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国家网信办发布《互联网信息服务深度合成管理规定（征求意见稿）》

CAC Publishes the Regulations for the Administration of Deep Synthesis of Internet Information Service (Draft for Comments)

国家网信办等四部门统一发布《关于统一发布网络关键设备和网络安全专用产品安全认证和安全检测结果的公告》

CAC and Other Four Agencies Jointly Issued the Notification on the Unified Release of the Security Certification and Test Results of Key Network Equipment and Specialized Network Security Products

银保监会办公厅发布《关于银行业保险业数字化转型的指导意见》

The General Office of CBIRC issued The Guideline on the Digitization of the Banking and Insurance Industry



国家发改委、商务部发布《关于深圳建设中国特色社会主义先行示范区放宽市场准入若干特别措施的意见》，将放宽数据要素交易和跨境数据业务等相关领域市场准入

NDRC and MOFCOM Jointly Issued the Opinions on Certain Special Measures to Ease Market Access in Shenzhen's Demonstration Zone, Aiming at Ease Market Access in Data Elements Trading, and International Data Business

深圳市市监局发布《深圳经济特区数据条例行政处罚裁量权实施标准》

Shenzhen AMR Issued the Implementation Standards for the Discretion of Administrative Penalties Under the Data Regulations of Shenzhen

上海市杨浦区发布《企业数据合规指引》

Shanghai Yangpu District Procuratorate Issued the Guidelines on Corporate Data Compliance

深圳中院：网站转载行政主管机关已合法公开的个人信息不构成侵权

Shenzhen Intermediate Court: Website's Reproduction of Personal Information That Has Been Legally Disclosed by Administrative Authorities Does Not Consist Of an Infringement

全国首例算法推荐案宣判：今日头条传播《延禧攻略》构成侵权

The First Case of Algorithmic Recommendation Ruling: Toutiao Spread *Story of Yanxi Palace* Consists of Infringement

EDPB通过了GDPR-CARPA认证制度

EDPB Adopts First Opinion on GDPR-CARPA

EDPB发布《访问权指南》并回应了有关Cookie同意的问询

EDPB Adopts Guidelines on Right of Access and Letter on Cookie Consent

欧盟委员会或将发布新数据法

EU Commission May Present a New Data Act

英国政府发布《国家网络安全战略：2022-2030》

U.K. Government Published Government Cyber Security Strategy: 2022-2030

法国最高行政法院批准了CNIL对谷歌1亿欧元的罚款

French Council of State Confirms CNIL's Euros 100 Million Sanction Against Google



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因违反透明度和同意框架，比利时数据保护机构对IAB欧洲罚款25万欧元

Belgian DPA Imposes 250,000 Euros Fine on IAB Europe for TCF Violations of GDP

美国国家标准技术研究所发布《面向企业风险管理和治理监督的网络安全风险分级》草案

NIST Releases Draft Report on Cybersecurity Risks for Enterprise Risk Management and Governance Oversight

美国国土安全部宣布建立网络安全审查委员会

The U.S. DHS Launches Cyber Safety Review Board

知识产权 Intellectual Property

最高人民法院批准增设无锡、徐州知识产权法庭

The Supreme People's Court Approves the Establishment of Wuxi and Xuzhou Intellectual Property Tribunal

国家知识产权局发布《商标注册申请快速审查办法（试行）》

China National Intellectual Property Administration issues Measures for Expedited Examination of Trademark Registration Applications (for Trial Implementation)

全国首例同时适用“法定赔偿”+“惩罚性赔偿”案件宣判

First Case in China to Apply Both "Statutory Damages" + "Punitive Damages"

北京高院拉斐水岸楼盘侵权拉菲酒案：明确商标贡献率举证责任

Beijing High People's Court Clarifying the Burden of Proof for the Contribution of the Trademark in Lafite Case

英超赢得版权纠纷案，PPTV 被判支付总额1.64亿英镑欠款

Premier League was Awarded UK£157m over Collapsed PPTV Deal

爱立信再诉苹果侵犯其SEP专利权，此前许可协议已到期

Ericsson Sues Apple for Infringement of 12 5G Patents

立方竞争法周报 Weekly Competition Law News

中俄签署反垄断执法和竞争政策领域合作协定

2022年2月4日，俄罗斯总统普京访华并出席北京冬奥会开幕式，国家主席习近平同普京举行会晤。访问期间，双方有关部门签署了包括《中华人民共和国政府与俄罗斯联邦政府反垄断执法和竞争政策领域的合作协定》在内的一系列重点领域合作文件。（[查看更多](#)）

China and Russia Sign Cooperation Agreement on Antitrust Enforcement and Competition Policy

On February 4, 2022, Russian President Putin visited China and attended the opening ceremony of the Beijing Winter Olympic Games. Chinese President Xi Jinping held a meeting with Putin. During the visit, the relevant authorities of the two sides signed a series of cooperation documents in key areas, including the agreement on cooperation in antitrust enforcement and competition policy between the Government of the People's Republic of China and the Government of the Russian Federation. ([More](#))

最高院知产庭：合同条款违反反垄断法认定无效

2022年1月27日，最高人民法院知识产权法庭（“最高院知产庭”）就一起涉及驾驶培训服务行业的横向垄断协议纠纷案作出判决，认定涉案联营协议和自律公约构成横向垄断协议，且当事人未提供充分证据证明存在豁免情形，改判确认涉案联营协议和自律公约因违反反垄断法规定而全部无效。（[查看更多](#)）

IP Tribunal of SPC: The Contract Violating the Anti-Monopoly Law is Invalid

On January 27, 2022, the Intellectual Property Tribunal of the Supreme People's Court (“IP Tribunal of SPC”) ruled on a dispute over a horizontal monopoly agreement in the driving training services industry, finding that the joint venture agreement and the self-regulation convention in dispute constituted a horizontal monopoly agreement and that the parties have not provided sufficient evidence to prove the existence of exemption. Therefore, the Tribunal changed the original sentence and confirmed that the joint venture agreement and the self-discipline convention were invalid for the violation of the Anti-Monopoly Law. ([More](#))

市场监管总局附条件批准超威半导体公司收购赛灵思公司股权案

2022年1月27日，国家市场监督管理总局（“市场监管总局”）宣布附条件批准超威半导体公司（“超威”）收购赛灵思公司（“赛灵思”）股权。市场监管总局认为此项集中对全球和中国境内CPU、GPU加速器、FPGA市场具有或可能具有排除、限制竞争效果。超威承诺（1）向中国境内市场销售时，不强制进行搭售；不阻碍或限制客户单独购买或使用；不得歧视单独购买的客户；（2）依据公平、合理、无歧视原则，向中国境内市场继续供应相关软件、配件；

(3) 确保赛灵思FPGA的灵活性和可编程性；(4) 继续保证与第三方产品的互操作性；(5) 对第三方制造商的信息采取保护措施。 ([查看更多](#))

SAMR Conditionally Approves the Acquisition of Xilinx by AMD

On January 27, 2022, the State Administration for Market Regulation (“SAMR”) announced a conditional approval for AMD’s acquisition for Xilinx’s equity. SAMR found that the acquisition has or may have the effect of eliminating and restricting competition on the global and Chinese markets for CPU, GPU accelerator, and FPGA. AMD committed that (1) it will not force tie-in sales to the Chinese market, prevent or restrict customers from purchasing or using the products separately, or discriminate against customers who purchase the products separately; (2) it will continue to supply relevant software and the accessories to the Chinese market on fair, reasonable, and non-discriminatory term; (3) it will ensure the flexibility and programmability of Xilinx’s FPGA; (4) it will continue to ensure interoperability with third-party products; and (5) it will take measures to protect the information of third-party manufacturers. ([More](#))

涉嫌削弱竞争，香港竞争事务委员会对Foodpanda以及Deliveroo开展调查

2022年1月27日，香港竞争事务委员会（“竞委会”）宣布对Foodpanda以及Deliveroo户户送开展调查。竞委会认为，这两家外卖平台涉嫌实施了多项具有削弱竞争性质的交易行为：（1）要求餐厅与其独家合作；（2）要求合作餐厅在该平台的商品价格等同或低于在其他外卖平台所示价格；（3）要求合作餐厅采用该平台的送餐服务时必须同时采用其平台的外卖自取服务或其他服务等。竞委会认为，上述行为可能会削弱外卖平台之间的竞争、妨碍其他外卖平台进入市场。

([查看更多](#))

Hong Kong Competition Commission Investigates into Online Food Delivery Platforms

On January 27, 2022, Hong Kong Competition Commission (“Commission”) began to investigate two online food delivery platforms, namely Foodpanda, and Deliveroo. The Commission held that the two platforms are suspected of conducting unlawful behaviors restricting competition: (1) requiring exclusive cooperation from partner restaurants; (2) requiring partner restaurants to offer the prices that are equal to or lower than those offered on other online food delivery platforms; and (3) requiring partner restaurants to use the pick-up or other services from the platform. The Commission considered that these behaviors may have the potential effect of softening competition among online food delivery platforms, as well as hindering the entry of new or smaller online food delivery platforms. ([More](#))

最高法公布阿斯利康与奥赛康发明专利权纠纷二审裁定书，指明“反向支付协议”是否涉嫌垄断的认定思路

2022年1月21日，最高人民法院（“最高法”）公布了阿斯利康有限公司（“阿斯利康”）与江苏奥赛康药业有限公司（“奥赛康”）侵害发明专利权纠纷二审裁定书。最高法指出，对于以不挑战专利权有效性为目的的“药品专利反向支付协议”是否涉嫌构成垄断协议的判断，核心在于

其是否涉嫌排除、限制相关市场的竞争。对此，可以假定在不存在有关协议的情形下，法院支持仿制药申请人请求宣告专利权无效的可能性，进以此为基础分析该协议是否损害竞争。（[查看更多](#)）

SPC Deliveres the Decision on AstraZeneca vs. Aosaikang Indicating Whether the Reverse Payment Agreement is Suspected of Monopoly

On January 21, 2022, the Supreme People's Court (“SPC”) delivered the decision on AstraZeneca China Co. Ltd. (“AstraZeneca”) vs. Jiangsu Aosaikang Pharmaceutical Co. Ltd. (“Aosaikang”). SPC pointed out that the core of judging on whether the reverse payment agreement on pharmaceutical patents without the purpose challenging the validity of patent rights is suspected of constituting a monopoly agreement is to determine whether the agreement is suspected of excluding or restricting competition in the relevant market. In this regard, the possibility of the court for supporting a generic drug applicant’s application for the invalidation of the patent in the absence of such a reverse payment agreement is the basis to analyze whether the agreement harmed competition. ([More](#))

市场监管总局附条件批准环球晶圆收购世创股权案

2022年1月20日，市场监管总局宣布附条件批准环球晶圆股份有限公司（“**环球晶圆**”）收购世创股份有限公司（“**世创**”）股权。2020年12月9日，环球晶圆与世创签署协议，环球晶圆拟取得世创的单独控制权。经分析，市场监管总局认为此项集中对全球和中国境内8英寸区熔晶圆市场具有或可能具有排除、限制竞争效果。经多轮商谈，环球晶圆承诺，将剥离区熔晶圆业务，并按照公平、合理、无歧视的原则，继续向中国境内客户供应各类晶圆产品。（[查看更多](#)）

SAMR Conditionally Approves the Acquisition of Siltronic by Global Wafer,

On January 20, 2022, SAMR announced a conditional approval for Global Wafer’s acquisition for Siltronic’s equity. On December 9, 2020, the two companies signed an agreement under which the Global Wafer would take sole control of Siltronic. SAMR found that acquisition has or may have the effect of eliminating and restricting competition on the global and Chinese markets for the *8-inch Zone-Melting Wafer Market* in China. After several rounds of discussions, Global Wafer promises to divest Zone-Melting Wafer business and continue to supply all kinds of wafer products to the Chinese market on fair, reasonable, and non-discriminatory term. ([More](#))

微软对动视暴雪的收购恐将接受FTC的反垄断审查

2022年2月1日，据彭博社消息，美国联邦贸易委员会（“**FTC**”）将对微软拟收购动视暴雪的交易是否会损害竞争展开调查。据报道，FTC的审查将集中在各方的游戏组合与微软主机和硬件系统的结合上。与此同时，FTC可能会密切关注微软对动视暴雪的收购将会如何限制其竞争对手。（[查看更多](#)）

Microsoft Deal for Activision Reviewed by FTC

On February 1, 2022, the Federal Trade Commission (“FTC”) will investigate whether Microsoft's proposed acquisition of Activision Blizzard will harm competition, according to Bloomberg. The investigation will focus on the combination of the company’s gaming portfolio with Microsoft’s consoles and hardware systems. At the same time, regulators are likely to look closely at how Microsoft’s ownership of Activision Blizzard could harm rivals by limiting their access to the company’s biggest games. ([More](#))

环球晶圆收购世创股权案未获德国政府批准

2022年2月1日，环球晶圆宣布，其收购德国半导体硅片大厂世创的交易于未获德国政府批准。此前，该项交易已取得了美国、新加坡、中国台湾等反垄断主管机构的批准，同时还获得了中国市场监管总局的附条件批准。德国政府的批准成为此收购案最后所需的收购条件。此前，环球晶圆已向德国提出长远的补偿措施及承诺。但由于德国政府未能在交易截止日前完成审查，因此环球晶圆公开收购世创股权案以及相关合约未能完成并将失效。 ([查看更多](#))

Global Wafer's Acquisition of Siltronic's Equity Fails to Obtain Approval from the German Government

On February 1, 2022, Global Wafer announced that its acquisition of Siltronic, a German semiconductor wafer manufacturer, has not been approved by the German government. The transaction has previously been approved by antitrust authorities in the U.S., Singapore, and Taiwan China, and received a conditional approval from Chinese SAMR. The German government's approval became the last condition for the deal. Previously, Global Wafer has offered long-term compensation measures and commitments to Germany. However, due to the German government's failure to complete its review by the closing date, the acquisition of Siltronic's equity by Global Wafer and the related contract will lapse. ([More](#))

涉嫌滥用支配地位，CMA对音乐流媒体市场开展审查

2022年1月27日，英国竞争与市场管理局（“CMA”）对音乐流媒体市场开展审查，以确定其中是否有阻碍创新或过度支配的行为。去年10月，CMA就曾计划对Spotify、Apple Music、Amazon和YouTube等占据支配地位的这一行业开展调查。CMA将审查该行业是否存在损害听众、歌手和作曲家利益的行为。此次审查的周期预计为12个月，并将于审查结束后公布对该市场的研究报告和相应的监管措施。 ([查看更多](#))

UK Watchdog Launches Music Streaming Investigation

On January 27, 2022, The Competition and Markets Authority (“CMA”) launched an investigation into the music streaming market to establish whether innovation is being stifled and if any companies hold excessive power. CMA said in October that it planned an investigation into a sector dominated by the likes of Spotify, Apple Music, Amazon, and YouTube. CMA will assess whether there is lack of competition in this field that could harm audience, singers, and songwriters. The CMA has 12 months to publish a market study report setting out its findings and any action it proposes to take. ([More](#))

欧盟委员会附条件批准Meta收购Kustomer股权案

2022年1月27日，欧盟委员会宣布附条件批准Meta收购Kustomer股权案。Kustomer是一款极具创新、快速增长的客户服务及支持客户关系管理（“CRM”）的软件。而Facebook旗下的WhatsApp、Instagram和Messenger则为CRM软件提供商提供了重要的支持来源。因此，Meta和Kustomer属于具有纵向关系的经营者。欧盟委员会认为，Meta有能力且有经济动机实施封锁策略，而这将损害相关市场的竞争。为此，Meta提出了为期10年的全面准入承诺。（[查看更多](#)）

EU Commission Conditionally Approves the Acquisition of Kustomer by Meta

On January 27, 2022, The EU Commission conditionally approved the proposed acquisition of Kustomer by Meta. Kustomer is an innovative, and fast-growing player in the customer service and support customer relationship management (“CRM”) software market. While the popular messaging channels, WhatsApp, Instagram, and Messenger of Meta are inputs for customer service and support CRM software providers. Meta and Kustomer therefore operate in vertically-related markets. EU Commission found that Meta would have the ability, as well as an economic incentive, to engage in foreclosure strategies, which could reduce competition in the market. To address the competition concerns identified by the Commission, Meta offered comprehensive access commitments with a 10-year duration. ([More](#))

欧盟普通法院裁定撤销欧盟委员会对英特尔10.6亿欧元的反垄断罚款

2022年1月26日，欧盟普通法院（General Court of the European Union）裁定撤销欧盟委员会于2009年5月对英特尔作出反垄断罚款。欧盟委员会曾于2009年认定英特尔通过限定交易和附条件回扣的方式阻止其客户向其竞争对手AMD购买芯片，并作出10.6亿欧元的罚款。英特尔就该处罚决定向法院起诉，但被驳回，英特尔向欧盟法院提起上诉，本案又转回至欧盟普通法院。欧盟普通法院认为欧盟委员会对该案所做的同等效率竞争者分析不够全面，无法确定回扣问题是否会产生反竞争效果，因此该法院决定撤销之前的处罚决定。（[查看更多](#)）

General Court of the European Union Annuls the Commission’s Decision Imposing a Fine of Euros 1.06 Billion on Intel

On January 26, 2022, the General Court of the European Union (“The General Court”) annuls the EU Commission’s penalty on Intel. On May 2009, EU Commission fined Intel for Euros 1.06 billion on its blocking customers from buying chips from rival AMD through restricted transactions and conditional rebates. The action brought by Intel against that decision was dismissed in its entirety by the General Court. On the appeal brought by Intel, the Court of Justice set aside that judgment and referred the case back to the General Court. The General Court held that the EU Commission’s analysis was incomplete and did not make it possible to establish to the requisite legal standard that the rebates at issue were capable of having, or likely to have, anticompetitive effects. Thus, the General Court annuls the decision. ([More](#))

欧盟委员会重启对英伟达收购ARM案的审查

2022年1月25日，路透社新闻称，欧盟委员会已经恢复了对英伟达收购英国芯片设计公司ARM的交易的调查，并计划延期至5月25日作出决定。为等待英伟达提供材料，欧盟委员会在去年12月底暂停了对该案的审查，并于今年1月11日重启。欧盟委员会曾警告称，该交易可能会抬高价格，抑制创新。美国和英国的反垄断监管委员会也曾对此项交易表示担忧。 ([查看更多](#))

EU Commission Resumes Investigation of Nvidia's Deal for ARM

On January 25, 2022, it was reported that EU Commission had resumed investigation of Nvidia's deal for British chip designer ARM setting a new deadline of May 25 for their decision. EU Commission had temporarily halted its scrutiny in late December while waiting for more information from Nvidia and resumed its review on Jan 11. It had previously warned that the deal could push up prices and reduce choice and innovation. U.S. antitrust regulators are also against the deal while UK counterpart CMA has also voiced concerns. ([More](#))

FTC提高2022年并购前申报门槛至1.01亿美元

2022年1月24日，FTC宣布了2022年《克莱顿法案》的最新并购前申报门槛。今年的申报标准由9,200万美元上升至1.01亿美元。美国每年都根据国民生产总值对《克莱顿法案》中的并购前申报标准进行调整。新标准将在其公布之日起30天后生效，将适用于在生效日之后完成的所有交易。 ([查看更多](#))

FTC Adjusts the Threshold for Reporting Proposed Mergers to USD 101 Million

On January 24, 2022, FTC announced that the size-of-transaction threshold for reporting proposed mergers and acquisitions under the Clayton Act will adjust from USD 92 million to USD 101 million. The FTC revises the thresholds annually based on the change in gross national product. The revised thresholds will apply to all transactions that close on or after the effective date of the notice, which is 30 days after its publication in the Federal Register. ([More](#))

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

国家网信办发布《互联网信息服务深度合成管理规定（征求意见稿）》

2022年1月28日，国家互联网信息办公室（“国家网信办”）发布了《互联网信息服务深度合成管理规定（征求意见稿）》。征求意见稿共25条，主要规定了以下五个方面的内容：一是制定目的依据、适用范围和整体要求；二是深度合成服务提供者主体责任；三是深度合成信息内容标识管理制度；四是明确了监督管理相关要求；五是明确了法律责任、解释部门和施行日期。征求意见稿提出，深度合成服务提供者应当建立健全辟谣机制，发现深度合成信息服务提供者利用深度合成技术制作、复制、发布、传播虚假信息的，应当及时采取相应的辟谣措施，并将相关信息报网信办等部门备案。 ([查看更多](#))

CAC Publishes the Regulations for the Administration of Deep Synthesis of Internet Information Service (Draft for Comments)

On January 28, 2022, the Cyberspace Administration of China (“CAC”) published the regulations for the *Administration of Deep Synthesis of Internet Information Service* (Draft for Comments). The draft has 25 articles, which mainly include the following five parts: (1) the purpose, the scope of application, and the requirements; (2) the main responsibility of deep synthesis service providers; (3) the identification management system for deep synthesized information; (4) the requirement for supervision; (5) the responsibility, the interpretation department, and the implementation date. The draft requires that the service providers should establish a refuting mechanism for disinformation, take appropriate refuting measures to the disinformation and report the relevant information to CAC when finding the misuse of deep synthesis technology to produce, copy, publish and disseminate false information. ([More](#))

国家网信办等四部门统一发布《关于统一发布网络关键设备和网络安全专用产品安全认证和安全检测结果的公告》

2022年1月29日，国家网信办等四部门统一发布了《关于统一发布网络关键设备和网络安全专用产品安全认证和安全检测结果的公告》（“《公告》”）。《公告》指出，为加强网络关键设备和网络安全专用产品安全管理，国家网信办会同工业和信息化部、公安部、国家认证认可监督管理委员会将统一发布网络关键设备和网络安全专用产品安全认证和安全检测结果（以下简称认证和检测结果），对经具备资格的机构安全认证或检测，符合相关国家标准强制性要求的产品予以公布。认证和检测结果通过中国网信网、工业和信息化部网站、公安部网站和认监委网站同步公布和更新。 ([查看更多](#))

CAC and Other Four Agencies Jointly Issued the Notification on the Unified Release of the Security Certification and Test Results of Key Network Equipment and Specialized Network Security Products

On January 29, 2022, CAC and other four agencies jointly issued the *Notification on the Unified Release of the Security Certification and Test Results of Key Network Equipment and Specialized Network Security Products* (“*The Notification*”). *The Notification* states that to strengthen the management of critical equipment and network security products, CAC, along with the Ministry of Industry and Information Technology, the Ministry of Public Security, the Certification and Accreditation Administration will jointly publish the results of certification and the test of key network equipment and specialized network security products (hereinafter referred to as the Results), and will publish the products in line with national mandatory standards after the authoritative test. The Results will be published and updated synchronously on the official websites of the above four agencies. ([More](#))

银保监会办公厅发布《关于银行业保险业数字化转型的指导意见》

2022年1月26日，中国银行保险监督管理委员会办公厅（“银保监会办公厅”）发布了《关于银行业保险业数字化转型的指导意见》（“《指导意见》”）。《指导意见》指出，在风险防范方面，要强化网络安全防护以及数据安全和隐私保护，包括构建云环境、分布式架构下的技术安全防护体系，建立新技术引入安全风险评估机制，建设安全运营中心，建立数据全生命周期的安全闭环管理机制，以及对外发布信息安全管理等。（[查看更多](#)）

The General Office of CBIRC issued The Guideline on the Digitization of the Banking and Insurance Industry

On January 26, 2022, the General Office of the China Banking and Insurance Regulatory Commission ("The General Office of CBIRC") issued *The Guideline on the Digitization of the Banking and Insurance Industry* ("The Guideline"). The Guideline states that, to prevent risk, network security protection and data security protection, and privacy protection should be strengthened, which requires the establishment of technology security protection systems in a cloud environment and distributed architecture, the introduction of security risk assessment mechanism, the establishment of security operation center, the establishment of the security closed-loop management mechanism of data, and the security management of releasing information, etc. ([More](#))

国家发改委、商务部发布《关于深圳建设中国特色社会主义先行示范区放宽市场准入若干特别措施的意见》，将放宽数据要素交易和跨境数据业务等相关领域市场准入

2022年1月24日，国家发改委、商务部发布了《关于深圳建设中国特色社会主义先行示范区放宽市场准入若干特别措施的意见》（“《意见》”）。《意见》分为六个部分，共24项。其中第二项指出要放宽数据要素交易和跨境数据业务等相关领域市场准入，研究设立数据要素交易场所，建立数据资源产权、交易流通、跨境传输、信息权益和数据安全保护等基础制度和技术标准；探索个人信息保护与分享利用机制；在重点领域做好国际规则衔接，积极参与跨境数据流动国际规则制定；以人民币结算为主，探索建立数据要素交易领域相关标准体系。（[查看更多](#)）

NDRC and MOFCOM Jointly Issued the Opinions on Certain Special Measures to Ease Market Access in Shenzhen's Demonstration Zone, Aiming at Ease Market Access in Data Elements Trading, and International Data Business

On January 24, 2022, the National Development and Reform Commission (“NDRC”) and the Ministry of Commerce (“MOFCOM”) jointly issued *The Opinions on Certain Special Measures to Ease Market Access in Shenzhen's Demonstration Zone* (“The Opinions”). The Opinions are divided into six sections, with 24 parts. The second part particularly points out that to relax market access in data trading and international data business, the government will help to set up data trading center, establish systems and technical standards for data property, data trading, cross-border transmission, information rights, and data security protection;

improve the mechanisms for personal information protection, sharing, and utilization; enhance international rules convergence in key areas, and actively participate in rule-making process in international data transmission ; and explore a standard system in data trading based on RMB. ([More](#))

深圳市市监局发布《深圳经济特区数据条例行政处罚裁量权实施标准》

2022年1月19日，深圳市市场监督管理局（“深圳市市监局”）发布了《深圳经济特区数据条例行政处罚裁量权实施标准》（“《实施标准》”），对其职权范围内数据执法事项裁量标准进行界定。《实施标准》对数据交易、不正当竞争、算法歧视的处罚事项、处罚情形、处罚标准作出了细化，为后续监管机构执法提供了明确依据。（[查看更多](#)）

Shenzhen AMR Issued the Implementation Standards for the Discretion of Administrative Penalties Under the Data Regulations of Shenzhen

On January 19, 2022, the Shenzhen Administration for Market Regulation (Shenzhen AMR) issued the *Implementation Standards for Discretionary Administrative Penalties under the Data Regulations of Shenzhen* (“*The Implementation Standards*”). *The Implementation Standards* defines the discretion standard of authorized enforcement on data protection issues. *The Implementation Standards* set detailed rules in penalty matters, penalty circumstances, and penalty standards for data trading, unfair competition, and algorithmic discrimination, providing a solid basis for enforcement. ([More](#))

上海市杨浦区发布《企业数据合规指引》

2022年2月7日，上海市杨浦区检察院发布《企业数据合规指引》（“《指引》”）。该《指引》分为六章，共38条，包括总则、数据合规管理体系、数据风险识别、数据风险评估与处置、数据合规运行与保障和附则。《指引》鼓励各类企业设置专门的数据合规管理部门，而不是由法务部门履行合规管理职能。《指引》列举了一些常见的数据风险，特别对数据刑事风险进行了提示。《指引》还明确要求数据处理者利用生物特征进行个人身份认证的，应当对必要性、安全性进行风险评估，不得强制个人同意收集人脸、步态、指纹、虹膜、声纹等生物特征信息。（[查看更多](#)）

Shanghai Yangpu District Procuratorate Issued the Guidelines on Corporate Data Compliance

On February 7, 2022, the Shanghai Yangpu District Procuratorate issued *The Guidelines on Corporate Data Compliance* (“*The Guidelines*”). *The Guidelines* are divided into six chapters with 38 articles, including General Provisions, Data Compliance Management System, Data Risk Identification, Data Risk Assessment and Disposal, Data Compliance Operation and Protection, and Bylaws. *The Guidelines* encourage all types of enterprises to set up a specific data compliance management department, rather than having the legal department perform the compliance management function. *The Guidelines* enumerate some common data risks, with special tips on data crime. *The Guidelines* also requires that data processors using biometric features for personal identification should assess necessity and security and shall not force individuals to consent to the collection of biometric information such as the face, gait, fingerprint, iris, and voiceprint. ([More](#))

深圳中院：网站转载行政主管机关已合法公开的个人信息不构成侵权

2021年12月30日，深圳市中级人民法院（“深圳中院”）公开了冯克斌诉深圳易图资讯股份有限公司（“易图公司”）、北京百度网讯科技有限公司（“百度公司”）房屋租赁合同纠纷二审判决书，认定网站转载行政主管机关已合法公开的个人信息不构成侵权。法院认为，易图公司转载了深圳市住房和建设局在其官网发布的《选房公示》，在该《选房公示》中，公布了冯克斌身份证号（隐藏后四位）、选定项目、面积。易图公司转载国家机关发布的公示信息，未篡改内容，并无不当，并未干涉、盗用、假冒冯克斌的姓名。对于百度公司是否侵犯冯克斌姓名权的问题，法院认为，百度公司提供搜索引擎，通过搜索关键词客观呈现搜索结果，并不存在过错，不构成侵权。（[查看更多](#)）

Shenzhen Intermediate Court: Website's Reproduction of Personal Information That Has Been Legally Disclosed by Administrative Authorities Does Not Consist Of an Infringement

On December 30, 2021, Shenzhen Intermediate People's Court published the second trial judgment of Feng Kebin vs. Shenzhen YiTu Information Co., Ltd (“YiTu”) and Beijing Baidu Technology Co., Ltd (“Baidu”) over a house lease contract. The court held that a website's reproduction of personal information that has been legally disclosed by the administrative authority does not constitute an infringement. The court held that YiTu reproduced the *Public Notice of Housing Selection* issued by Shenzhen Housing and Development Bureau on its official website, in which announced Mr. Feng's ID number (last four digits hidden), selected house and area. It is not improper for Yitu to replicate the public announcement information, and did not interfere with, or impersonate Mr. Feng's name. On the issue of whether Baidu infringed Mr. Feng's naming right, the court held that as a search engine, Baidu objectively presented search results through search keywords, which was not at fault and did not constitute infringement. ([More](#))

全国首例算法推荐案宣判：今日头条传播《延禧攻略》构成侵权

2022年1月24日，北京爱奇艺科技有限公司（“爱奇艺公司”）诉北京字节跳动科技有限公司（“字节公司”）侵害《延禧攻略》信息网络传播权一案的判决书被公开。判决书中，法院对网络服务提供者的注意义务、算法推荐的侵权注意义务等作出明确认定。法院认定字节公司具有充分的条件、能力和合理的理由知道其众多头条号用户大量地实施了涉案侵权行为，属于法律所规定的应当知道的情形。但其所采取的相关保护措施，尚未达到“必要”程度。字节公司不仅仅提供信息存储空间服务，而是同时提供了信息流推荐服务，理应对用户的侵权行为负有更高的注意义务。最终，法院认定字节公司的涉案行为侵害了爱奇艺公司的著作权，赔偿原告经济损失150万元及诉讼合理开支50万元。（[查看更多](#)）

The First Case of Algorithmic Recommendation Ruling: Toutiao Spread *Story of Yanxi Palace* Consists of Infringement

On January 24, 2022, the judgment in the case of Beijing QIYI Technology Co., Ltd (“iQIYI”) vs. Beijing ByteDance Technology Co., Ltd (“ByteDance”) infringing the information network dissemination right of TV drama *Story of Yanxi Palace* was made public. In the judgment, the court decided on the duty of care for network service providers and for algorithmic recommendations. The court held that ByteDance had sufficient conditions, ability, and reasonable grounds to know that many users on TouTiao.com had committed the infringing acts in large numbers, which is a situation that should be known under the law. However, the protection measures it took did not reach the level of *necessary*. ByteDance not only provided information storage space service but also provided information flow recommendation service, so it should have a higher obligation to pay attention to the infringing acts of users. In the end, the court ruled that ByteDance infringed iQIYI's copyright and compensated the plaintiff CNY1.5 million for economic loss and CNY 500,000 for litigation expenses. ([More](#))

EDPB通过了GDPR-CARPA认证制度

2022年2月2日，欧洲数据保护委员会（“EDPB”）宣布通过了卢森堡国家数据保护委员会提交的GDPR-CARPA认证制度的意见。这是EDPB首次一致通过的全国性认证制度。EDPB指出，GDPR-CARPA认证制度是一个通用制度，不侧重于具体部门或处理类型，而是规定了组织在处理数据时应遵循的数据保护治理要求。 ([查看更多](#))

EDPB Adopts First Opinion on GDPR-CARPA

On February 2, 2022, the European Data Protection Board (“EDPB”) announced that it had adopted its opinion on the General Data Protection Regulation Certified Assurance Report-based Processing Activities (“GDPR-CARPA”) certification scheme submitted to the EDPB by the Luxembourg National Commission for Data Protection and noted that this is the first time that the EDPB adopts a consistency opinion on criteria for a nationwide certification scheme. In particular, the EDPB stated that the GDPR-CARPA certification scheme is a general scheme, which does not focus on a specific sector or type of processing and includes requirements on data protection governance in the organization surrounding the processing activities. ([More](#))

EDPB发布《访问权指南》并回应了有关Cookie同意的问询

2022年1月19日，EDPB通过了《访问权指南》（“《指南》”）。《指南》旨在分析访问权的各个方面，并为不同情况下如何实施访问权提供精确指导。《指南》厘清了访问权的范围、控制者必须向数据主体提供的信息、访问请求的格式、访问的主要方式以及无根据或过度请求等问题。此外，EDPB回复了一封有关Cookie同意的问询函。在信中，EDPB重申，它致力于确保整个欧洲经济区统一适用数据保护规则。为此，EDPB成立了一个关于Cookie同意栏的特别工作组，以协调对有关Cookie同意栏的投诉的回应。此外，EDPB更新了有关Cookie同意的指南，以确保在同意的条件和意愿的明示方面采取了统一的方法。 ([查看更多](#))

EDPB Adopts Guidelines on Right of Access and Letter on Cookie Consent

On January 19, 2022, the EDPB adopted Guidelines on the Right of Access. The Guidelines aim to analyze the various aspects of the right of access and to provide more precise guidance on how the right of access has to be implemented in different situations. Among others, the Guidelines provide clarifications on the scope of the right of access, the information the controller has to provide to the data subject, the format of the access request, the main modalities for providing access, and the notion of manifestly unfounded or excessive requests. In addition, the EDPB adopted a letter in reply to letters calling for a consistent interpretation of cookie consent. In the letter, the EDPB reiterates that it is committed to ensuring the harmonized application of data protection rules throughout the European Economic Area. In this respect, the EDPB has recently set up a taskforce on cookie banners to coordinate the response to complaints concerning cookie banners. Furthermore, the EDPB has updated the Guidelines on consent in order to ensure a harmonized approach on the conditionality of consent and on the unambiguous indication of wishes. ([More](#))

欧盟委员会或将发布新数据法

2022年2月3日，2022年2月3日，据EURACTIV报道，欧盟委员会计划在2月23日发布《数据法》。

《数据法》是一项针对非个人数据的横向立法，将适用于欧盟的互联产品制造商、数字服务提供商和用户。《数据法》提案规定了数据共享的规则、公共机构的访问条件、国际数据传输、云转换和互操作性。 ([查看更多](#))

EU Commission May Present a New Data Act

On February 3, 2022, according to EURACTIV, EU Commission plans to present the Data Act on 23 February. The Data Act is a horizontal legislation for non-personal data, which will apply to the manufacturers of connected products, digital service providers and users in the EU. The Data Act proposal defines the rules for sharing data, conditions for access by public bodies, international data transfers, cloud switching and interoperability. ([More](#))

英国政府发布《国家网络安全战略：2022-2030》

2022年1月25日，英国内阁发布了《国家网络安全战略：2022-2030》，阐述了政府建设成为能够抵御网络风险的公共部门的计划，呼吁社会各方面发挥其作用，加强英国在网络空间的经济实力。该战略概述了英国政府的目标，即在2025年之前大力加强对网络攻击的防范，到2030年，整个政府的所有部门都能抵御网络漏洞和攻击。 ([查看更多](#))

U.K. Government Published Government Cyber Security Strategy: 2022-2030

On January 25, 2022, the U.K Cabinet Office published the *Government Cyber Security Strategy: 2022-2030*, which sets out the government's approach to building a cyber resilient public sector, calling on all parts of society to play their part in reinforcing the UK's economic strengths in cyberspace. The Strategy outlines the aim of the government's critical functions to be significantly hardened to cyberattacks by 2025, with all government organizations across the whole public sector being resilient to known vulnerabilities and attack methods no later than 2030. ([More](#))

法国最高行政法院批准了CNIL对谷歌1亿欧元的罚款

2022年1月28日，法国国家信息与自由委员会（“CNIL”）宣布，在谷歌对CNIL于2020年12月开出的1亿欧元罚款提出上诉后，法国最高行政法院发布决定，确认CNIL可以就Google违反《通用数据保护条例》规定的一站式拒绝Cookies机制的行为进行制裁。 ([查看更多](#))

French Council of State Confirms CNIL's Euros 100 Million Sanction Against Google

On January 28, 2022, the French data protection authority CNIL announced that the Council of State had issued its decision, in which it confirmed the competency of CNIL to issue sanctions on cookies outside the one-stop shop mechanism under the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”), following appeals from Google against a Euros 100 million fine issued by CNIL in December 2020. ([More](#))

因违反透明度和同意框架，比利时数据保护机构对IAB欧洲罚款25万欧元

2022年2月2日，比利时数据保护机构公布了其在DOS-2019-01377号案件中的决定，对IAB欧洲处以25万欧元罚款。在对IAB欧洲的透明度和同意框架进行调查后，比利时数据保护机构认定，IAB欧洲作为数据控制者，通过透明度和同意框架字符串来登记个人用户的同意、拒绝和偏好，以此来标记用户。比利时数据保护机构认为，IAB欧洲的行为可能已经违反了GDPR。 ([查看更多](#))

Belgian DPA Imposes 250,000 Euros Fine on IAB Europe for TCF Violations of GDPR

On February 2, 2022, the Belgian Data Protection Authority (“Belgian DPA”) published its decision in Case No. DOS-2019-01377, in which it imposed a fine of 250,000 Euros on Interactive Advertising Bureau Europe (“IAB Europe”). Following an investigation into the Transparency and Consent Framework (“TCF”) designed by IAB Europe, the Belgian DPA determined that IAB Europe acts as a data controller for the registration of individual users' consent signal, objections, and preferences by means of the Transparency and Consent String, linked to an identified user. Consequently, the Belgian DPA found that IAB Europe can be held responsible for potential violations of the GDPR. ([More](#))

美国国家标准技术研究所发布《面向企业风险管理和治理监督的网络安全风险分级》草案

2022年1月26日，美国国家标准技术研究所（“NIST”）《面向企业风险管理和治理监督的网络安全风险分级》草案，并正在向社会征求意见。草案描述了整合企业风险信息的方法，包括如何在考虑风险参数、标准和业务影响的同时，汇总和规范网络安全风险登记册（“CSRR”）的结果的概念示例。此外，NIST指出，整合和规范化风险信息有助于为企业级风险决策和监控提供信息，从而有助于全面了解总体网络风险。在这方面，草案描述了企业风险概况（“ERP”）的创建，可用于支持企业对网络风险和其他风险类型的比较和管理。 ([查看更多](#))

NIST Releases Draft Report on Cybersecurity Risks for Enterprise Risk Management and Governance Oversight

On January 26, 2022, the U.S National Institute of Standards and Technology (“NIST”) released its draft NIST Interagency Report 8286C “*Staging Cybersecurity Risks for Enterprise Risk Management and Governance Oversight*” and is seeking comments on the same. The draft report describes methods for combining risk information, which could include notional examples for aggregating and normalizing the results from cybersecurity risk registers, while also considering risk parameters, criteria, and various business impacts. Furthermore, NIST noted that having integrated and normalized risk information helps to inform enterprise-level risk decision-making and monitoring, which then assists in creating a comprehensive picture of the overarching cyber risk. In this respect, the draft report describes the creation of an enterprise risk profile that could be used to support the comparison and management of cyber and other risk types. ([More](#))

美国国土安全部宣布建立网络安全审查委员会

2020年2月3日，美国国土安全部根据关于改善国家网络安全的第14028号行政命令的指示，推出了网络安全审查委员会（“CSRB”）。国土安全部表示，CSRB是一个公私协力的组织，将汇集政府和行业领导者，以提高美国网络安全。CSRB将审查和评估重大网络安全事件，以便政府、网络安全行业和其他安全组织能够更好地保护美国的网络和基础设施，其第一次审查将聚焦2021年底发现的广泛使用的Log4j软件的漏洞。 ([查看更多](#))

The U.S. DHS Launches Cyber Safety Review Board

On February 3, 2020, the U.S. Department of Homeland Security (“DHS”) launched the Cyber Safety Review Board (“CSRB”) as directed under Executive Order 14028 on Improving the Nation's Cybersecurity. DHS stated that the CSRB is a public-private initiative that will bring together government and industry leaders to elevate the nation's cybersecurity. In addition, the DHS stated that the CSRB will review and assess significant cybersecurity events so that government, industry, and the broader security community can better protect U.S. networks and infrastructure and its first review will focus on the vulnerabilities discovered in late 2021 in the widely used Log4j software library. ([More](#))

知识产权 Intellectual Property

最高人民法院批准增设无锡、徐州知识产权法庭

2022年1月22日，江苏省高级人民法院在江苏省第十三届人民代表大会发表工作报告。报告显示，最高人民法院批准增设无锡、徐州知识产权法庭。此前，江苏省已设立南京、苏州知识产权法庭管辖江苏省内专利(除外观设计专利纠纷)、技术秘密、计算机软件、植物新品种、集成电路布图设计、涉及驰名商标认定及垄断纠纷，及江苏省部分市的外观设计专利纠纷、商标、著作权、不正当竞争、技术合同纠纷。

来源：最高人民法院

The Supreme People's Court Approves the Establishment of Wuxi and Xuzhou Intellectual Property Tribunal

Supreme People's Court decided to establish specialized IP Tribunal within the Wuxi Intermediate People's Court and Xuzhou Intermediate People's Court in Jiangsu Province. Previously, Nanjing and Suzhou Intellectual Property Tribunals have been established in Jiangsu Province to govern disputes over patents (except design patent disputes), technology secrets, computer software, new varieties of plants, layout designs of integrated circuits, disputes involving the recognition of well-known trademarks and monopolies, and in some municipalities in Jiangsu Province disputes over design patents, trademarks, copyrights, unfair competition and technology contracts. Now, Jiangsu is the only province with four specialized IP tribunal in China.

Source: [Jiangsu high people's court](#)

国家知识产权局发布《商标注册申请快速审查办法（试行）》

2022年1月14日，国家知识产权局发布了《商标注册申请快速审查办法（试行）》（以下简称“《办法》”），自发布之日起施行。

《办法》的出台将有利于更好满足市场主体差异化需求，服务经济社会高质量发展。其中指出，有下列情形之一的商标注册申请可以请求快速审查：涉及国家或省级重大工程、重大项目、重大科技基础设施、重大赛事、重大展会等名称，且商标保护具有紧迫性的；在特别重大自然灾害、特别重大事故灾难、特别重大公共卫生事件、特别重大社会安全事件等突发公共事件期间，与该突发公共事件直接相关的；为服务经济社会高质量发展，推动知识产权强国建设纲要实施确有必要；其他对维护国家利益、社会公共利益或者重大区域发展战略具有重大现实意义的。

来源：国家知识产权局

China National Intellectual Property Administration issues *Measures for Expedited Examination of Trademark Registration Applications (for Trial Implementation)*

On 14 January 2022, China National Intellectual Property Administration issues *Measures for Expedited Examination of Trademark Registration Applications (for Trial Implementation)* (Measures), which shall come into effect from the date of issue.

The Measures is for meeting the varied needs of market entities and serving the high-quality development of the economy and society. Trademark applications under one of the following circumstances may request expedited examination: Where the names of national or provincial projects, major projects, major scientific and technological infrastructure, major events, major exhibitions, etc. are involved and trademark protection is of an urgent nature. Where it is directly related to the response to a public emergency such as a significant natural disaster, a significant accident and disaster, a significant public health event or a significant social security event during such a public emergency. Where it is necessary to serve high-quality economic and social development and to promote the implementation of the outline for the construction of a strong intellectual property country. Others that are of great practical significance for safeguarding national interests, social public interests or major regional development strategies.

Source: [China National Intellectual Property Administration](#)

全国首例同时适用“法定赔偿”+“惩罚性赔偿”案件宣判

广东省广州市越秀区人民法院就腾讯诉任我行电子游戏机商店侵害商标权及不正当竞争纠纷一案作出判决，认定被告行为构成商标侵权和不正当竞争，判决被告停止侵权，并赔偿被告经济损失及合理维权开支共计204129元。

法院认为，如果能确定部分损失或侵权获利，应当先以部分损失或侵权获利计算赔偿金额，符合适用惩罚性赔偿要件的，以该部分损失或获利确定惩罚性赔偿数额；不能确定损失或侵权获利的部分，仍应当适用法定赔偿。本案中，法院查明了被告自认的5件涉案商品销售的获利，并认定该部分获利符合适用惩罚性赔偿的要件；对未能查明的侵权商品销售量部分依法适用法定赔偿。

该案为全国首例同时适用“法定赔偿”+“惩罚性赔偿”的商标侵权及不正当竞争纠纷案件，明确了在实际损失或侵权获利可部分查清情况下，可同时适用惩罚性赔偿和法定赔偿这一裁判思路，对司法实践具有很强的指导意义。

来源：广东省广州市越秀区人民法院

First Case in China to Apply Both "Statutory Damages" + "Punitive Damages"

Guangzhou Yuexiu District People's Court made a judgment of a case between Tencent v. Ren I Xing Electronic Game Shop over infringement of trademark and unfair competition, finding that the defendant's acts constituted trademark infringement and unfair competition, and ruling that the defendant shall cease infringement and compensate the defendant for economic losses and reasonable expenses in defending its rights, totaling RMB 204,129.

The court held that, if partial loss or profit from infringement could be determined, the amount of compensation shall be calculated on the basis of partial loss or profit from infringement first, and the amount of punitive damages shall be determined on the basis of the partial loss or profit; if the loss or profit from infringement cannot be determined, statutory damages shall still be applied. In this case, the court identified the defendant's self-identified profits from the sale of the five pieces of merchandise involved in the case, and found that the profits shall also be applied for punitive damages; the portion of the sales volume of the infringing merchandise that could not be identified shall apply statutory damages.

This case is the first case in China in which both "statutory damages" and "punitive damages" were applied, clarifying the principle that punitive damages and statutory damages can be applied at the same time, when the actual loss or infringement profit can be partially ascertained, which is of great guidance to judicial practice.

Source: Guangzhou Yuexiu District People's Court

北京高院拉斐水岸楼盘侵权拉菲酒案：明确商标贡献率举证责任

北京市高级人民法院对一起侵害商标权纠纷案作出判决。判决显示，原告拉菲庄园在葡萄酒行业享有很高的声望，并为“拉菲”、“LAFITE”等注册商标的权利人。被告怀来利世鸿亚公司等涉案楼盘小区大门、小区配套设施及微信公众号等相关宣传推广活动中突出使用“CHATEAU LAFITE”“拉斐水岸”等标识构成商标侵权，法院同时在该案中明确了商标贡献率举证责任。

法院认为，商品房作为大宗特殊商品，在销售过程中，相关公众一般会对楼盘所处地域、周边环境及配套设施、交通情况、楼盘开发者的信誉和实力、房屋质量、销售价格等因素予以考虑，上述因素对于消费者最终购买房屋更具有决定性作用，而商标标志在商品房销售中的贡献和作用通常较为有限，当然，亦不否认某楼盘品牌经过长期经营在相关公众中产生较强的影响力。因此，通过商标贡献率可以更为精准的计算侵权获利数额。就本案而言，法院已释明确定合适的商标贡献率更能够较为精确计算侵权获利情况，对此，拉菲酒庄首先应当举证证明其主张的商标贡献率，怀来利世鸿亚公司等被告不予认可，再提供相反证据。

来源：北京高级人民法院

立方短评：在知识产权领域，“贡献率”一词创设于美国专利判例中，也称为“技术贡献规则”，此规则在我国《关于审理侵犯专利权纠纷案件应用法律若干问题的解释》也有所体现。有学者观点认为，“商标贡献率”可能是来源于专利技术领域中有关“贡献率”的运用经验（参见赵春杰：《“商标贡献率”刍议》）。上述案件中，原告拉菲庄园试图通过商标贡献率来计算被告侵权获利，即侵权获利=商标贡献率（%）×侵权行为人总获利，但最终因未能举证证明商标贡献率而无法得到法院的支持。因商标贡献率难以衡量、缺乏统一计算标准等原因，仅有少量案件明确认可具体商标贡献率的数值，大多数案件中，商标贡献率仅作为法院酌定赔偿数额的考量因素出现。我们在处理同类案件调研过程中，曾调研到法院认可73%的商标贡献率案例（参见(2015)湘高法民三终字第4号），系将被告在实施侵权行为后的销售增长额视为涉案商标所带来的增益，由此推出商标贡献率，但该判决不免有忽略了被告商业经营中其他要素过分夸大“商标贡献”之嫌。目前司法实践鼓励通过商标贡献率更为精准的计算侵权获利数额，但商标贡献率的认定并非易事，系诉讼当事人的举证博弈，对商标权利人提出了较高的举证要求。

Beijing High People's Court Clarifying the Burden of Proof for the Contribution of the Trademark in Lafite Case

Beijing High People's Court issued a judgment on infringement of trademark. According to the judgment, the plaintiff, Chateau Lafite, enjoys a high reputation in the wine industry, and is the owner of registered trademarks such as "Lafite" and "LAFITE". The defendant prominently used the "CHATEAU LAFITE" and "LAFITE WATERFRONT" in the promotion activities of the commercial housing, such as the gates of the commercial housing, the supporting facilities of the commercial housing and the WeChat official account, constituting trademark infringement. The court also clarified the burden of proof for the contribution of the trademark in the case.

The court held that, as a special commodity, the public will consider the geographical location, the surrounding environment, supporting facilities, the traffic situation, the reputation and strength of the property developer, the quality and the sales price of the commercial housing, and the above factors have a decisive role in the final purchase decision of housing by consumers, while the contribution of the trademark in the sale of commercial housing is usually more limited, although there is no denying that a commercial housing brand has a strong influence on the public over time. Therefore, the contribution of a trademark can be used to calculate the amount of infringement profit more accurately. In this case, the court has explained that a suitable contribution rate can be used to calculate the infringe-

ment profit more accurately, and that Chateau Lafite shall first provide evidence to prove its claimed contribution rate, if the defendant does not agree with the plaintiff's evidence, the defendant will then provide evidence to the contrary.

Source: The Beijing High People's Court

Lifang & Partners: The term "contribution rate" was adopted in US patent jurisprudence, and is also referred to as the "technical contribution rule", which is also reflected in *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Disputes*. According to some scholars, the term "contribution rate" may have been derived from the experience of using the term "contribution rate" in the field of patent technology (see Zhao Chunjie: *Regulating the Contribution Rate of Trademarks*).

In the above case, the plaintiff, Chateau Lafite, calculated the defendant's infringement profits through the trademark contribution rate, i.e. $\text{infringement profits} = \text{trademark contribution rate (\%)} \times \text{the total profits of the infringer}$, but ultimately failed to prove the trademark contribution rate, and could not be supported by the court. Due to the difficulty of measuring the contribution rate and the lack of calculation criteria, only a small number of cases explicitly recognised the specific contribution rate, and in most cases, the contribution rate was only used as a factor in the court's discretion to determine the amount of compensation. In the course of our research on similar cases, we have investigated a case in which the court recognised a 73% contribution rate (see (2015) Xiang Gao Fa Min San Zhong Zi No. 4), in which the defendant's sales increase after the infringement was regarded as the gain brought about by the infringed trademark, and thus the contribution rate was introduced, but the judgement inevitably overstated the other elements of the defendant's business operations. The current judicial practice encourages more accurate calculation of the amount of infringement profits through the trademark contribution rate, but the determination of the trademark contribution rate is not an easy task and is a game of evidence for the parties to the litigation, which places a high burden of proof on the trademark right holder.

英超赢得版权纠纷案，PPTV 被判支付总额1.64亿英镑欠款

近日，英超联赛官方宣布，英超在与PPTV的诉讼中获胜，PPTV被判需赔偿1.64亿英镑（约14.22亿元人民币）。PPTV认为，由于2020年因为疫情而强制停赛100天，英超只执行了20%的赛程，所以希望跟英超官方协商能否在版权价格上“打折”或者延期付款，但遭到了英超方面的拒绝。

经过长时间的诉讼后，本周二英国高等法院的听证会做出了有利于英超联赛的判决，并要求PPTV支付1.57亿英镑的转播费以及利息等费用，共计1.64亿英镑。

来源: SportsPromedia

Premier League was Awarded UK£157m over Collapsed PPTV Deal

A UK High Court judge says Chinese broadcaster PP Sports must pay the UK£157 million (US\$213 million) it owes to the Premier League. Justice Fraser ruled on a dispute between English soccer's top flight and Suning-owned PPLive Sports International, which is based in the Hong Kong Special Administration Region of China, on 11th January, following a hearing in November.

The Premier League terminated its deal with PP Sports in September 2020, just a year into the three-

season Chinese rights deal, saying it was owed two instalment payments totalling nearly UK£157 million. The first payment was originally due in March 2020, two weeks before the 2019/20 season was interrupted by the pandemic.

The judge ruled in the league's favour, with Justice Fraser confirming that the claimant was entitled to a "summary judgment" – without a trial. He said summary judgments are granted when a judge concludes a defendant has "no real prospect" of defending a claim. The judge concluded that "none of the defences advanced" by PP Sports had anything other than "fanciful prospects of success".

Source: [SportsPromedia](#)

爱立信再诉苹果侵犯其SEP专利权，此前许可协议已到期

2022年1月18日，爱立信公司再次对苹果公司提起了专利侵权诉讼，这是两家公司围绕iPhone中使用5G无线专利使用费的最新一轮交锋。爱立信向美国得克萨斯州西部地区法院提起了两项针对苹果的专利侵权诉讼，总共涉及12项独立的专利。诉状称，在两家公司最近协议到期后，苹果不再拥有爱立信的2G、3G和4G牌照。

新的法庭文件显示，爱立信公司和苹果公司于2015年签订的交叉授权专利协议现在已经到期，双方正在就一项包括5G覆盖范围的新协议进行谈判，并寻求通过诉讼方式解决。

此前，爱立信曾于2021年10月首先提起诉讼，声称苹果试图不正当地降低专利使用费。美国时间2021年12月17日，苹果对爱立信提起反诉，指控爱立信在谈判过程中采取“强硬”策略，提出不合理要求。

来源: [知产财经](#)

Ericsson Sues Apple for Infringement of 12 5G Patents

Apple is being sued by Ericsson for continuing to use the Swedish company's 5G patents in the iPhone after its license agreement expired.

Two lawsuits have been filed by Ericsson, and together cover a total of 12 separate patents. The suits come after protracted negotiations with Apple failed to conclude before the firm's prior licensing deal expired. The lawsuits were filed in the Western District of Texas, and also in at least one unknown jurisdiction outside the US.

Previously, Apple sued Ericsson in December 2021, alleging that the firm was using "strong-arm tactics" in its patent negotiations. These legal exchanges are similar to a series of suits both companies went through in 2015. Those were then resolved by a new patent licensing agreement, and it is this which has now expired.

Source: [AppleInsider](#)

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