Shipbuilding & Marine Engineering is set for an EU antitrust veto after the companies declined to offer remedies to allay competition concerns. Hyundai expected unconditional European Commission clearance for the deal, which is unlikely after an informal offer of remedies, which included the sale of part of a shipyard, fell short while a formal proposal was never put on the table, the people said. Hyundai also said it expected the EU competition watchdog to reach the same conclusions as regulators in Singapore, China and Kazakhstan which have already given the green light. ([More](#))

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

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#### **全国首部网络安全和信息化地方性法规：《湖南省网络安全和信息化条例》将于2022年1月1日施行**

2021年12月3日, 湖南省人大常委会通过了《湖南省网络安全和信息化条例》(以下简称《条例》), 该《条例》是我国第一部同时规范网络安全和信息化工作的省级地方性法规,

《条例》提出对未列入关键信息基础设施的重要信息系统, 在网络安全等级保护制度的基础上, 实行重点保护; 明确保护措施包括建立网络安全信息共享机制, 对重要信息系统安全风险进行检测评估, 组织网络安全应急演练, 对网络安全事件应急处置与网络功能恢复提供技术支持等。 ([查看更多](#))

#### **China's First Local Regulations on Cybersecurity and Informatization: Regulations on Cybersecurity and Informatization in Hunan Province Will Come into Force on January 1, 2022**

On December 3, 2021, the Standing Committee of the Hunan Provincial People's Congress adopted the *Regulations on Cybersecurity and Informatization in Hunan Province* (Regulations), which is the first provincial-level local regulations in China regulating both cybersecurity and informatization work.

The Regulations propose to implement key protection for important information systems not included in the critical information infrastructure on the basis of the network security level protection system. It also clarifies that protection measures include the establishment of network security information sharing mechanism, the detection and assessment of security risks of important information systems, the organization of the network security emergency drills, and the technical support for emergency response to cybersecurity incidents and recovery of network functions. ([More](#))

## 《App违法违规收集使用个人信息监测分析报告》发布

为及时反映当前App收集使用个人信息整体情况，国家计算机网络应急技术处理协调中心会同中国网络空间安全协会对前期专项治理和平台监测发现的App违法违规收集使用个人信息问题进行了总结梳理，并于12月9日发布了《App违法违规收集使用个人信息监测分析报告》，内容包括App收集使用个人信息总体状况和工作建议。（[查看更多](#)）

## **The Monitoring and Analysis Report on Apps' Illegal Collection and Use of Personal Information was Released**

To timely reflect the current overall situation of Apps' collection and use of personal information, National Computer Network Emergency Response Technical Team/Coordination Center of China together with the Cyber Security Association of China, summarized and sorted out problems regarding Apps' illegal collection and use of personal information that were found in the previous special governance and platform monitoring, and issued the *Monitoring and Analysis Report on Apps' Illegal Collection and Use of Personal Information* On December 9, which includes the overall status of Apps' collection and use of personal information and relevant work advice. ([More](#))

## 金标委就《金融数据安全 数据安全评估规范》征求意见

12月3日，全国金融标准化技术委员会（以下简称“金标委”）发布公告，就《金融数据安全 数据安全评估规范》金融标准征求意见。该规范明确了金融数据安全、安全保护、安全运维三个主要评估域及安全评估主要内容和方法。（[查看更多](#)）

## **the CFSTC Solicits Comments on Financial Data Security - Data Security Assessment Specification**

On December 3, China Financial Standardization Technical Committee (CFSTC) issued an announcement to solicit opinions on the *Financial Data Security - Data Security Assessment Specification*, which clarifies the three main assessment domains of financial data security management, security protection and security operation and maintenance, as well as the main contents and methods of security assessment. ([More](#))

## 广州海珠出台全国首份数据经纪人试点工作方案

2021年12月10日，广东省海珠区人民政府印发《广州市海珠区数据经纪人试点工作方案》，这是全国首份数据经纪人试点工作方案。推动建立数据经纪人，是广东省深化数据要素市场化配置改革的一项制度性安排，将对全国数据要素市场培育工作具有示范引领作用。数据经纪人将侧重于场景化数据利用，其职责在于建立供需信任关系、挖掘数据要素价值、维护各方合法权益、活跃数据要素市场，促进数据可信有序流通和市场化利用，加速数据与经济活动融合，赋能传统产业转型升级，催生新产业新业态新模式。（[查看更多](#)）

## Guangzhou Haizhu Introduces China's First Pilot Work Program for Data Brokers

On December 10, 2021, the People's Government of Haizhu District, Guangdong Province issued the *Pilot Work Plan for Data Brokers in Haizhu District, Guangzhou*, which is the first pilot work plan for data brokers in China. Promoting the establishment of data brokers is an institutional arrangement for Guangdong Province to deepen the reform of market-oriented allocation of data elements, which will have a demonstration and leading role in the cultivation of data element market in China. The data broker will focus on scenario-based data utilization, and its responsibilities are to establish a trust relationship between supply and demand, explore the value of data elements, protect the legitimate rights and interests of all parties, activate the data elements market, promote the credible and orderly circulation and market-oriented utilization of data, accelerate the integration of data and economic activities, empower the transformation and upgrading of traditional industries, and give birth to new industries and new business models. ([More](#))

## 工信部通报下架106款侵害用户权益APP名单

12月9日，工业和信息化部（以下简称为“工信部”）针对App超范围收集用户个人信息等违规行为进行检查并公开通报。通报内容显示，在106款App中，主要存在违规收集个人信息，违规使用个人信息，账号注销难，强制用户使用定向推送功能，频繁、过度索取权限以及超范围收集个人信息的问题。工信部强调，依据《个人信息保护法》《网络安全法》等相关法律要求，相关应用商店应在该通报发布后，立即组织对名单中违规App进行下架处理。针对部分违规情节严重、拒不整改的App，属地通信管理局应对App运营主体依法予以行政处罚。 ([查看更多](#))

## The MIIT Has Removed 106 Apps That Violate the Rights of Users

On December 9, the Ministry of Industry and Information Technology (MIIT) inspected and publicly notified violations such as App collecting users' personal information beyond the scope. According to the notice, among the 106 Apps, the main problems include collecting personal information illegally, using personal information illegally, set difficulties for closing account, forcing users to use directional push function, asking for permissions frequently and excessively and collecting personal information beyond the scope. The MIIT stressed that in accordance with *Personal Information Protection Law, Cybersecurity Law* and other relevant legal requirements, the relevant application stores should organize the removal of illegal Apps immediately after the release of the notice. For some Apps that have serious violations and refuse to rectify, the local communication administration should impose administrative penalties on the App operators according to laws. ([More](#))

## 中国信通院联合60余企业单位，共同发起“数据安全共同体”计划

中国信通院拟联合60余家高校、科研院所、企事业单位共同发起“数据安全共同体计划”。“数据安全共同体计划”将依托大数据应用与安全创新实验室开展具体工作，致力于促进数据安全生态链各环节的交流与合作，促进数据安全政策、技术、产品、人才多要素良性互动。 ([查看更多](#))



## CAICT and More Than 60 Enterprises plan to Jointly Launch The "Data Security Community" Plan

China Academy of Information and Communication Technology (CAICT) plans to jointly launch the "Data Security Community Plan" with more than 60 universities, research institutes, enterprises and institutions. The "Data Security Community Plan" will rely on the Big Data Application and Security Innovation Laboratory to carry out specific works. It is committed to promoting the exchange and cooperation of all aspects of the data security ecological chain, and promoting the benign interaction of data security policies, technologies, products and talents. ([More](#))

### 美国和英国承诺深化数据合作关系

美国商务部长吉娜-雷蒙多和英国数字、文化、媒体和体育国务大臣纳丁-多里斯宣布了一项关于两国间使用和交换数据的新协议。双方表示在努力"支持、稳定和实现双边数据流的利益"方面取得了进展。关于目前有关国际数据流动的问题，雷蒙多和多里斯表示希望"以促进和推动不同数据保护框架之间的互操作性的方式塑造一个全球数据生态系统"。 ([查看更多](#))

### US and UK Commit to Deepen the Data Partnership

U.S. Commerce Secretary Gina Raimondo and U.K. Secretary of State for Digital, Culture, Media & Sport Nadine Dorries announced a new pact on the use and exchange of data between the two nations. The two sides indicated progress on efforts to "support, stabilize and realize the benefits of bilateral data flows." With respect to ongoing issues concerning international data flows, Raimondo and Dorries voiced desires to "shape a global data ecosystem in a manner that promotes and advances interoperability between different data protection frameworks." ([More](#))

### 爱尔兰数据保护委员会提交对Instagram的决定调查草案

爱尔兰数据保护委员会于12月7日宣布，他们根据《通用数据保护条例》第60条的规定向Instagram提交了一份与Facebook爱尔兰公司处理儿童个人数据有关的决定调查草案。其他相关监管机构现在有一个月的时间来发回任何"合理和相关的反对意见"。 ([查看更多](#))

### Irish DPC Submits Draft Decision Inquiry into Instagram

The Irish Data Protection Commission(DPC) announced on December 7 that they submitted a draft decision inquiry into Instagram under Article 60 of the EU General Data Protection Regulation (GDPR) relating the processing of personal data of children by Facebook Ireland Limited. Other concerned supervisory authorities now have one month to send back any "reasoned and relevant objections." ([More](#))

### 荷兰数据保护委员会对税务和海关总署罚款275万欧元

荷兰的数据保护委员会对税务和海关总署的数据处理违反欧盟《通用数据保护条例》处以275万欧元的罚款。荷兰的数据保护委员会认为该局处理属于育儿津贴申请人的双重国籍信息是“非



法的、歧视性的，因此是不恰当的”，并指出该局应该根据数据最小化原则删除这些数据。美联社主席Aleid Wolfsen认为，该案件是一个“用算法进行非法处理侵犯了不受歧视的权利”的例子。（[查看更多](#)）

### **Dutch DPA Fines Tax Authority 2.75M Euros**

The Netherlands' data protection authority(Dutch DPA), fined the Tax and Customs Administration 2.75 million euros for data processing violations under the GDPR. The Dutch DPA deemed the administration's processing of dual nationality information belonging to applicants for childcare allowance "unlawful, discriminatory and therefore improper," noting the administration should have deleted the data according to data minimization principles. AP chairman Aleid Wolfsen said the case is an example of how "unlawful processing with an algorithm has violated the right to non-discrimination." ([More](#))

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