



# NEWSLETTER

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

### 全国信息安全标准化技术委员会《电子政务移动办公系统安全技术规范》征求意见稿发布

2022年3月28日，全国信息安全标准化技术委员会《电子政务移动办公系统安全技术规范》征求意见稿（“《征求意见稿》”）发布。该《征求意见稿》提出了电子政务移动办公系统安全技术框架，规定了移动终端安全、移动通信安全、移动接入安全、服务端安全和安全管理中心等各部分技术要求，以及测试评价方法。

《征求意见稿》规定了电子政务移动办公系统主要由移动终端、通信网络、移动接入区和服务端四部分构成。《征求意见稿》说明了电子政务移动办公系统面临的主要安全风险存在于移动终端、通信网络、移动接入区和服务端等方面，基于对电子政务移动办公系统的安全风险分析，电子政务移动办公系统的安全技术框架应包括移动终端安全、移动通信安全、移动接入安全、服务端安全和安全管理中心五部分。（[查看更多](#)）

### The National Information Security Standardization Technical Committee Solicits Public Comments for the Safety Specification of E-government Mobile Office System

On 28 March 2022, the National Information Security Standardization Technical Committee solicits public comments for the *Safety Specification of E-government Mobile Office System* (Exposure Draft). The Exposure Draft proposes the security technical framework of the e-government mobile office system, specifies the technical requirements for mobile terminal security, mobile communication security, mobile access security, server security and security management center, as well as methods of testing and evaluating.

The Exposure Draft stipulates that the e-government mobile office system is mainly composed of four parts: mobile terminal, communication network, mobile access area and server. It also states that the main security risks faced by the e-government mobile office system exist in mobile terminals, communication networks, mobile access areas and servers. Based on the security risk analysis of the e-government mobile office system, the security technology framework of the e-government mobile office system should include five parts: mobile terminal security, mobile communication security, mobile access security, server security and security management center. ([More](#))

### 三部门联合印发《关于进一步规范网络直播营利行为促进行业健康发展的意见》

2022年3月31日，国家互联网信息办公室、国家税务总局、国家市场监督管理总局联合印发《关于进一步规范网络直播营利行为促进行业健康发展的意见》（“《意见》”）。该《意见》着力构建跨部门协同监管长效机制，加强网络直播营利行为规范性引导，鼓励支持网络直播依法合规经营，促进网络直播行业中规范，规范中发展。《意见》强调落实网络直播平台主体责任、要求平台履行法定义务，同时明确了应保护直播平台合法权益。（[查看更多](#)）

### **Three Ministries Jointly Issues the *Opinions on Further Regulating the Profitable Behavior of Online Live Broadcasting to Promote the Healthy Development of the Industry***

On 31 March 2022, the Cyberspace Administration of China, the State Taxation Administration and the State Administration for Market Regulation jointly issued the *Opinions on Further Regulating the Profitable Behavior of Online Live Broadcasting to Promote the Healthy Development of the Industry* ("the *Opinions*"). *The Opinions* focuses on building a mechanism for long-term cross-departmental collaborative supervision, to strengthen the normative guidance and encourage compliant business activities in the field of online live broadcasting. *The Opinions* emphasizes the responsibilities of online live broadcasting platforms, as well as their legitimate rights and interests to be protected. ([More](#))

### **证监会就《关于加强境内企业境外发行证券和上市相关保密和档案管理工作的规定》公开征求意见**

2022年4月2日，为支持企业依法依规赴境外上市，提高境外发行证券与上市过程中相关保密和档案管理工作的规范化水平，推动深化跨境监管合作，证监会会同财政部、国家保密局、国家档案局对《关于加强在境外发行证券与上市相关保密和档案管理工作的规定》（证监会公告〔2009〕29号）进行修订，形成了《关于加强境内企业境外发行证券和上市相关保密和档案管理工作的规定（征求意见稿）》（“《规定》”）。

本次修订相较于原规定，主要作出的调整有：完善了法律依据；调整适用范围，与《国务院关于境内企业境外发行证券和上市的管理规定（草案征求意见稿）》相衔接；明确了本《规定》适用于企业境外直接和间接上市；明确了企业信息安全责任，为相关业务的在保密和档案管理方面提供了更加清晰、明确的指引；完善了跨境监管合作安排。 ([查看更多](#))

### **CSRC Solicits Public Comments for the *Provisions on Strengthening the Confidentiality and Archives Management in Relation with Securities Issuing and Listing Abroad of Domestic Companies***

On 2 April 2022, the China Securities Regulatory Commission (“CSRC”), the Ministry of Finance of the People’s Republic of China (“PRC”), the National Administration of State Secrets Protection and the National Archives Administration of China amended the *Provisions on Strengthening Confidentiality and Archives Administration of Overseas Issuance and Listing of Securities (Exposure Draft)* issued by CSRC, which is numbered as “CSRC Announcement〔2009〕29”. The amended draft is named as the *Regulations on Strengthening Confidentiality and Archives Administration of Overseas Issuance and Listing of Securities by Domestic Enterprises (Exposure Draft)*. (“the *Provisions*”) It aims to support companies with compliant listing, to improve the standardization of confidentiality and file management, and to promote international regulatory cooperation.

Main adjustments include: enhanced the legal basis; adjusted the application scope to be in line with the *Regulations on Strengthening Confidentiality and Archives Administration of Overseas Issuance and Listing of Securities by Domestic Enterprises (Exposure Draft)*; clarified the application scope of the *Provisions* as applying to direct and indirect listing; clarified the security responsibilities of companies so that clearer and more specific guidelines in aspects of confidentiality and archives management for

related businesses is provided; and improved international regulatory cooperation arrangements. ([More](#))

### 《重庆市数据条例》经重庆市五届人大常委会第三十三次会议表决通过

2022年3月30日，《重庆市数据条例》（“《条例》”）经市五届人大常委会第三十三次会议表决通过，将于2022年7月1日起施行。2021年，全国人大常委会相继出台《数据安全法》《个人信息保护法》，对数据安全、个人信息保护作了规范。《重庆市数据条例》（“《条例》”）作为重庆市数据领域的基础性法规，既是对上位法和中央政策的贯彻落实，也是推动重庆市经济社会高质量发展的有力举措。《条例》明确了数据安全是数据管理的底线。条例在《数据安全法》等上位法的框架下，结合重庆市实际，建立健全数据处理规则和数据安全体系；条例旨在解决数据管理中主要难题，着眼于公共数据资源规范，发挥示范带动作用，促进数据资源有效流通。（[查看更多](#)）

### The Chongqing Data Regulations Approved by Voting on the 33rd Meeting of the Standing Committee of the Fifth People's Congress of Chongqing

On 30 March 2022, the *Chongqing Data Regulations* (“the Regulations”) were approved by voting on the 33rd Meeting of the Standing Committee of the Fifth People's Congress of Chongqing, and will come into force on 1 July 2022. In 2021, the Standing Committee of the National People's Congress successively promulgated the *Data Security Law* and the *Personal Information Protection Law* to regulate data security and personal information protection. As the fundamental regulations in the data field of Chongqing, *the Regulations* is not only a implementation of higher-level laws and policies, but also a powerful measure to promote the high-quality economic and social development of Chongqing. *The Regulations* clarifies that data security is the bottom line of data management. Under the framework of higher-level laws, such as the *Data Security Law*, *the Regulations* establishes and improves data processing rules and data security systems in accordance with the actual situation of Chongqing. *The Regulations* aims to, based on the actual situations in Chongqing, solve the main problems of data management, focus on the specification of public data resources, play a leading role in demonstration, and promote the effective circulation of data resources. ([More](#))

### 银保监会依法查处21家银行机构监管数据质量违法违规行为

2022年3月25日，银保监会严肃查处一批监管标准化数据（EAST）数据质量领域违法违规案件，对政策性银行、国有大型银行、股份制银行等共21家银行机构依法作出行政处罚决定，处罚金额合计8760万元。

近年来，银保监会高度重视监管数据的整体治理水平和质量控制机制，组织开展了对21家全国性中资银行机构EAST数据质量专项检查。对检查发现的漏报错报EAST数据、部分数据交叉校核

存在偏差等数据质量违规问题，银保监会依法严肃予以行政处罚。同时，督促银行机构严肃追责问责，深挖数据质量违规问题背后的治理不完善、机制不健全等根源性问题，坚持当下改与长久立相结合，完善机制缺陷，弥补制度漏洞。 ([查看更多](#))

## **CBIRC Punishes 21 Banking Institutions for Violations of Laws and Regulations on Data Quality Supervision**

On 25 March 2022, the China Banking and Insurance Regulatory Commission (“CBIRC”) dealt with a number of cases of violations in the field of data quality of Examination and Analysis System Technology (EAST). CBIRC fined in a total of 21 banking institutions including policy banks, large state-owned banks, and joint-stock banks. The total amount is 87.6 million yuan.

In recent years, CBIRC has attached great importance to the level of overall governance and quality control mechanism of regulatory data, and has organized special inspections on the EAST data quality of 21 national Chinese banking institutions. For data quality violations such as omissions and misreporting of EAST data and deviations in cross-checking of some data found in inspections, CBIRC severely imposed administrative penalties in accordance with the law. In the meanwhile, CBIRC urged banking institutions to seriously pursue accountability, dig deep into the root causes of imperfect governance and imperfect mechanisms behind data quality violations, adhere to the combination of current reform and long-term establishment, improve mechanism defects, and make up for system loopholes.

([More](#))

## **英国版SCCs：英国个人数据跨境传输立法框架发布**

2022年3月21日，国际数据传输协议（“IDTA”）生效。出口商可运用 IDTA或附录，在跨境传输受限的个人数据时，仍与英国 GDPR 第46条保持一致。IDTA 和附录共同属于英国个人数据跨境传输一揽子计划的组成部分。

英国信息委员会办公室（“ICO”）在为英国 GDPR 发布的指南中，增加了关于跨境传输受限的说明。此外，ICO正在开发其他法律工具，以供为（各个）组织（使用数据的过程中）提供支持和指导。 ([查看更多](#))

## **UK SCCs: UK Releases Legislative Framework for International Transfers of Personal Data**

On 21 March 2022, the International Data Transfer Agreement (“IDTA”) came into force. Exporters will be able to use the IDTA or the Addendum as a transfer tool to comply with Article 46 of the UK GDPR when making restricted transfers. The IDTA and Addendum form part of the wider UK package to assist international transfers. This includes independently supporting the Government’s approach to adequacy assessments of third countries.

In Guide issued by the Information Commissioner’s Office (“ICO”) for UK GDPR, they added clarification as to what is a restricted transfer. Furthermore, the ICO is developing additional tools to provide support and guidance to organizations. ([More](#))

## 英国ICO和 CMA制定数字市场的合作蓝图

2022年3月25日，英国竞争与市场管理局（“CMA”）和信息委员会办公室（“ICO”）发表联合声明，阐述了他们对数字经济中竞争与数据保护之间关系的共同意见。声明的内容包括：数据（包括个人数据）在数字经济中发挥的重要作用；竞争目标与数据保护目标之间的强大协同作用；两个监管机构如何合作以克服矛盾，以及为消费者带来积极成果的实际案例。（[查看更多](#)）

### UK ICO and CMA Set Out Blueprint for Collaboration in Digital Markets

On 25 March 2022, the Competition and Markets Authority (“CMA”) and the Information Commissioner’s Office (“ICO”) have published a joint statement that sets out their shared views on the relationship between competition and data protection in the digital economy. The content of the statement includes: the important role that data – including personal data – plays within the digital economy; the strong synergies that exist between the aims of competition and data protection; the ways that the two regulators will work collaboratively together to overcome any perceived Tensions between their objectives; practical examples of how the two organizations are already working together to deliver positive outcomes for consumers. ([More](#))

## 美国：众议院提出电子货币和安全硬件法案

2022年3月28日，美国众议员、金融科技负责小组主席斯蒂芬·林奇（Stephen Lynch）提出电子货币和安全硬件法案（“ECASH法案”），建议向公众试行电子版美元。这项创新立法将提高金融包容性，最大限度地保护消费者和数据隐私，并推动美国开发和监管数字资产。该法案的共同提案人还有金融服务委员会的Jes ú s G. “Chuy” Garc í a、Rashida Tlaib、Ayanna Pressley 和 Alma Adams。（[查看更多](#)）

### US House of Representatives Issues the *Electronic Currency and Secure Hardware Act*

On 28 March 2022, U.S. Representative Stephen F. Lynch, Chairman of the Task Force on Financial Technology, introduced H.R. 7231, the *Electronic Currency and Secure Hardware (“ECASH”) Act*, which would develop an electronic version of the U.S. Dollar for use by the American public. This innovative legislation would promote greater financial inclusion, maximize consumer protection and data privacy, and advance U.S. efforts to develop and regulate digital assets. U.S. Representatives Jesús G. “Chuy” García, Rashida Tlaib, Ayanna Pressley and Alma Adams of the Committee on Financial Services are original cosponsors of the bill. ([More](#))

## 欧盟委员会就获取车载数据的可能措施征求意见

2022年3月30日，欧盟委员会就《访问车辆数据、功能和资源的提案》进行了证据征集和公众咨询，该提案对2022年2月发布的《数据法》提案作出了补充。欧盟委员会邀请有关各方对问题的理解、欧盟干预的必要性以及初步范围的可能选择及其预期影响征集证据及发表咨询意见。此外，欧盟委员会表示，通过公众咨询，他们正在收集有关访问车辆数据、功能和资源

的经验信息。欧盟委员会还提到，在竞争、创新、隐私、安全、安保等方面，就一系列可行性措施的潜在影响收集意见。 ([查看更多](#))

## The European Commission Seeks Views on Possible Measures on Access to In-vehicle Data

On 30 March 2022, the European Commission published a call for evidence, accompanied by an open public consultation on a proposal on access to vehicle data, functions, and resources, which would complement the proposal for Data Act published in February 2022. In particular, the Commission noted that, with the call for evidence, they invite interested parties to express views on the understanding of the problem, the need for EU intervention, and on the preliminary range of possible options and their expected impact. In addition, the Commission stated that with the public consultation, they seek to collect information on the experience with access to vehicle data, functions, and resources today. Furthermore, the Commission mentioned that it also seeks to gather views on the possible impact of a range of possible measures, notably on competition, innovation, privacy, safety, security, etc. ([More](#))

## 新加坡就匿名化发布《基础匿名化指南》

2022年3月31日，个人数据保护委员会（以下简称“PDPC”）发布了新的《基本匿名化指南》，为企业如何通过简单的5步匿名化流程恰当地对各种数据集进行基本匿名化和去标识化提供更具操作性的指导。特别是，该指南概述了基本的匿名化概念和用例，并列出了包括以下5个步骤的过程：

了解所持有的个人数据信息，尤其是数据的属性以及不同的可识别性和对个人的敏感程度；通过去除直接标识符和分配假名等方法实现个人数据的去标识化；应用匿名化技术，如记录压制、属性压制、字符屏蔽、泛化和数据扰动等；重新计算识别风险，尤其是与长期数据保存和内部与外部数据共享相关的风险；通过实施技术和流程控制，管理重新识别和披露风险，并将这些风险纳入事件管理。 ([查看更多](#))

## Singapore publishes *Basic Anonymization Guidelines*

On 31 March 2022, the Personal Data Protection Commission (“PDPC”) has published a new Guide on Basic Anonymization to provide more practical guidance for businesses on how to appropriately perform basic anonymization and de-identification of various datasets through a simple 5-step anonymization process. In particular, the guide outlines basic anonymization concepts and use cases and sets out a five-step process which involves:

knowing the personal data records being held, particularly the data attributes and the varying degrees of identifiability and sensitivity to an individual; de-identifying personal data by removing direct identifiers and assigning pseudonyms; applying anonymization techniques such as record suppression, attribute suppression, character masking, generalization, and data perturbation; computing the risk of re-identification, particularly in relation to long-term data retention and internal and external data sharing; and managing re-identification and disclosure risks by implementing technical and process controls, incorporating such risks into incident management plans, and adopting legal controls. ([More](#))

## 美国务院成立网络空间和数字政策局

2022年4月4日，美国司法部宣布，网络空间和数字政策局（简称“CDP”）即日起开始运作。作为布林肯现代化议程的关键一环，CDP的职责是处理与网络空间、数字技术和数字政策相关的国家安全挑战、经济机遇以及对美国价值观的影响。

CDP局包括三个政策方面：国际网络空间安全、国际信息和通信政策以及数字自由。最终，该事务局将由参议院确认的大使领导。（[查看更多](#)）

### U.S. Established Cyberspace and Digital Policy Bureau

On 4 April 2022, the Department announced that the Bureau of Cyberspace and Digital Policy (“CDP”) began operations today. A key piece of Secretary Blinken’s modernization agenda, the CDP bureau will address the national security challenges, economic opportunities, and implications for U.S. values associated with cyberspace, digital technologies, and digital policy.

The CDP bureau includes three policy units: International Cyberspace Security, International Information and Communications Policy, and Digital Freedom. Ultimately, the bureau will be led by a Senate-confirmed Ambassador-at-Large. ([More](#))

## 美国国会通过《优化网络犯罪度量法案》

2022年4月6日，美国参议员、参议院网络安全核心小组联合主席托姆·蒂利斯、布莱恩·沙茨、约翰·科宁和理查德·布卢门撒尔提出了打击网络犯罪并帮助美国人免受网络诈骗的新立法。两党联合制定的《优化网络犯罪度量法案》将改善网络犯罪的数据收集，为执法和政策制定者提供更多工具来了解美国网络犯罪的规模和范围。（[查看更多](#)）

### U.S. Congress Approved *Better Cybercrime Metrics Act*

On 6 April 2022, U.S Senator Thom Tillis, Co-Chair of the Senate Cybersecurity Caucus, Brian Schatz, John Cornyn, and Richard Blumenthal introduced new legislation to fight cybercrime and help keep Americans safe from online scams. The bipartisan *Better Cybercrime Metrics Act* will improve data collection on cybercrimes, giving law enforcement and policy makers more tools to understand the size and scope of cybercrime in the United States. ([More](#))

## 知识产权 Intellectual Property

### 《北京市知识产权保护条例》通过，自2022年7月1日起实施

2022年3月31日，北京市十五届人大常委会第三十八次会议表决通过了《北京市知识产权保护条例》。《条例》自2022年7月1日起施行，共七章五十七条，涉及知识产权行政保护和司法保护、重点新兴领域知识产权保护、公共服务建设、知识产权纠纷调处等四个方面内容。明确市、区人民政府及其相关部门、司法机关的知识产权保护职责，建立侵权违法行为快速协查机制、对外转让审查机制、行政保护和司法保护衔接机制；依法惩治知识产权犯罪。建立专利导

航、知识产权金融、重大经济科技活动知识产权分析评议、知识产权人才培养等制度；建立知识产权公共服务体系、公共信息服务平台，促进和规范知识产权服务业发展。

来源：新京报

### **Beijing Intellectual Property Protection Regulations to be Effective on July 1, 2022**

On March 31, 2022, the Thirty-eighth Meeting of the Standing Committee of the 15th Beijing Municipal People's Congress voted to adopt the *Beijing Intellectual Property Protection Regulations (Regulations)*. The *Regulations*, which shall be effect on July 1, 2022, contain seven chapters and fifty-seven articles, covering four aspects: administrative and judicial protection of IP, protection of IP in key emerging areas, construction of public services, and mediation of IP disputes. The *Regulations* mainly cover the following:

- 1) Clarifying the IP protection responsibilities of municipal and district governments, administration department concerned and judicial authorities
- 2) Establishing a mechanism for rapid coordination and investigation of infringement , a review mechanism for IP foreign transfers, and a mechanism for the convergence of administrative and judicial protection;
- 3) Punishing IPR crimes;
- 4) Establishing systems for patent navigation, IP finance, IP analysis and evaluation of major economic and scientific activities, and IP personnel training;
- 5) Establishing an intellectual property public service system and a public information service platform, for promoting the development of the intellectual property service industry.

Source: [The Beijing News](#)

### **天津知产法庭发布全国首例以合理许可费确定商业秘密损失数额案件**

3月31日，天津知识产权法庭公开审理并当庭宣判赵某某侵犯商业秘密罪一案，这是两高《关于办理侵犯知识产权刑事案件司法解释（三）》施行后，全国首例以合理许可费确定损失数额的案件。

该案被告人赵某某原系某外资企业销售部员工，其在该公司工作期间，私自将大量公司文件存储于配发的移动硬盘内，并在离职后带离公司。经鉴定，硬盘内设计图所记载的公差参数系不为公众所知悉的技术信息，具有较高的经济价值。此前，该公司通过签订劳动合同、员工手册、发送邮件、设置电脑开机提醒等多种方式对公司商业秘密采取保护措施。其后，被告人赵某某被抓获归案。经过庭审，法院当庭宣判，判处被告人赵某某有期徒刑十个月，并处罚金6万元。被告人赵某某当庭表示服从法院判决，不上诉。

来源：知产财经

## Tianjin Court Issues China's First Criminal Judgment on Mis-appropriation of Trade Secret that Affirm Losses of Victim based on Reasonable Licensing Fees

On March 31, the Tianjin IP Tribunal held a public hearing and made a criminal judgement on the case of Zhao 's mis-appropriation on trade secrets, which was the first case in China to affirm the amount of trade secret losses based on reasonable licensing fees, after the implementation of the *Interpretation on Several Issues Concerning the Specific Application of Law in Handling of Criminal Cases of Intellectual Property Infringement (III)* by the Supreme People's Court and Supreme People's Procuratorate of China.

The Defendant in the case, Mr. Zhao, formerly an employee of the sales department of a WFOE, and stored a large number of company documents in the mobile hard disk of him during his employment, and keep it after leaving the company. The hard drive was identified as having high economic value, as it recorded tolerance parameters in the design drawings, which were technical information not known to the public. The company took protective measures, including the signing of labor contracts, employee manuals, sending e-mails, set computer boot reminders, and other ways to protect company's trade secrets. Subsequently, the Defendant was arrested. After the trial, the court issued judgment, sentencing imprisonment of ten months and a criminal fine of RMB 60,000. The Defendant did not appeal.

Source: [IP Economy](#)

## 北京知识产权法院明确涉通信领域专利创造性的判断

近日，北京知识产权法院发布一例专利案件，明确了涉通信领域专利创造性的判断。该案指出在发明专利权无效行政纠纷中，专利权人主张权利要求的具体特征相对于现有技术具有不同的获取方式或实现某种特定的技术效果，但专利权人无法具体说明不同之处，且说明书对上述主张也未予以记载，反而是针对上述具体特征记载了多个并列技术特征，该具体特征与多个并列特征均是基于相同背景技术的改进，取得了相同的技术效果，该具体特征相对于其他并列技术特征未体现出特别之处，仅仅是多个并列特征的其中一种，则专利权人的主张不能作为评价涉案专利具备创造性的依据。

来源：[北京知识产权法院](#)

## Beijing IP Court Clarifies Judgment of Patent Inventiveness in the Telecommunication Field

Recently, the Beijing Intellectual Property Court issued a patent case that clarifies the judgment of patent inventiveness in the communication field. The case pointed out that in an administrative case over the invalidation of patent rights for inventions, the patentee claimed that the specific features of the claims had a different way of obtaining or achieving a particular technical effect compared with the prior art, but the patentee was unable to specify the differences and the specification did not record the above claim, instead, multiple parallel technical features were recorded for the aforementioned specific features. In this case the specific features and the multiple parallel features are based on the improvement of the same background technology and achieve the same technical effect, the specific features do not reflect special features compared with other parallel technical features, therefore the

claim of the patentee cannot be used as the basis for evaluating the inventiveness of the patent in question.

Source: Beijing Intellectual Property Court

## “京天红”炸糕双向互诉案审结，法院明确诚实信用抗辩

北京知识产权法院就京天红（北京）餐饮有限公司（以下简称“京天红公司”）与刘某某、虎的味蕾（北京）餐饮管理有限公司不正当竞争纠纷、商标权纠纷等案作出二审判决，两案均判决驳回上诉，维持原判。此前，一审法院判决认定京天红公司不构成商标侵权，认定刘某某、虎的味蕾公司构成不正当竞争，并判决赔偿经济损失600000元及合理开支150000元。

该案系涉及“京天红”炸糕在先字号权和在后商标权冲突的双向互诉案件，法院明确了知识产权裁判中保护在先权益的原则。

二审法院认为，商标专用权不能成为不正当竞争行为的权利障碍。如商标权人作为同一地域范围内的同业竞争者，在理应知晓他人先字号或先使用标识的使用和知名度情况下，其申请注册多件与他人显著性较强的在先字号和先使用标识相同的商标，其行为难谓正当。商标权人使用以及授权其他主体在相同商品上使用商标的行为，具有攀附在先权益主体的主观恶意，其行为容易使人误认为是在先权益人的商品或者与在先权益人存在特定联系，构成不正当竞争行为。

此外，商标所有人虽系商标的专用权人，但当同时满足如下情形时，不应认定被控侵权主体构成侵权：1. 商标所有人注册的商标中包含多枚与他人知名商标相似的商标；2. 商标所有人无法证明注册上述商标具有真实的使用意图；3. 商标所有人提交的证据不足以证明其在被控侵权主体之前进行了真实的商业使用；4. 被控侵权主体使用商标具有正当性。

来源：北京知识产权法院

## Trademark v. Tradename Two-Way Lawsuits Concluded, The Court Clarified the Principles of Good Faith Defense

Beijing Intellectual Property Court issued a second instance judgment on the disputes over unfair competition and trademark rights between Jingtianhong (Beijing) Catering Co., Ltd (Jingtianhong Company) and Liu and Tiger's Taste Bud (Beijing) Catering Management Co., Ltd. Both appeals were rejected and the original judgments were upheld. Previously, the court of first instance ruled that Jingtianhong Company did not constitute trademark infringement, found that Liu and Tiger's Taste Buds constituted unfair competition, and awarded compensation for economic loss of RMB 600,000 and reasonable expenses of RMB 150,000.

The case was a mutual lawsuit involving the conflict between the prior company name right and the subsequent trademark right of "Jingtianhong" fried cake, and the court clarified the principles of honesty and trustworthiness in intellectual property litigation.

The court of second instance held that the trademark right cannot be an obstacle to unfair competition. If a trademark owner, as a competitor in the same industry within the same geographical area, applies for the registration of a trademark which is same with prior company name and prior used mark, when it shall know the use and popularity of the prior company name or prior used mark of others, its behavior can hardly be considered legitimate. The trademark owner's use and authorization of other parties to use the trademark on the same goods has the subjective malice of use the reputation of prior interests party, its conduct is likely to mislead people to believe the existence of a specific connection and constitutes unfair competition. make people believe that the specific connection with the prior interests, which constitutes an act of unfair competition.

In addition, although the trademark owner is entitled with exclusive right, the alleged infringing party shall not be deemed to have infringed when the following circumstances are met: 1. the trademark owner's registered trademark contains multiple trademarks similar to other well-known trademarks; 2. the trademark owner cannot prove that the registration of the trademark with a real intention to use; 3. the evidence submitted by the trademark owner is insufficient to prove that it has made real commercial use of the trademark before the alleged infringing party; 4. The evidence submitted by the trademark owner is not sufficient to prove that the trademark was used for real commercial purposes before the party of the alleged infringement.

Source: [Beijing Intellectual Property Court](#)

## 美国电影协会：谷歌删除数千个盗版网站的努力开始奏效

2022年早些时候，谷歌从其搜索结果中删除了几个知名的盗版网站。例如，在荷兰反盗版组织BREIN发出通知后，谷歌删除了海盗湾及其众多镜像网站和代理网站。美国电影协会（MPA）首席执行官查尔斯·里夫金（Charles Rivkin）认为，这样的举措在打击网络盗版方面确实起到了重要作用。迄今为止，MPA协助谷歌在10个国家完成了删除行动。他指出：“谷歌与MPA合作从搜索结果中删掉了大量与盗版相关的域名，以帮助有效执行要求网络服务提供商阻止访问盗版网站的法院命令。谷歌删除盗版网站的行动是有效的。我们对删除行动所产生的效果进行初步研究发现，当网站被屏蔽且被从搜索结果中删除时，盗版网站的流量比只被ISP屏蔽下降得更厉害。”

来源：[Torrentfreak](#)

## MPA: Google's Delisting of Thousands of Pirate Sites Works

The Motion Picture Association (MPA) has teamed up with Google to remove pirate site domain names from search results in countries where these are already blocked by ISPs. No court has ordered Google to take action but the company is voluntarily complying with "no-fault" ISP injunctions. In addition to praising Google's efforts, the MPA also takes the opportunity to show how effective blocking orders can be. This is important, as these are available in dozens of countries around the world, but not in the U.S. "And we know from empirical research and real-world testing with our partners at Google that delisting adjudicated piracy sites from search results makes this already effective legal tool even more potent," MPA CEO Charles Rivkin concludes.

Source: [Torrentfreak](#)

## 德国自2022年5月1日延长PCT进入国家阶段期限

2022年3月16日，德国专利商标局（DPMA）向WIPO做出了关于指定局和选定局进入国家阶段期限的声明。该声明称，PCT进入德国国家阶段的期限将由自最早优先权日起30个月延长至31个月，该修订将于2022年5月1日起生效，无任何过渡性条款。

DPMA计划修订后的条款适用于所有尚未进入德国国家阶段的PCT申请，包括：

之前适用30个月期限且期限尚未届满或者是未在2022年4月30日届满的PCT申请；

30个月期限已经届满，但是申请人在2022年5月1日之前尚未根据PCT条约提出进入德国国家阶段的有效请求的PCT申请。

来源：[European IP](#)

## Germany Extends Period for PCT Applications to Enter the National Phase, from May 2022

There has been an extension to the period for PCT applications to enter the national phase in Germany, to 31 months which will come into force from 1 May 2022.

*The Second act to Simplify and Modernise patent law in Germany (Second Patent Law Modernisation Act – Patentrechtsmodernisierungsgesetz) was promulgated in the Federal Law Gazette (BGBl. I p.3490) on 17 August 2021. The Act on Further Duties of the German Patent and Trade Mark Office and to Revise the Patent Costs Act were promulgated in the Federal Law Gazette (BGBl. I p.4074) on 7 September 2021.*

The purpose of the *Second Patent Law Modernisation Act* is to simplify and modernise the *Patent Act (Patentgesetz)* and other IP laws in Germany. The amendments relevant to the procedures before the German Patent and Trade Mark Office (DPMA) are contained in several articles. They concern overarching issues in the IP Acts and in the Ordinance Concerning the DPMA as well as provisions in individual acts and ordinances and in the *Act on International Patent Conventions*.

The omnibus act came into force on 18 August 2021. Those amendments that require adjustments to the IT systems of the DPMA will enter into force on 1 May 2022.

The period for PCT applications to enter the national phase will be extended from 30 to 31 months from the filing date or priority date, as the case may be.

In future, applicants will have one more month to pay the fee for entry into the national phase at the DPMA and, if applicable, to submit the German translation of the application.

Source: [European IP](#)

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