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The National Information Security Standardization Technical Committee Issued a national standard *Information Security Technology: Guidelines for the Management of Personal Information Processing Activities of Mobile Internet Applications (App) of Mobile Smart Terminals (Draft for Comment)*

信安标委发布国家标准《信息安全技术 应用商店的移动互联网应用程序（App）个人信息处理规范性审核与管理指南》（征求意见稿）

NISSTC Issued a national standard *Information Security Technology: Guidelines for Regulatory Review and Management of Personal Information Processing of Mobile Internet Applications (App) in Application Stores (Draft for Comment)*

国内首个个人信息保护、确权服务平台“人民数保”上线

China’s First Service Platform for Personal Information Protection and Rights Confirmation Launched

英国卫生与社会保障部发布新数据健康战略

U.K. Department of Health and Social Care Published a New Strategy: Data in Health

法国数据保护机构针对移动应用程序数据流发起调研

France’s Data Protection Authority Launched Study to Investigate Data Flows of Mobile Applications by Examining Location Data

欧洲议会内部市场和消费者保护委员会批准《数字服务法案》相关协议

European Parliament’s Committee on Internal Market and Consumer Protection Endorsed Agreement on *Digital Services Act*

谷歌因将用户数据存储于美国和欧洲被俄罗斯罚款1500万卢布

Russia Fined Google RUB 15 Million for Storing Users’ Data in US and Europe

美国联邦贸易委员会向国会提交关于使用人工智能解决在线问题的警告

US Federal Trade Commission Report Warned to US Congress About Using Artificial Intelligence to Combat Online Problems

知识产权 Intellectual Property

全额判赔250万元，最高法院：侵权人宣称的经营业绩可作为损害赔偿的依据

Damages of RMB 2.5 Million Was Awarded, The Supreme People's Court (SPC): Business Performance Promoted By the Infringer Can Be the Basis of Calculation of Damages

最高院改判：专利无效决定对已履行调解书部分没有追溯力

SPC: The Patent invalidation Decision Has No Retroactive Effect on the Part of the Mediation that Has Been Performed

最高法再审改判，擅用“虎镖”等多枚商标及仿冒商品名称、包装的行为构成侵权

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SPC: Using "Tiger Dart" and Other Trademarks, Counterfeiting Commodity Names and Packaging, Shall Constitute Infringement

适用5倍惩罚性赔偿，授权解约后仍使用“骏怡”标识被判侵权

Maximum Five Times Punitive Damages Was Applied, Using "JunYi" Trademark After the Termination of License Constituted infringement

天津高院：特许经营模式的特许人在过错条件下应就加盟商的侵权行为承担连带责任

Tianjin People's High Court: Franchisor Shall Bear Joint and Several Liability for Franchisees' Trademark Infringement

奥迪向蔚来提起商标诉讼，称“ES6”侵犯“S6”权益

Audi Claims Nio's Model Name for the ES8 Infringes on Its Trademark of Audi S8

阿迪达斯起诉耐克，指控其在9项专利上侵权

Adidas Alleged in a Lawsuit that Nike Infringed Its Nine Patents

立方竞争法周报 Weekly Competition Law News

反垄断法修正草案将二审：进一步明确反垄断制度在平台的适用规则

2022年6月16日，全国人大常委会法制工作委员会举行记者会。据介绍，《反垄断法》修正草案拟提请十三届全国人大常委会审议，主要拟作五点修改：（一）明确“国务院反垄断执法机构”是本法的执法部门；（二）进一步明确反垄断相关制度在平台经济领域的具体适用规则；（三）完善垄断协议“安全港”规则；（四）对未达到申报标准的经营者集中的调查、处理程序进行完善；（五）对经营者集中的审查工作提出具体要求。（查看更多）

The Draft Amendment to the Anti-Monopoly Law Submitted for Second Reading: Further Clarifies the Application Rules of Anti-Monopoly System on Platforms

On June 16, 2022, the Legal Affairs Committee of the Standing Committee of the National People's Congress held a press conference, stating that the draft amendment to the *Anti-Monopoly Law* will be submitted for deliberation to the Standing Committee of the 13th National People's Congress, with five major revisions: (1) clarifying that the "Anti-Monopoly Law Enforcement Agency of the State Council" is the enforcement agency of this law; (2) further clarifying the specific application rules of anti-monopoly-related systems in the field of platform economy; (3) improving the "safe harbor" rules for monopoly agreements; (4) perfecting the investigation and handling procedures for merger control cases which do not meet the notification threshold; (5) putting forward specific requirements for merger control. (More)

知网向个人用户开放查重服务，此前曾遭起诉涉嫌垄断

2022年6月12日，同方知网（北京）技术有限公司（“**知网**”）发布公告，向个人用户直接提供查重服务。此前，因无正当理由拒绝向个人用户开放查重服务，知网被起诉违反《反垄断法》第17条，实施滥用市场支配地位的行为，损害个人的合法权益。该案于今年3月21日由杭州市中级人民法院正式受理。（查看更多）

CNKI Opens Duplicate Checking Services to Individual Users, after Being Sued for Alleged Monopoly

On June 12, 2022, Tongfang Knowledge Network Technology Co., Ltd. (Beijing) ("**CNKI**") issued an announcement saying that it will provide duplicate checking services directly to individual users. Previously, CNKI was sued for violating article 17 of the *Anti-Monopoly Law* for refusing to provide duplication-checking services to individual users without justified reasons, abusing its dominant market position and damaging the legitimate rights and interests of individuals. On March 21 this year, the Hangzhou Intermediate People's Court formally accepted this case. (More)

绍兴柯桥供水有限公司因滥用市场支配地位被罚没近2300万元

2022年6月10日，国家市场监督管理总局（“**市场监管总局**”）发布对绍兴柯桥供水有限公司（“**柯桥公司**”）行政处罚决定书。经查明，柯桥公司在区域供水市场内具有支配地位，没有正当理由，指定供水工程施工企业，限定二次供水设施、设备及部件的品牌、供货厂商，附加不合理交易条件额外收取费用，排除、限制了市场竞争，损害了交易相对人的利益。因此浙江

省市场监督管理局（“**浙江省市监局**”）对其作出处罚决定，没收违法所得并处2020年度销售额3%的罚款，共计约2300万元。（查看更多）

Shaoxing Keqiao Water Supply Company Receives a Fine of Nearly CNY 23 Million for Abusing Dominant Market Position

On June 10, 2022, the State Administration for Market Regulation (“**SAMR**”) issued an administrative penalty decision against Shaoxing Keqiao Water Supply Co., Ltd. (“**Keqiao Company**”). It has been found out that Keqiao Company had a dominant market position in the regional water supply market. It designated certain companies to deal with the construction of water supply projects, restricted the brands and suppliers of secondary water supply facilities, equipment and components, and charged extra transaction fees without justified reasons, which resulted in exclusion and restriction of market competition and damage to transaction counterparties. Therefore, Zhejiang Administration for Market Regulation (“**Zhejiang AMR**”) made a penalty decision to confiscate its illegal gains and impose a fine of 3% of its 2020 annual sales, totaling about CNY 23 million. (More)

欧盟普通法院撤销欧盟委员会对高通近10亿欧元的罚款决定

2022年6月15日，欧盟普通法院（EU General Court）对高通（Qualcomm）反垄断上诉案作出裁决，撤销欧盟委员会对高通的罚款决定。此前，欧盟委员会对其处以9.97亿欧元的反垄断罚款，原因是高通向苹果公司支付巨额排他性费用，要求苹果公司在iPhone和iPad上只使用其芯片，排除了英特尔公司等对手的竞争。欧盟普通法院认为，欧盟委员会的一系列程序性违规行为影响了高通的辩护权，并使欧盟委员会为指控高通实施被诉行为而进行的分析无效。（查看更多）

The EU General Court Annuls EU Commission’s Decision Imposing on Qualcomm a Fine of Close to EUR 1 Billion

On June 15, 2022, the EU General Court ruled on Qualcomm’s antitrust appeal, reversing the EU Commission’s decision to impose a fine on Qualcomm. Previously, the EU Commission slapped Qualcomm with an antitrust fine of EUR 997 million after it paid Apple a huge exclusivity payment, under which Apple had to use only its chips in iPhones and iPads, excluding competition from rivals such as Intel. The EU General Court held that a number of procedural irregularities by the EU Commission affected Qualcomm’s right of defense, and invalidated the EU Commission’s analysis of the conduct alleged against Qualcomm. (More)

德国联邦卡特尔局对苹果公司的第三方应用追踪规则展开调查

2022年6月14日，德国联邦卡特尔局（“FCO”）对苹果公司追踪第三方App的规则展开调查，评估这些规则是否为苹果公司自身提供了优惠待遇，或阻碍了其他公司的业务。FCO称，此次调查是基于德国《反限制竞争法》第十修正案第19a条进行，该法规允许执法机构更早、更有效地对具有显著跨市场竞争影响的经营者的反竞争行为进行干预。(查看更多)

FCO Reviews Apple’s Tracking Rules for Third-Party Apps

On June 14, 2022, Germany’s Federal Cartel Office (“**FCO**”) initiated a proceeding against Apple to review its tracking rules for third-party apps, whether these rules have provided preferential conditions for itself or hindered other companies’ businesses. According to FCO, the investigation is based on Article 19a of the 10th amendment to *Act against Restraints of Competition,* which enables the authority to

intervene earlier and more effectively against the anti-competitive practices of companies, which are of paramount significance for competition across markets. (More)

英国竞争上诉法庭支持反垄断机构对Meta收购Giphy会损害竞争的评估

2022年6月14日，英国竞争上诉法庭（“CAT”）作出判决，支持英国竞争与市场管理局（“CMA”）要求Meta剥离Giphy的决定。2021年，CMA对Meta收购Giphy交易案发布报告，认为该交易会严重削弱社交媒体平台竞争，使Giphy失去在线广告市场潜在挑战者地位。Meta提出七项理由请求撤销该决定，但CAT否定了Meta提出的六项上诉理由，最终认定Meta与Giphy的合并大大减少了在线广告市场的动态竞争。（查看更多）

UK Competition Appeal Tribunal Endorses Antitrust Agency's Assessment that Meta's Purchase of Giphy Harms Competition

On June 14, 2022, the Competition Appeal Tribunal ("**CAT**") has made a judgement, upholding the decision of the Competition and Markets Authority ("**CMA**") to require Meta to sell Giphy. In 2021, CMA released a report on Meta's acquisition of Giphy, arguing that the acquisition would lead to a substantial lessening of competition between social media platforms and remove Giphy as a potential challenger in the online advertising market. Meta sought an order quashing the Decision on seven grounds, but CAT denied Meta's six grounds of appeal, concluding that Meta's acquisition of Giphy had significantly reduced the dynamic competition of online advertising market. (More)

应荷兰反垄断机构要求，苹果公司在荷兰开放第三方支付

2022年6月11日，荷兰消费者和市场管理局（“ACM”）发布公告称，根据欧洲和荷兰竞争规则的要求，苹果公司已改变其设置的不公平条件，将允许在荷兰的约会应用程序中使用不同的付款方式。此前，苹果公司限制约会应用程序的用户付款方式，被ACM认定为滥用市场支配地位。ACM对其处以定期罚款，以强制进行上述更改，最终所有定期罚款总计5000万欧元。苹果公司曾就该命令提起异议，相关程序仍在进行中。（查看更多）

Apple Allows Third-Party Payments Methods at Request of Dutch Antitrust Authority

On June 11, 2022, Dutch Authority for Consumers and Markets ("**ACM**") released an announcement, stating that Apple has changed its unfair conditions, and will now allow different methods of payment in Dutch dating apps under European and Dutch competition rules. Previously, Apple imposed payment method that customers of dating apps use, which in ACM's opinion constituted abusing of its dominant position. ACM forced these changes by imposing an order subject to periodic penalty payment. In the end, the sum of all penalty payments totaled EUR 50 million. Apple has filed an objection against this order, and the procedure regarding the objection is still ongoing. (More)

高通在加州联邦法院面临修正后的反垄断集体诉讼

近日，据媒体报道，高通在美国加州联邦法院面临修正后的集体诉讼。案件指控称，高通作为芯片制造商，其商业行为迫使消费者为手机、平板电脑和其他蜂窝设备支付被人为抬高的价格，构成滥用市场支配地位。此前，美国一上诉法院驳回了针对高通提起的反垄断集体诉讼。这一重新提起的集体诉讼主要针对高通违反加州的反垄断法（*Cartwright Act*）和反不公平竞争法的行为。（查看更多）

Qualcomm Faces an Amended Antitrust Class Action in California Federal Court

Recently, according to report media, Qualcomm faces an amended class action in California federal court. The case alleges that the chipmaker's business conduct forced them to pay artificially inflated prices for mobile phones, tablets and other cellular devices, which constituted abusing of dominant market position. Previously, a US appeals court dismissed the antitrust class action against Qualcomm. The refiled complaint focused on Qualcomm violating California's state antitrust law *Cartwright Act* and the state's unfair competition law. (More)

英国竞争与市场管理局拟对苹果和谷歌启动新一轮反垄断调查

近日，CMA发布针对苹果和谷歌移动生态系统的最终报告。报告显示，苹果和谷歌在移动生态系统方面存在“有效的双寡头垄断”，能够完全控制移动设备上的操作系统、应用商店和网络浏览器等市场。因此，CMA拟对苹果和谷歌启动新一轮反垄断调查，着重调查两家公司在移动浏览器市场的主导地位，以及苹果通过应用商店对云游戏的限制。此外，CMA还宣布针对谷歌在应用商店支付的相关行为采取执法行动。（查看更多）

CMA Plans New Antitrust Investigation into Apple and Google

Recently, CMA issued the final report on mobile ecosystems of Apple and Google. The report found that Apple and Google have an "effective duopoly" on mobile ecosystems that allows them to exercise a stranglehold over markets of operating systems, app stores and web browsers on mobile devices. Therefore, CMA is planning to launch a new antitrust investigation into Apple and Google's dominant position in mobile browsers and Apple's restrictions on cloud gaming through its App Store. Besides, CMA is also taking enforcement action against Google in relation to its app store payment practices. (More)

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

中国资产评估协会发布《数据资产评估指导意见（征求意见稿）》

近日，中国资产评估协会发布《数据资产评估指导意见（征求意见稿）》（“《指导意见》”），并向资产评估行业和相关单位征求意见。《指导意见》指出，资产评估专业人员在进行数据资产评估业务时，需要关注影响数据资产价值的质量因素、应用因素、成本因素及法律因素。（查看更多）

China Appraisal Society Issued *Guidelines on Data Asset Appraisal (Draft)*

Recently, China Appraisal Society issued *Guidelines on Data Asset Appraisal (Draft)* ("Guidelines") and solicited opinions from the asset appraisal industry and relevant associates. The Guidelines pointed out that asset evaluation professionals need to pay attention to the quality factors, application factors, cost factors and legal factors, which affect the value of data assets when carrying out data asset evaluation. (More)

国家互联网信息办公室修订《移动互联网应用程序信息服务管理规定》

2022年6月14日，国家互联网信息办公室（“网信办”）发布最新修订的《移动互联网应用程序信息服务管理规定》（“《应用程序规定》”）。《应用程序规定》共27条，包括信息内容主

体责任、真实身份信息认证、分类管理、行业自律、社会监督及行政管理等条款。《应用程序规定》旨在进一步依法监管移动互联网应用程序，促进应用程序信息服务健康有序发展，将自2022年8月1日起施行。（查看更多）

Cyberspace Administration of China Revised *Regulations on Administration of Mobile Internet Application Information Services*

On June 14, 2022, the Cyberspace Administration of China ("CAC") issued the latest revision of *Regulations on the Administration of Mobile Internet Application Information Services* ("Application Regulations"). There are 27 articles in the Application Regulations, including the responsibility of information content subjects, the identity information authentication, the classification management, the industry self-discipline management, the social supervision, the administrative management and so on. The Application Regulations aim to further supervise mobile Internet applications in accordance with the law, to promote the healthy and orderly development of application information services. The Application Regulations will come into force on August 1, 2022. (More)

工业和信息化部：正修订《电信和互联网用户个人信息保护规定》

2022年6月14日，中共中央宣传部举行“中国这十年”系列主题新闻发布会。会上，工业和信息化部（“工信部”）总工程师韩夏指出：工信部高度重视个人信息保护工作。2013年工信部出台了国内第一部针对个人信息保护的部门规章，即《电信和互联网用户个人信息保护规定》，目前工信部正在对其进行修订，以强化应用程序关键责任链的管理，进一步健全个人信息保护制度体系。（查看更多）

Ministry of Industry and Information Technology: Amending *Regulations on the Protection of Personal Information of Telecommunications and Internet Users*

On June 14, 2022, the Publicity Department of the Central Committee of the Communist Party of China held a series press conference on "China's Ten Years". At the conference, Han Xia, chief engineer of the Ministry of Industry and Information Technology ("MIIT"), pointed out that MIIT attaches great importance to the protection of personal information. In 2013, MIIT issued China's first departmental regulation for personal information protection, namely *Regulations on the Protection of Personal Information of Telecommunications and Internet Users.* Currently, MIIT is revising it to strengthen the management of the key responsibility chain of the application and further improve the personal information protection system. (More)

网信办发布《互联网跟帖评论服务管理规定（修订草案征求意见稿）》

2022年6月17日，网信办发布《互联网跟帖评论服务管理规定（修订草案征求意见稿）》（“《跟帖评论规定》”）。《跟帖评论规定》要求跟帖评论服务提供者严格落实主体责任，对注册用户进行真实身份信息认证，建立健全用户个人信息保护制度，建立健全跟帖评论审核管理、实时巡查、应急处置、举报受理等信息安全管理制度，及时发现跟帖评论服务存在的安全缺陷、漏洞等风险，并向网信部门报告。（查看更多）

CAC Issued *Regulations on Administration of Internet Threaded Commenting Services (Draft for Comments)*

On June 17, 2022, CAC issued *Regulations on Administration of Internet Threaded Commenting Services (Draft for Comments)* ("Threaded Commenting Regulations"). The Threaded Commenting Regu-

lations require service providers to strictly implement their subject responsibilities, authenticate the identity information of registered users, establish and improve the user's personal information protection system as well as the review management, the real-time inspection, the emergency response, and the reporting acceptance of threaded comments, timely discover the security flaws, loopholes and other risks of the threaded commenting service, and report it to the network information departments. (More)

全国信息安全标准化技术委员会发布国家标准《信息安全技术 移动智能终端的移动互联网应用程序（App）个人信息处理活动管理指南》（征求意见稿）

2022年6月13日，全国信息安全标准化技术委员会（“信安标委”）发布国家标准《信息安全技术 移动智能终端的移动互联网应用程序（App）个人信息处理活动管理指南》（“《智能终端指南》”）的征求意见稿。《智能终端指南》将应用程序的运行生命周期分为了安装、启动、运行、更新、退出、停用/卸载几个阶段，并明确了每一阶段主要面临的个人信息安全风险。（查看更多）

The National Information Security Standardization Technical Committee Issued a national standard *Information Security Technology: Guidelines for the Management of Personal Information Processing Activities of Mobile Internet Applications (App) of Mobile Smart Terminals (Draft for Comment)*

On June 13, 2022, the National Information Security Standardization Technical Committee (“NISSTC”) issued the draft of national standard *Information Security Technology: Guidelines for the Management of Personal Information Processing Activities of Mobile Internet Applications (App) of Mobile Smart Terminals* (“Smart Terminals Guidelines”) and solicited for public comments. The Smart Terminals Guidelines divide the applications' life cycle into installation, startup, operation, update, exit, deactivation/uninstallation, and clarifies the main personal information security risks faced in each stage. (More)

信安标委发布国家标准《信息安全技术 应用商店的移动互联网应用程序（App）个人信息处理规范性审核与管理指南》（征求意见稿）

2022年6月17日，信安标委发布国家标准《信息安全技术 应用商店的移动互联网应用程序（App）个人信息处理规范性审核与管理指南》（“《应用商店指南》”）的征求意见稿。《应用商店指南》旨在指导应用商店运营者对应用程序个人信息处理活动的审核与管理，将审核管理流程分为应用程序进入应用商店前的个人信息处理活动审核和应用程序进入应用商店后的个人信息安全管理两大部分。（查看更多）

NISSTC Issued a national standard *Information Security Technology: Guidelines for Regulatory Review and Management of Personal Information Processing of Mobile Internet Applications (App) in Application Stores (Draft for Comment)*

On June 17, 2022, NISSTC issued the draft of national standard Information Security Technology: *Guidelines for Regulatory Review and Management of Personal Information Processing of Mobile Internet Applications (App) in Application Stores* (“Application Store Guidelines”) and solicited for public comments. The Application Store Guidelines aim to guide application store operators in the review and management of the application's processing activities of personal information. The review and management processes are divided into two parts, namely the review of personal information pro-

cessing activities before entering the application store and the personal information security management after entering the application store. (More)

国内首个个人信息保护、确权服务平台“人民数保”上线

2022年6月20日，国内首个个人信息保护、确权服务平台“人民数保”正式上线。“人民数保”平台的目标是，在保护个人数据不被非法乱用的同时，实现数据精准确权、授权、流转及二次开发，将个人数据权利还归个人，让数据真正取用于民、造福于民，让广大人民群众共享数字化红利。（查看更多）

China’s First Service Platform for Personal Information Protection and Rights Confirmation Launched

On June 20, 2022, China’s first right confirmation and service platform for personal information protection, namely “People’s Data Protection”, was officially online. The goal of the “People’s Data Protection” is to protect personal data from illegal misuse, realize the accurate rights confirmation, authorization, circulation and secondary development of data, return personal data rights to individuals, so that data can truly be used for the people, benefit the people, and allow the general public to share the benefits of digitalization. (More)

英国卫生与社会保障部发布新数据健康战略

2022年6月13日，英国卫生与社会保障部发布名为“数据拯救生命：用数据重塑健康和社会关怀”的新战略。新战略侧重于七项原则，如提高对医疗保健系统使用数据的信任等，利用疫情期间的数据驱动力和创新力来推动医疗保健转型，创建一个安全且具有隐私保护的系统，为患者和专业人士提供服务。（查看更多）

U.K. Department of Health and Social Care Published a New Strategy: Data in Health

On June 13, 2022, UK Department of Health and Social Care published a new strategy named “Data Saves lives: Reshaping Health and Social Care with Data”. The new strategy focuses on 7 principles, such as improving trust in the health and care system’s use of data and so on, to harness the data-driven power and innovation seen during the pandemic to drive transformation in health and care, creating a secure and privacy-preserving system that delivers for both patients and professionals. (More)

法国数据保护机构针对移动应用程序数据流发起调研

2022年6月13日，法国数据保护机构（“CNIL”） 发起了一项研究，将通过检查地理位置数据来调查移动应用程序的数据流。CNIL 力图使移动应用程序的数据流可见，并将根据从数据经纪人处获取的地理位置数据集进行研究。此项研究的主要目标是提高公众和专业人士对移动应用程序收集地理位置数据的相关问题的认知。（查看更多）

France’s Data Protection Authority Launched Study to Investigate Data Flows of Mobile Applications by Examining Location Data

On June 13, 2022, France’s data protection authority (“CNIL”) launched a study to investigate data flows of mobile applications by examining location data. CNIL pursued to make the data flows of mobile applications visible, and it will carry out a study based on a geolocation data set obtained from a

data broker. The main objective of the research is to raise awareness among the public and professionals on the issues related to the collection of geolocation data by mobile applications. (More)

欧洲议会内部市场和消费者保护委员会批准《数字服务法案》相关协议

2022年6月16日，欧洲议会内部市场和消费者保护委员会批准了与欧盟各国政府就《数字服务法案》（“DSA”）达成的临时协议。DSA连同《数字市场法案》（“DMA”）的提案，对于在未来几年向用户提供更安全、更开放的数字空间以及为公司提供公平竞争环境制定了具有里程碑意义的标准。DSA为在线平台引入了与其平台规模和所带来的社会风险相称的新义务。小微企业将享有额外的时间来遵守规则，并将获得某些豁免。违规处罚最高可达平台全球营业额的6%。（查看更多）

European Parliament's Committee on Internal Market and Consumer Protection Endorsed Agreement on *Digital Services Act*

On June 16, 2022, European Parliament's Committee on Internal Market and Consumer Protection endorsed the provisionally reached agreement with EU governments on the *Digital Services Act* ("DSA"). Together with the proposal on *Digital Markets Act* ("DMA"), DSA sets landmark standards for a safer and more open digital space for users and a level playing field for companies for years to come. DSA introduces new obligations for online platforms, proportionate to their size and to the societal risks they pose. Micro and small companies will have additional time to conform to the rules and will be subject to certain exemptions. Penalties for non-compliance can reach up to 6% of platforms' worldwide turnover. (More)

谷歌因将用户数据存储于美国和欧洲被俄罗斯罚款1500万卢布

2022年6月16日，据媒体报道，莫斯科塔甘斯基地方法院因谷歌一再拒绝落实俄罗斯公民个人数据的本地化要求，对其处以1500万卢布的罚款。此前，谷歌曾于2021年7月因拒绝将俄罗斯公民的个人数据进行本地化而被罚款。在同样的背景下，俄罗斯联邦法警服务局（“FSSP”）已着手向Meta收取近20亿卢布的罚款。（查看更多）

Russia Fined Google RUB 15 Million for Storing Users' Data in US and Europe

On June 16, 2022, according to report media, the Tagansky District Court in Moscow fined Google RUB 15 million for repeatedly refusing to localize Russian citizens' personal data. Previously, Google was fined in July 2021 for refusing to localize Russian citizens' personal data. In the same context, the Russian Federal Bailiff Service ("FSSP') has started collecting an almost RUB 2 billion fine from Meta. (More)

美国联邦贸易委员会向国会提交关于使用人工智能解决在线问题的警告

2022年6月16日，联邦贸易委员会（“FTC”）向国会提交了一份报告，针对使用人工智能解决在线问题可能存在的风险提出警告，并敦促政策制定者需要“非常谨慎”地对待依赖人工智能作为政策解决方案的做法。特别是对于大型科技平台和其他公司而言，人工智能的使用存在局限性和自身问题。该报告概述了人工智能工具在设计上可能存在的不准确性、偏见性和歧视性，并可能造成鼓励依赖侵入性商业监控形式发展等重大风险担忧。（查看更多）

US Federal Trade Commission Report Warned to US Congress About Using Artificial Intelligence to Combat Online Problems

On June 16, 2022, the Federal Trade Commission ("FTC") issued a report to the US Congress warning about using artificial intelligence to combat online problems and urging policymakers to exercise "great caution" about relying on it as a policy solution. The use of artificial intelligence, particularly by big tech platforms and other companies, comes with limitations and problems of its own. The report outlines significant concerns that artificial intelligence tools can be inaccurate, biased, and discriminatory by design and incentivize relying on increasingly invasive forms of commercial surveillance. (More)

知识产权 Intellectual Property

全额判赔250万元，最高法院：侵权人宣称的经营业绩可作为损害赔偿的依据

近日，最高人民法院对福州百益百利自动化科技有限公司与上海点挂建筑技术有限公司等侵害实用新型专利权纠纷一案作出二审判决，撤销原判，判决被告停止侵权，赔偿经济损失及合理开支共计250万元。

本案中，涉案专利为一种名为“结固式锚栓”的实用新型专利，被诉侵权产品具有涉案专利权利要求1-3、7的全部技术特征，经查明，被告提出的抵触申请仅公开了构成结固式锚栓的金属杆上的每组径向通孔适配一支U型件的技术方案，并没有公开被诉侵权产品“每组径向通孔适配多支U型件”以及“多支U型件对穿通过一组径向通孔”的技术特征，故抵触申请抗辩不成立，构成专利侵权。

关于损害赔偿数额，最高院认为，在被告明确表示不提交被诉侵权产品销售数据和财务账册的情况下，可以根据原告的主张和提供的证据认定被告的侵权获利。同时，被告在2017年宣称其累计施工面积已达200万平方米以上，被告虽主张其为夸大宣传、并非经营实绩，但并未提交相关反证证明其实际施工量及使用的被诉侵权产品量，最高院认为，其宣称的经营业绩可以作为计算损害赔偿的依据。基于原告提供的相关证据，被告侵权获利已经明显超过了法定赔偿的最高限，最高院考虑到被告侵权时间长、侵权范围广、侵权恶意明显，以及原告的合理维权费用等因素，依法对原告主张的250万元赔偿数额予以全额支持。

来源：最高人民法院

Damages of RMB 2.5 Million Was Awarded, The Supreme People's Court (SPC): Business Performance Promoted By the Infringer Can Be the Basis of Calculation of Damages

Recently, SPC made a second instance judgment on the dispute over utility model patent infringement between Fuzhou Baiyibaili Technology Co., Ltd. and Shanghai Dianhang Construction Technology Co., Ltd., et. al., revoking the first instance judgment and ordering the defendants to stop the infringement and pay damages of RMB 2.5 million.

In this case, the infringing product had all the technical features of claims 1-3 and 7 of the patent, and the defendant's conflicting application was not tenable, and constituted patent infringement.

Regarding the damages, SPC held that, if the defendant expressly stated that it would not submit the sales data and financial books of the infringing products, the defendant's infringement profit could be determined based on the plaintiff's claims and the evidences provided. The defendant promoted in 2017 that its cumulative construction area had reached more than 2 million square meters. Although the defendant claimed that it was an exaggerated promotion rather than an actual business performance, it did not submit relevant counter-evidences to prove its actual construction volume and the amount of the infringing products used. SPC held that the promoted business performance can be used as the basis for calculating damages. Based on the relevant evidence provided by the plaintiff, the defendant's infringement profit exceeded the maximum judicial damages. Considering factors such as the defendant's long period, the wide scope, the obvious malicious of the infringement, and the plaintiff's reasonable cost. SPC fully supported the plaintiff's claim for damages of RMB 2.5 million.

Source: The Supreme People's Court

最高院改判：专利无效决定对已履行调解书部分没有追溯力

近日，最高人民法院对上诉人尚亨中与被上诉人柳州市柳南区浩千塑料制品厂（下称浩千厂）专利权宣告无效后返还费用纠纷一案作出二审判决，撤销原判，认定尚亨中无需返还浩千厂在涉案专利被宣告无效之日前已部分履行的许可费12万元。

本案中，尚亨中于2018年以浩千厂侵害涉案专利权为由向法院提起诉讼。后双方达成协议，约定由浩千厂向尚亨中支付涉案专利许可使用费22万元（于2018年11月16日支付12万元，于2019年8月10日前支付10万元），2018年11月16日，原审法院据此制作了涉案调解书予以确认。同日，浩千厂支付第一期涉案专利许可使用费12万元。2019年4月3日，国家知识产权局作出无效宣告审查决定书，宣告涉案专利权全部无效。

最高院认为，根据《专利法》第四十七条第二款，宣告专利权无效的决定对已经履行或执行的判决、调解书以及合同部分，不具有追溯力，本案中双方自愿达成了和解协议，约定了分期履行义务，并由法院制作涉案调解书确认，其中第一期款项的履行时间在涉案专利被宣告无效决定日前，该无效决定对已经履行的部分没有追溯力。同时，浩千厂在涉案专利被宣告无效之日前已支付的12万元与许可使用费总金额22万元之比，相对于浩千厂在涉案专利被宣告无效之日前已实际使用涉案专利技术的期间与涉案调解书约定的许可使用期限之比，尚属合理，不属于《专利法》第四十七条第三款规定的“明显违反公平原则”的情形。故尚亨中无需返还浩千厂已经支付的12万元许可费。

来源：最高人民法院

SPC: The Patent invalidation Decision Has No Retroactive Effect on the Part of the Mediation Letter that Has Been Performed

Recently, the Supreme People's Court made a second instance judgment between the appellant Shang Hengzhong (Shang) and the appellee Liunan Haoqian Plastic Products Factory (Haoqian), on the dispute over return of expenses after announcement on invalidation of patent rights. SPC revoked the first instance judgment, and ruled that Shang did not need to refund the license fee of RMB 120,000.

In this case, Shang alleged in a lawsuit that Haoqian infringed the patent rights in 2018. Afterwards, the two parties reached an agreement that Haoqian paid Shang license fee of RMB 220,000 (120,000 on November 16, 2018, and 100,000 before August 10, 2019). On November 16, 2018, the first instance court made a mediation letter and Haoqian paid the RMB 12,000. On April 3, 2019, the CNIPA issued the examination decision on the application to declare the patent invalid.

SPC held that, according to Article 47.2 of the *Patent Law*, the decision to declare the patent invalid has no retrospective effect on the judgments, mediation and contracts that have already been performed or enforced. In this case, both parties reached a settlement agreement voluntarily, and agreed to perform obligations in installments, which was confirmed by the court in the mediation letter. The time for the first installment was before the date of the invalidation decision, and the invalidation decision had no retrospective effect on the part that had already been performed. The ratio of the RMB 120,000 to the total license fee of RMB 220,000, is reasonable compared with the the ratio of the period that Haoqian actually used the patent to the period of license agreed in the mediation letter, did not belong to the "obvious violation of the principle of fairness" stipulated in Article 47, paragraph 3 of the *Patent Law*. Therefore, Shang did not need to refund the license fee.

Source: The Supreme People's Court

最高法再审改判，擅用“虎镖”等多枚商标及仿冒商品名称、包装的行为构成侵权

最高人民法院对郑州张百年医药有限公司（下称张百年公司）与徐振强等侵害商标权及不正当竞争纠纷案作出再审裁判，撤销一审、二审判决，判决被告停止侵权，将损害赔偿数额由4万元提高至30万元。

再审主要围绕被告是否同时侵害张百年公司第12164895号“张百年”商标、第12016972号“虎镖”商标、第29616900号“虎镖”注册商标专用权展开。最高院认为，上诉三枚注册商标核定使用商品类别为第10类，属医疗器械类商品，与被诉侵权商品医用冷敷贴构成相同或类似商品。被诉侵权商品的包装上突出使用了与上述三枚注册商标完全相同的“张百年”及“虎镖”标识，还标注了注册商标标志及商标注册号，构成商标性使用，容易造成相关公众对商品来源产生混淆误认。故被告销售被诉侵权商品的行为构成商标侵权，同时构成不正当竞争。

关于赔偿数额，最高院认为，二审判决确定的赔偿数额系基于被告仅侵害了张百年公司一枚商标专用权作出的认定，被告的行为还侵害了其他三枚注册商标专用权，同时构成不正当竞争。鉴于本案被诉侵权商品属医药卫生类商品，与社会公众的生命健康存在密切联系，行为人理应对产品承担较高的注意义务，结合三被告侵权行为的具体情节、主观恶意程度，张百年公司及其注册商标、商品的声誉，以及张百年公司合理维权费用等因素，法院酌定赔偿数额为30万元。

本案是最高人民法院对恶意销售知名商标商品和仿冒具有一定影响的包装、装潢的产品的典型判例，具有一定的参考借鉴意义。

来源：最高人民法院

SPC: Using "Tiger Dart" and Other Trademarks, Counterfeiting Commodity Names and Packaging, Shall Constituted Infringement

The Supreme People's Court made a retrial judgment on the dispute over trademark infringement and unfair competition and between Zhengzhou Zhang Bainian Pharmaceutical Co., LTD. (Zhang Bainian) and Xu Zhenqiang, et. al., revoking the first and second instance judgments, ordering the defendants to stop the infringement and increasing the

damages from RMB 40,000 to RMB 300,000.

The retrial mainly focused on whether the defendants infringed on the trademark No. 12164895 "Zhang Bainian", No. 12016972 "Tiger Dart" and No. 29616900 "Tiger Dart". SPC held that the three trademarks were approved on the commodities of medical device in Class 10, which are same or similar commodities as the infringing commodities of medical cold compress. The packaging of the infringing goods prominently used the logos of "Zhang Bainian" and "Tiger Dart", which were identical to the above trademarks. The infringing commodities also marked the trademark logo and trademark registration number, which constituted trademark use, and caused confusion and misunderstanding of the source of commodities. Therefore, the acts constituted trademark infringement and unfair competition.

Regarding the damages, SPC held that the damages determined in the second instance judgment was based on that the defendants only infringed one trademark, actually, the defendant's acts also infringed three other trademarks and constituted unfair competition. In view of the infringing goods are medical and health commodities, which are closely related to the life and health of the public, which requires a higher duty of care for the goods. Considering the specific circumstances of the infringement, the malice of the defendants, the reputation of Zhang Bainian and its trademarks and goods, the court decided to award the damages of RMB 300,000.

Source: The Supreme People's Court

适用5倍惩罚性赔偿，授权解约后仍使用“骏怡”标识被判侵权

近日，上海浦东法院审结一起商标侵权及不正当竞争案，认定被告行为符合惩罚性赔偿的适用要件，判定其立即停止不正当竞争行为，变更企业名称，并按照双方在合同中约定的基数和倍数，赔偿原告经济损失及维权合理开支共计63万余元。

本案中，原告青岛尚美数智科技集团有限公司（下称尚美公司）系“骏怡”商标的权利人，与被告某商务酒店于2020年签署《商标授权使用管理合同》（下称《管理合同》），许可被告使用“骏怡”商标，并由其缴纳商标许可使用费。如果被告在合同终止后继续使用该商标，则应当按合同约定费用的5倍支付使用费。后双方协商解除合同后，被告仍在酒店招牌、室内装潢等多处使用“骏怡”标识。

法院认为，被告在解约后仍在经营中使用原告商标，构成商标侵权及不正当竞争，且具有明显的主观故意，侵权时间较长，情节严重，应对其适用惩罚性赔偿。关于基数和倍数确定，鉴于双方先前签订的《管理合同》中已就合同终止后商标使用费的计算做了约定。由于被告拒不提供完整的财务信息，法院适用举证妨碍规则，综合考虑疫情对酒店行业的影响，酌情确定了平均入住率和平均客房单价，计算出其涉案侵权行为惩罚性赔偿的基数为12万余元，并依据双方在合同中约定的倍数，适用5倍惩罚性赔偿。最终，法院判定该酒店赔偿尚美公司经济损失及维权合理开支共计63万余元。

来源：上海浦东法院

Maximum Five Times Punitive Damages Was Applied, Using "JunYi" Trademark After the Termination of License Constituted infringement

Recently, the Shanghai Pudong District Court made a judgment on the dispute over trademark infringement and unfair competition, ordering the defendant to stop the unfair competition, change the company name, and pay damages of RMB 630,000.

In this case, the plaintiff is the right holder of the trademark "JunYi", and signed the *Trademark Authorization and Use Management Contract* (hereinafter referred to as the "Contract") with the defendant in 2020, allowing the defendant to use the "JunYi" trademark. If the defendant continues to use the trademark after the termination of the contract, it shall pay 5 times the license fee agreed in the contract. Afterwards, the two parties negotiated to terminate the contract, the defendant still used the "Junyi" logos in many places, such as the hotel signboard and interior decoration, which constituted trademark infringement and unfair competition, and the malice was obvious, the infringement lasted for a long time, and the circumstances of infringement were serious, therefore, punitive damages shall be applied.

In terms of the base and multiples of the damages, the multiples has been stipulated in the Contract. Since the defendant refused to provide complete financial information, the court applied the rule of obstruction of evidence, the impact of the epidemic on the hotel industry, and confirmed that the average occupancy rate and average room price by plaintiff as appropriate, and calculated that the base of punitive damages was 120,000, and applied five times punitive damages, awarding the damages of RMB 630,000.

Source: Shanghai Pudong District Court

天津高院：特许经营模式的特许人在过错条件下应就加盟商的侵权行为承担连带责任

天津市高级人民法院对卡地亚国际有限公司（下称卡地亚公司）与梦金园黄金珠宝集团股份有限公司（下称梦金园集团公司）、山东梦金园珠宝首饰有限公司（下称山东梦金园公司）等侵害商标权及不正当竞争纠纷案作出终审判决。判决六被告停止侵权，赔偿经济损失及合理开支共计43万元，梦金园集团公司、山东梦金园公司对涉案加盟店铺的赔偿金额承担连带赔偿责任。

本案中，卡地亚为涉案第202386号“Cartier”号和第G892848号“ ”注册商标权利人，其中Cartier商标曾被认定为驰名商标，其“LOVE”系列首饰商品装潢构成有一定影响的商品装潢。尚丰珠宝行等4家店铺未经权利人许可，销售了标注与涉案商标标识相同的首饰，侵害了涉案注册商标专用权，且销售仿冒卡地亚“LOVE”系列首饰装潢的商品，构成不正当竞争。经查明，上述店铺均为山东梦金园公司的加盟店铺，分别与山东梦金园公司签订有《特许经营合同》，加盟店铺特许经营类型为“店中店”，法院认为，山东梦金园公司作为特殊特许经营模式的特许人，显然未尽到应有的管理责任和注意义务，对上述加盟店铺实施的商标侵权及不正当竞争行为存在过错应对此承担帮助侵权的责任，梦金园集团公司虽并不从事黄金饰品的生产及销售，但作为山东梦金园公司的母公司，无论经营范围还是对外宣传等方面，均具有生产、销售的能力也实际从事了相关行为，故梦金园集团公司，山东梦金园公司对涉案加盟商的行为承担连带责任。

来源：天津市高级人民法院

立方短评：特许经营的特许人对于被特许人在商业活动中的商标侵权行为，是否需要承担责任，存在一定争议。一方面，特许人对于被特许人有相当的约束力，由其管理被特许人的经营

行为，制止商标侵权行为，效率和效果明显优于其他主体；但是，特许人对被特许人可能的商标侵权行为进行预防，则需要付出较高的预防成本，不利于特许经营业务的开展。在制止商标侵权行为的责任上，对特许人施以何种程度的注意义务，以达到能够有效制止商标侵权行为，同时不至于使得特许人承担过高的预防成本，是法院需要解决的问题。

在本案中，法院对于特许人需要承担的义务，从商业特许经营模式的基本特征、特许经营合同的内容及实际履行情况、加盟商实施侵权行为的方式，以及相关公众的认知等因素进行了分析，认定特许人负有制止被特许人侵权行为的注意义务，在被特许人的侵权行为并非偶发的情况下，没有积极采取行动制止被特许人的商标侵权行为，没有尽到管理责任和注意义务，存在过错，应承担帮助侵权的责任。

该判决明确了特许经营活动中特许人行使管理责任、履行注意义务的界限，要求特许人应采取行动积极制止被特许人的侵权行为，可以更加高效地制止知识产权侵权行为，保护权利人的合法利益。

Tianjin High People's Court: Franchisor in Fault of Franchise Mode Shall Bear Joint and Several Liability for Franchisees' Trademark Infringement

Tianjin High People's Court made a final judgment on the dispute over trademark infringement and unfair competition between Cartier International Co., LTD. (Cartier) and Mokingran Group Co., LTD. (Mokingran Group Company), Shandong Mokingran Co., LTD. (Shandong Mokingran Company) , et. al. The court ruled that the defendants shall stop the infringement and pay damages of RMB 430,000, Mokingran Group Company and Shandong Mokingran Company shall bear joint and several liability for the franchisee shops.

In this case, Cartier is the righter of the trademark No. 202386 " Cartier " and No. G892848"  ". The trademark No. 202386 was identified as a well-known trademark, and the decoration of "LOVE" series jewelry constituted the commodity decoration with certain influence. Four shops sold the jewelry with the same mark as the trademark, which constituted trademark infringement, they also sold goods that counterfeited Cartier's "LOVE" series of jewelry decoration, which constituted unfair competition. It was found that the above shops were franchised shops of Shandong Mokingran Company, and signed *Franchise Contract* with Shandong Mokingran Company respectively, and the franchised model was "shop-in-shop". The court held that Shandong Mokingran Company, as the franchisor of the special franchise model, obviously failed to fulfill its management responsibility and duty of care, shall bear the liability of assistance of infringement, although Mokingran Group Company is not engaged in manufacturing and selling gold jewelry, but as the parent company of Shandong Mokingran Company, regardless of the scope of business or external publicity, etc., have the ability and actually engaged in the relevant acts, Mokingran Group Company and Shandong Mokingrann company were jointly and severally liable for the infringement of the franchisees.

Source: Tianjin High People's Court

Lifang & Partners: There is controversy over whether the franchisor of a franchise shall be liable for the franchisee's trademark infringement during franchise activities. On the one hand, the franchisor has considerable control on the franchisee, and is much more efficient and effective for stopping trademark infringement acts of franchisee than other entities. However, the franchisor also needs to invest much to prevent the franchisee's trademark infringement, which is not conducive to the development of franchise business.

Therefore, the degree of duty of care imposed on the franchisor to effectively stop trademark infringement without making the franchisor to bear excessive prevention costs, is an issue that the courts need to decide.

In this case, the court analyzed the obligations of the franchisor from the characteristics of the franchise model, the content and actual performance of the franchise contract, the way the franchisee committed the infringement, and the perception of the relevant public, and ruled that the franchisor shall have the duty of care to stop the franchisees' infringement. In the case that the franchisees' infringement is not accidental, if the franchisor did not take active actions to stop the trademark infringement, it shall be considered as failing to fulfill the management responsibility and duty of care, and shall bear the liability of assistance of infringement.

The judgment clarifies the boundaries of the franchisor's management responsibility and duty of care in franchising activities, and requires the franchisor to take actions to actively stop the franchisee's infringement acts, which can more efficiently stop intellectual property infringement and protect the legitimate interests of the IP right holders.

奥迪向蔚来提起商标诉讼，称“ES6”侵犯“S6”权益

据德国《商报》6月16日报道，大众汽车旗下的奥迪已向慕尼黑法院提起诉讼，指控中国智能电动汽车公司蔚来（NIO）侵犯了奥迪的商标。

奥迪称，蔚来决定将其两款车型命名为ES6和ES8，侵犯了奥迪两款车型S6和S8的商标权。奥迪发言人证实了这一诉讼，蔚来发言人则表示，不对正进行的诉讼发表评论。

据了解，蔚来迄今为止的大部分销量都在中国。去年 5 月，蔚来进入挪威市场，并计划在年底前进入德国、荷兰、瑞典和丹麦。蔚来此前已经开始在挪威销售 ES8 车型，也已表示计划在德国推出 ET7 电动轿车。

来源：handelsblatt.com

Audi Claims Nio's Model Name for the ES8 Infringes on Its Trademark of Audi S8

Audi has filed a lawsuit in a Munich court against Chinese electric vehicle maker Nio over an alleged infringement of the Volkswagen Group subsidiary's trademark rights, German newspaper Handelsblatt reported on Thursday.

Audi believes that Nio's decision to name two of its models ES6 and ES8 infringes on Audi's trademark for its S6 and S8 model designations.

A Nio spokesperson declined to comment. A spokesperson for Audi was not immediately available for comment to Reuters.

Nio, a premium brand that so far has made most of its sales in China, entered the Norwegian market in May last year and plans to launch in Germany, the Netherlands, Sweden, and Denmark before the end of the year. The company started sales in Norway with the ES8 model but has said it plans to launch in Germany with the ET7 electric sedan.

Source: handelsblatt.com

阿迪达斯起诉耐克，指控其在9项专利上侵权

6月10日，阿迪达斯(Adidas AG)向德克萨斯州联邦法院提起诉讼，称耐克公司(Nike Inc.)的Nike Run Club等移动应用程序，以及调整运动鞋贴合度的Adapt系统，侵犯了阿迪达斯在运动监测、“智能鞋”系统和其他技术方面的9项专利。

具体指控如下：

1、Nike Adapt系统侵犯了adidas在2004年推出的「可在穿着时感知并调整鞋子舒适度」的adidas 1鞋款；

2、Nike的Run Club、Training Club等app侵犯了adidas在跟踪和存储与活动相关的进度、性能反馈以及个性化的指导和训练技巧方面的专利；

3、SNKRS app侵犯了adidas允许用户在Confirmed app上「预订和购买限量版球鞋」的专利。

对于这次诉讼，目前Nike还未作出任何回应。

来源：news.bloomberglaw.com

Adidas Alleged in a Lawsuit that Nike Infringed Its Nine Patents

Adidas AG alleged in a lawsuit filed in Texas federal court that Nike Inc. mobile apps like the Nike Run Club infringed multiple patents for GPS tracking software, systems to remotely control athletic wear, and other mobile fitness features.

Adidas said in the June 10 complaint that it owns nine patents that cover route tracking, audio feedback, and a product launch system that were unlawfully incorporated into the Nike Training Club, SNKRS, and Adapt apps.

Nike has not yet responded to the lawsuit.

Source: news.bloomberglaw.com

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