



# NEWSLETTER

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

### 最高法院发布反垄断民事诉讼司法解释征求意见稿

2022年11月18日，最高人民法院（“最高院”）发布了《最高人民法院关于审理垄断民事纠纷案件适用法律若干问题的规定（公开征求意见稿）》（“《征求意见稿》”）。《征求意见稿》在2012年版反垄断民事诉讼司法解释的基础上，新增了针对关于合同约定仲裁条款情况下的起诉问题、反垄断民事诉讼案件管辖（特别是针对境外垄断行为的管辖问题）、举证责任、司法与行政处罚衔接等热点问题的规定，同时也细化了在反垄断民事诉讼中对相关市场界定、市场支配地位认定、垄断行为反竞争效果认定、垄断行为抗辩理由和豁免情况的认定。此外，《征求意见稿》还着重对互联网平台经济垄断相关问题进行了解释和说明。此次意见征求截止日期为2022年12月9日。（[查看更多](#)）

### SPC Issues Exposure Draft of Judicial Interpretation on Anti-Monopoly Civil Litigations

On November 18, 2022, the Supreme People's Court (the 'SPC') issued the *Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Monopoly Civil Dispute Cases (Exposure Draft)* ('Exposure Draft'). On the basis of the 2012 edition of the Judicial Interpretation on Anti-Monopoly Civil Litigations, the *Exposure Draft* has newly added provisions on issues such as filing a litigation under an arbitration clause as agreed in a contract, the jurisdiction of anti-monopoly civil litigation cases (especially for the jurisdiction of overseas monopolistic behaviors), the burden of proof, and the connection between judicial and administrative penalties. The *Exposure Draft* also detailed the definition of the relevant market, the determination of a market dominant position, the determination of the anti-competitive effect of a monopolistic behavior, the defense reasons and exemptions of a monopolistic behavior in an anti-monopoly civil litigation. In addition, the *Exposure Draft* also focuses on explaining and interpreting issues related to the economic monopoly of Internet platforms. The deadline for this call for comments is December 9, 2022. ([More](#))

### 最高法院发布反垄断典型案例

2022年11月17日，最高院发布了人民法院反垄断典型案例。案例涉及横向垄断协议、滥用市场支配地位、行业协会垄断、公用企业垄断行为、其他协同行为、知识产权相关的垄断行为等不同的垄断行为情节，考察了垄断协议的豁免、反垄断罚款基数、涉及垄断行为的损害赔偿认定标准和举证责任分配、非垄断案由案件中的反垄断审查等不同问题，加强了对涉垄断案件的司法裁判指导。（[查看更多](#)）

### SPC Releases Typical Anti-Monopoly Cases

On November 17, 2022, the SPC released the typical anti-monopoly cases of the people's courts. The cases involve different circumstances of monopoly behavior such as horizontal monopoly agreements, abuse of market dominant position, monopoly of industry associations, monopoly behavior of public enterprises, other concerted behavior, set out adjudication rules on anti-monopoly issues like exemption

of monopoly agreement, calculation basis of anti-monopoly fines, the determination standard of damages involving monopoly behavior, the rules on distribution of the burden of proof and the anti-monopoly review in non-monopoly cases, and strengthen the judicial adjudication guidance for monopoly cases. ([More](#))

### 北京通报经营者集中审查情况

2022年11月16日，北京市市场监督管理局（“北京市市监局”）发布了北京推进经营者集中反垄断审查的工作情况。自2022年8月1日起，截至2022年11月14日，已公示13件，审结10件，办结商谈3件，办理过程平均用时18天，最短仅用时14天。之后，北京市市监局还将进一步提升审查效能，同时加强对企业的宣传培训，推动经济高质量发展。（[查看更多](#)）

### Beijing Notifies the Review Working Situation of Delegated Merger Filing Cases

On November 16, 2022, the Beijing Municipal Bureau for Market Regulation (‘Beijing AMR’) released the situation of Beijing AMR working on the anti-monopoly review of the entrusted notifications of concentration of operators. From August 1, 2022 to November 14, 2022, 13 cases have been publicized, 10 cases have been concluded, and 3 cases have been negotiated. The average processing time is 18 days, and the shortest time is only 14 days. After that, the Beijing AMR will further improve the efficiency of review, and at the same time strengthen publicity and training for enterprises to promote high-quality economic development. ([More](#))

### 上海发布六部反垄断指引

2022年11月14日，上海市市场监督管理局发布公告，根据新修订的多项反垄断规定，结合工作实践，公布所编制的《上海市经营者集中申报指引》、《配合反垄断调查指引》、《横向垄断协议案件宽大制度指引》、《经营者集中简易案件申报指引》、《经营者集中案件申报名称指引》和《金融业经营者集中申报营业额计算指引》共六部系列指引。（[查看更多](#)）

### Shanghai Issues 6 Anti-Monopoly Guidelines

On November 14, 2022, the Shanghai Municipal Administration for Market Regulation issued a statement, announcing the series of 6 guidelines, i.e. *the Guideline for Notification of Concentration of Business Operators in Shanghai, Guideline for Cooperating with Anti-monopoly Investigations, Guideline for the Leniency System for Horizontal Monopoly Agreement Cases, Guideline for the Notification of Simplified Cases of Concentration of Business Operators, Guideline for the Name of the Notification of Concentration Cases of Business Operators and Guideline for the Turnover Calculation in the Concentration of Business Operators in the Financial Industry*. These guidelines are compiled in accordance with multiple newly revised anti-monopoly regulations and combined with work practice. ([More](#))

### 第九届中国公平竞争政策国际论坛在京举办

2022年11月14日，九届中国公平竞争政策国际论坛在北京开幕。论坛由市场监管总局国家反垄断局、国务院反垄断委员会办公室、总局竞争政策与大数据中心、北京市市监局共同举办，主

题为“公平竞争、统一市场与高质量发展”。此次论坛为期一天半，包括开、闭幕式和3个专题论坛，参会人员将围绕建设统一市场中的公平竞争政策、反垄断与高质量发展、反不正当竞争与繁荣发展等重要问题进行探讨。 ([查看更多](#))

## **The 9<sup>th</sup> China Fair Competition Policy International Forum Held in Beijing**

On November 14, 2022, the 9<sup>th</sup> China Fair Competition Policy International Forum opened in Beijing. The forum was co-hosted by the State Anti-Monopoly Bureau of the State Administration for Market Regulation, the Office of the Anti-Monopoly Committee of the State Council, the Competition Policy and Big Data Center of the State Administration for Market Regulation, and the Beijing Municipal Bureau for Market Regulation. The theme was “fair competition, unified market and high-quality development”. The forum will last for one and a half days, including opening and closing ceremonies and three special forums. The participants will discuss important issues such as fair competition policy regarding building a unified market, anti-monopoly and high-quality development, anti-unfair competition and prosperous development. ([More](#))

## **欧盟对在线旅游企业Booking收购e Traveli展开反垄断调查**

2022年11月16日，欧盟委员会发布公告，对Booking股份有限公司收购e Traveli展开调查。Booking和e Traveli分别为从事在线旅游住宿业务和在线旅游航空业务的服务供应商，Booking还通过其比价平台KAYAK活跃于元搜索（metasearch）服务市场。欧盟委员会初步调查表明，Booking在在线旅游住宿业务服务市场可能具有市场支配地位，通过将e Traveli在在线旅游航空服务方面的业务活动与Booking自身的服务套件相结合，该交易可能会显著降低相关市场中的竞争。欧盟委员会担心，该交易可能导致竞争对手进入市场的壁垒提高、在市场中扩张难度增加。 ([查看更多](#))

## **Mergers: Commission Opens In-depth Investigation into the Proposed Acquisition of eTraveli by Booking**

On November 16, 2022, the European Commission published an announcement, stating that it had opened an investigation into proposed acquisition by Booking Holdings (‘Booking’) of eTraveli. Booking and eTraveli are both active in the provision of OTA services, respectively focusing on accommodation OTA and flight OTA services. Booking is also active in the market of metasearch services (MSS) mainly through its price comparison platform KAYAK. The Commission's preliminary investigation indicates that Booking may have a dominant position on the market for the provision of accommodation OTA services and that the transaction may significantly reduce competition in this market by combining eTraveli's activities in flight OTA services with Booking's own suite of services. The Commission is concerned that the transaction may lead to an increase in barriers to entry and expansion for rival OTAs. ([More](#))

## **欧盟《数字服务法》正式生效**

2022年11月16日，欧盟《数字服务法》（Digital Services Act, “DSA”）正式生效。DSA旨在建立更安全、负责的在线环境，可适用于将消费者连接到商品、服务或信息内容的所有数字服

务。DSA为在线平台创造了全面的新义务，以降低在线服务可能造成的损害和应对风险，为用户的在线权利提供了强有力的保护，并将数字平台置于全新的透明度和责任框架之下。DSA将为欧盟提供一套统一的监管规则，为整个欧盟市场中的用户提供新的保护，并为企业提升法律确定性。 ([查看更多](#))

## Digital Services Act Comes into Effect

On November 16, 2022, the Digital Services Act ('DSA') officially comes into effect. DSA aims to provide a safer and more accountable online environment and applies to all digital services that connect consumers to goods, services, or content. It creates comprehensive new obligations for online platforms to reduce harms and counter risks online, introduces strong protections for users' rights online, and places digital platforms under a unique new transparency and accountability framework. Designed as a single, uniform set of rules for the EU, these rules will give users new protections and businesses legal certainty across the whole single market. ([More](#))

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

### 《个人信息保护认证实施规则》发布

2022年11月4日，国家市场监督管理总局、国家互联网信息办公室联合发布《个人信息保护认证实施规则》（以下简称《规则》）。在认证依据方面，《规则》明确，个人信息处理者应当符合GB/T35273《信息安全技术 个人信息安全规范》的要求。对于开展跨境处理活动的个人信息处理者，还应当符合TC260-PG-20222A《个人信息跨境处理活动安全认证规范》的要求。 ([查看更多](#))

### Rules on Implementation of Personal Information Protection Certification Were Released

On 4 November 2022, the State Administration for Market Regulation and the Cybersecurity Administration of China ("CAC") jointly issued *the Rules on Implementation of Personal Information Protection Certification (the "Rules")*. In terms of basis of certification, the Rules provide that personal information processors shall meet the requirements set forth in GB/T35273 *Information Security Technology Personal Information Security Specification*, and specify that the cross-border processing activities of personal information processors shall also meet the requirements set forth in TC260-PG-20222A *Security Certification Specifications for Cross-border Personal Information Processing Activities*. ([More](#))

### 国务院关于数字经济发展情况的报告提请全国人大常委会审阅

2022年10月28日，了国务院关于数字经济发展情况的报告提请十三届全国人大常委会第三十七次会议审议。报告指出，我国网络安全保障和数字经济治理水平持续提升。一是法律和政策制

度体系逐步健全，初步构建了数据基础制度体系的“四梁八柱”。二是网络安全防护能力持续增强。建立网络安全监测预警和信息通报工作机制，完善关键信息基础设施安全保护、数据安全保护和网络安全审查等制度，健全国家网络安全标准体系，完善数据安全和个人信息保护认证体系。三是数字经济治理能力持续提升。（[查看更多](#)）

## **The State Council Submitted a Report on the Development of the Digital Economy to the Standing Committee of the National People's Congress for Review**

On 28 October 2022, the report of the State Council on the development of the digital economy was submitted to the 37th Session of the Standing Committee of the 13th National People's Congress for review. The report pointed out that China's network security and digital economy governance level has continued to improve. First, the legal and policy system has been gradually improved, and the foundation of a basic data-based system has been initially established. Second, network security protection capabilities have been continuously enhanced. China is committed to establishing a network security monitoring and information notification mechanism, and improving the systems of security protection of key information infrastructure, data security protection, network security review, national network security standards, and data security and personal information protection certification. Third, the capabilities of digital economy governance has continued to improve. ([More](#))

## **国家网信办修订《互联网跟帖评论服务管理规定》发布**

2022年11月16日，国家互联网信息办公室发布新修订的《互联网跟帖评论服务管理规定》（以下简称新《规定》）。新《规定》自2022年12月15日起施行。新《规定》共16条，重点明确了跟帖评论服务提供者跟帖评论管理责任、跟帖评论服务使用者和公众账号生产运营者应当遵守的有关要求等内容。此外，新《规定》强调，公众账号生产运营者可按照用户服务协议向跟帖评论服务提供者申请跟帖评论区管理权限。跟帖评论服务提供者应当对公众账号生产运营者的跟帖评论管理情况进行信用评估后，合理设置管理权限，提供相关技术支持。（[查看更多](#)）

## **Cyberspace Administration Issues Revised Administrative Provisions on Comment Threading Services on the Internet**

On 16 November 2022, CAC issued *the revised Administrative Provisions on Comment Threading Services on the Internet (the "New Provisions")*, which shall come into force on 15 December 2022. The New Provisions contain a total of 16 articles, specifying online comment service providers' management responsibility for online comments, the relevant requirements that shall be complied with by the users of the online comment services and those who operate official accounts. In addition, the New Provisions emphasized that those who operate official accounts may apply to online comment service providers for the management authority of the online comment area in accordance with the user service agreement. Online comment service providers shall conduct a credit assessment on the online comment management of those who operate the official accounts, set reasonable management authority and provide relevant technical support. ([More](#))



## 信安标委就国家标准《信息安全技术 关键信息基础设施网络安全应急体系框架》 公开征求意见

2022年11月17日，全国信息安全标准化技术委员会（以下简称“信安标委”）发布国家标准《信息安全技术 关键信息基础设施网络安全应急体系框架》（以下简称《框架》）征求意见稿，征求意见截止至2023年1月16日。《框架》给出了关键信息基础设施网络安全应急体系框架，包括机构设置、分析识别、应急预案、监测预警、应急处置、事后恢复与总结、事件报告与信息共享、应急保障、演练与培训等内容。《框架》适用于关键信息基础设施运营者建立健全网络安全应急体系、开展网络安全应急活动，也可供关键信息基础设施安全保护的其他相关方参考。（[查看更多](#)）

## NISSTC Seeks Public Comments on the National Standard Information Security Technology — Framework for Cybersecurity Emergency System of Critical Information Infrastructure

On 17 November 2022, the National Information Security Standardization Technical Committee sought public comments on the national standard *Information Security Technology — Framework for Cybersecurity Emergency System of Critical Information Infrastructure (the “Framework”)*, with the deadline for feedback being 16 January 2023. The Framework provides for a system of emergency responses to cybersecurity incidents of critical information infrastructure, including the organization establishment, analysis and identification, emergency plan, monitoring and early warning, emergency disposal, post-event recovery and summary, incident reporting and information sharing, emergency safeguards, drills, training, etc. The Framework is applicable to critical information infrastructure operators in establishing and improving their emergency responses to cybersecurity and in carrying out emergency responses to cybersecurity incidents, and serve as a reference for other parties involved in the security protection of critical information infrastructure. ([More](#))

## 北京网信办：开展年度汽车数据安全管理工作报送工作

2022年11月17日，北京市互联网信息办公室（以下简称“北京网信办”）发布“关于开展2022年度汽车数据安全管理工作报送工作的通知”。2022年度汽车数据安全管理工作报送对象包括注册地为北京地区的开展重要数据处理活动的汽车数据处理者，包括汽车制造商、零部件和软件供应商、经销商、维修机构以及出行服务企业等。报送方式为：按要求编制《2022年度汽车数据安全管理工作报告》，加盖企业公章，以纸质版+电子版光盘形式报送至北京市互联网信息办公室，报送前还需致电联系010-67676912。该报送工作截止至2022年12月15日。（[查看更多](#)）

## Cyberspace Administration of Beijing Organizes to Carry out the Submission of 2022 Automobile Data Security Management Information

On 17 November 2022, the Cyberspace Administration of Beijing issued *the Notice on Carrying out the Submission of 2022 Automobile Data Security Management Information*. Entities required to submit

such information are automobile data processors which are registered in Beijing and carrying out important data processing activities, including automobile manufacturers, parts and software suppliers, dealers, repair agencies and travel service companies. The submission method is as follows: preparing the *Report on Automobile Data Security Management 2022* as required, affixing the company's official seal, and submitting the same to the Cyberspace Administration of Beijing Municipality in the form of paper and electronic CD. It is also required to call 010- 67676912 prior to the submission. The deadline for the submission is December 15, 2022. ([More](#))

## 深圳数据交易所正式揭牌

2022年11月15日，由广东省人民政府指导，深圳市人民政府主办的深圳数据交易所揭牌暨数据交易成果发布仪式在深圳举行。目前，深圳数据交易所累计交易额已突破11亿元，覆盖场景53个，交易笔数415，已收录入库超过55大类的数据资源信息，涵盖超过600多个数据产品。同时启动首批线上数据交易。随着深圳数据交易所成立，至此，北上广深四大一线城市数据交易所均已上线。 ([查看更多](#))

## Shenzhen Data Exchange Officially Launched

On 15 November 2022, the ceremony for unveiling the Shenzhen Data Exchange and announcing data transaction results washeld in Shenzhen. Under the guidance of the People's Government of Guangdong Province, the ceremony was hosted by the People's Government of Shenzhen Municipality. Currently, the cumulative trading amount of the Shenzhen Data Exchange has exceeded RMB1.1 billion, covering 53 scenarios and 415 transactions, and more than 55 categories of data resource information have been included in the database, covering over 600 data products. At the same time, the first batch of online data transactions have been launched. With the establishment of Shenzhen Data Exchange, so far, data exchanges in all the four first-tier cities, namely in Beijing, Guangzhou and Shenzhen have been launched. ([More](#))

## 特大系列侵犯公民个人信息案件侦破

2022年11月13日，从黑龙江鸡西市公安局获悉，该局成功侦破一起特大系列侵犯公民个人信息案件，共计抓获犯罪嫌疑人322名，涉及全国27个省份。今年2月，鸡西市公安局发现辖区内有居民大量收租微信号、QQ号。经查，该犯罪团伙以发布诱导性信息吸粉引流，再通过租收的微信号进行登录，发布虚假信息，以获取巨额不法利益。警方共抓获犯罪嫌疑人322名，依法扣押涉案资金560余万元，扣押电脑78部，手机412部，涉案银行卡638张。 ([查看更多](#))

## An Extraordinarily Series of Serious Infringements of Citizens' Personal Information Were Investigated and Uncovered

On 13 November 2022, according to the Public Security Bureau of Jixi City, Heilongjiang Province, the Bureau has successfully detected a series of cases seriously infringing citizens' personal information, arresting 322 suspects in 27 provinces across the country. In February this year, the Public Security Bureau of Jixi City discovered that there were residents within its jurisdiction collecting and renting out a large number of WeChat numbers and QQ numbers. According to the investigation, the group

of suspects first released deceptive information to attract followers and increase internet traffic, and then used the rented WeChat accounts to log in and release false information to make huge illegal benefits. The police arrested 322 criminal suspects in total, seized a sum of more than CNY5.6 million in total, 78 computers, 412 mobile phones, and 638 bank cards involved in the case in accordance with the law. ([More](#))

## 欧洲数据保护专员公署就规定欧盟范围内网络安全要求的条例发表意见

2022年11月15日，欧洲数据保护专员公署（“EDPS”）公布了其对一项拟议法规的意见，该条例规定了对具有数字元素的产品网络安全要求。具体而言，拟议法规旨在规定欧盟范围内对各类硬件和软件产品及其远程数据处理解决方案的网络安全要求。这些产品和软件包括浏览器、操作系统、防火墙、网络管理系统、智能仪表或路由器等。EDPS建议厘清拟议条例与欧盟数据保护法律之间的关系，特别是两者在市场监管和执法领域如何互动。为此，EDPS认为拟议条例不应影响或试图影响关于个人数据处理的现行欧盟法律的适用以及独立数据保护机构的任务和权力。（[查看更多](#)）

## The EDPS Published Opinion on a Proposed Regulation Laying down Cybersecurity Requirements

On 15 November 2022, the EDPS published its Opinion on a proposed regulation laying down cybersecurity requirements for products with digital elements. Concretely, the proposed regulation aims to set out EU-wide cybersecurity requirements for a broad range of hardware and software products and their remote data processing solutions. These include, for example, browsers, operating systems, firewalls, network management systems, smart meters or routers. The EDPS suggests clarifying the relationship between the proposed regulation and EU data protection laws, specifically how these will interact in the area of market surveillance and enforcement. To this end, it is the EDPS' opinion that the proposed regulation should not affect, or seek to affect, existing EU laws that are already governing the processing of individuals' personal data and the tasks and powers of independent data protection authorities. ([More](#))

## 意大利宣布人脸识别技术非法，但用于打击犯罪的除外

2022年11月14日，意大利数据保护局（Data Protection Agency）谴责了两个尝试使用人脸识别技术的城市市政当局，禁止人脸识别和“智能眼镜”的使用。意大利数据保护局表示，在意大利通过专门的法律之前，或者至少明年年底之前，使用生物特征识别系统的人脸识别技术将不会被允许使用；例外情形为该等技术在司法调查或打击犯罪中发挥作用。（[查看更多](#)）

## Italy Outlaws Facial Recognition Tech, except to Fight Crime

On 14 November 2022, Italy prohibited the use of facial recognition and 'smart glasses' as its Data Protection Agency issued a rebuke to two municipalities experimenting with the technologies. Facial recognition systems using biometric data will not be allowed until a specific law is adopted or at least until the end of next year, the privacy watchdog said. The exception is when such technologies play a role in judicial investigations or the fight against crime. ([More](#))

## 谷歌同意与40个州达成3.915亿美元隐私和解协议

据纽约时报2022年11月14日报道，谷歌（Google）与美国40个州的总检察长联合作为一方达成了一项高达3.915亿美元的隐私和解协议，因为谷歌被指控误导用户，使用户认为他们已经关闭了账户设置中的位置跟踪功能，尽管该公司仍在继续收集这些信息。上述各州总检察长表示，直到2018年5月，谷歌甚至还在追踪已经注销谷歌应用程序的用户的位置，而注销行为可能导致消费者认为位置追踪功能已经被关闭。根据上述各州总检察长，这是美国各州迄今为止达成的金额最大的互联网隐私和解协议。上个月，谷歌以8500万美元与亚利桑那州单独就一起类似的位置追踪诉讼案达成和解。此外，谷歌还面临着华盛顿特区、印第安纳州和德克萨斯州就欺骗性位置追踪提出的其他诉讼。（[查看更多](#)）

### Google Agrees to \$392 Million Privacy Settlement with 40 States

According to reporting by the New York Times on 14 November 2022,, Google agreed to a record \$391.5 million privacy settlement with a 40-state coalition of attorneys general for charges that it misled users into thinking they had turned off location tracking in their account settings even as the company continued collecting that information. Until May 2018, Google even tracked the location of users who had logged out of Google apps, an action that could lead a consumer to believe location tracking had been disabled, the attorneys general said. The attorneys general said the agreement was the biggest internet privacy settlement by U.S. states. Last month, Google separately settled a similar location tracking lawsuit with Arizona for \$85 million. Google faces additional lawsuits brought by Washington, D.C., Indiana and Texas for deceptive location tracking. ([More](#))

## 知识产权 Intellectual Property

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### 最高法院发布《关于涉外民商事案件管辖若干问题的规定》

11月15日，最高人民法院（以下简称“最高院”）发布《最高人民法院关于涉外民商事案件管辖若干问题的规定》（以下简称《规定》），自2023年1月1日起施行。《规定》第二条将第一审涉外民商事案件管辖权下放至所有中级人民法院，同时明确中级人民法院管辖第一审涉外民商事案件的级别管辖标准。《规定》根据不同区域确定不同标的额的管辖标准，中级人民法院涉外民商事案件收案数量相应存在明显差异的实际情况。《规定》对于平等保护中外当事人合法权益，便利当事人诉讼，进一步提升涉外民商事审判质效具有重大意义。

来源：最高院

### SPC Releases Provisions on Issues Concerning the Jurisdiction over Foreign-related Civil and Commercial Litigation Cases

On November 15, SPC released *Provisions on Issues Concerning the Jurisdiction over Foreign-related Civil and Commercial Litigation Cases (the Provisions)*, which shall come into force on 1 January 2023. The Provisions stipulate that the jurisdiction over foreign-related civil and commercial cases in the first instance shall be delegated to all intermediate people's courts. Meanwhile, the standards for hierarchical jurisdiction and the standards for determining the jurisdiction of different amounts of cases according to different regions are clarified.

Source: SPC

## 沪警方成功侦破特大侵犯知名玩具品牌著作权案

今年8月，上海市公安局经侦总队会同黄浦分局发现，某网店对外销售的玩具产品与“乐高”玩具高度相似，存在侵权嫌疑。警方查明一个以陈某为首的犯罪团伙在未经授权的情况下，通过自行注册玩具品牌，对“乐高”积木拼装玩具进行剥样、抄数、开模后，1:1复刻成设计图纸，再规模化生产仿制侵权玩具，最终以“乐高”玩具市场价2至3成的价格对外销售非法牟利的犯罪事实，涉案金额高达17亿元。这类犯罪行为不仅严重损害企业权益、破坏市场秩序、打击创新活力，也侵害了消费者的合法权益。

来源：上海发布

## Shanghai Police Raided a Highly Similar Lego Toy Producer for Copyright Criminal Case with Value more than RMB 1.7 Billion

In August this year, Shanghai Municipal Public Security Bureau and Huangpu Branch found that the products sold by an online store were highly similar to "Lego" toys, which was suspected of copyright infringement. The police found out that a criminal gang through registration of toy brands, reproduced the "Lego" toys, and produced pirated toys, and finally sold the "Lego" toys for illegal profits at a price of 20% to 30% of the market price of the genuine Lego products. The amount involved in the case was up to RMB1.7 billion.

Source: Shanghai Municipal Public Security Bureau

## 网络文学领域首个诉前禁令获法院支持

近日，网络文学领域首个诉前禁令的裁定书公布。据悉，这是网络文学领域首个诉前禁令。海南自由贸易港知识产权法院发出诉前禁令认为，UC浏览器、神马搜索有大量链接未经阅文公司许可，用户即可直接免费阅读阅文公司旗下热门连载网络文学作品《夜的命名术》，涉嫌侵害阅文公司对涉案作品享有的信息网络传播权。如不及时制止，将影响阅文公司的市场交易机会，造成流量降低、收入减少等损害。此外，UC浏览器、神马搜索经营方等采取屏蔽、断链、删除等措施，不会影响其正常生产经营和合法权益，也不会对社会公共利益造成损害。故责令UC浏览器、神马搜索立即对侵犯《夜的命名术》信息网络传播权的链接采取删除、屏蔽、断链等必要措施。

来源：海南自由贸易港知识产权法院

## **The First Preliminary Injunction in the Field of Online Literature Dispute was Supported by the Court**

Recently, the ruling of the first preliminary injunction in the field of online literature was issued and enforced. Hainan Free Trade Port Intellectual Property Court ruled that UC Browser and Shenma Search provided a large number of links., through which the users can directly read the popular online literary work. The act of UC Browser and Shenma Search was suspected of infringing the right of network dissemination of information of Yuewen Company. If the act is not stopped in time, it may affect the trading opportunities of Yuewen Company, resulting in reduced network heat, revenue and other damages. In addition, the measures taken by UC Browser and Shenma Search operators such as blocking, broken link and deletion will not affect their normal operation and legitimate rights and interests, nor will they cause damage to the public interest.

Source: Hainan Free Trade Port Intellectual Property Court

## **北京高院认定“奥特曼”构成驰名商标**

近日，北京高级人民法院就上海新创华文化发展有限公司（原审原告）与深圳宏韵科技有限公司、北京京东叁佰陆拾度电子商务有限公司（原审被告）侵害商标权及不正当竞争纠纷案作出二审判决，判决驳回上诉，维持原判。一审法院判决被告停止侵权，赔偿经济损失。

法院认为，首先，原告在同一案件中主张认定其多枚不同类别的商标构成驰名商标时，应就其不同类别商标的实际使用情况进行分别审查。本案中原告除提供众多“奥特曼”的一般性知名度证据外，还提供了奥特曼影视作品的公映许可证、作品在各大视频网站热播的证明等大量证据。以上证据可证明原告在中国大陆长期、持续的使用，“奥特曼”早已建立起较高的市场知名度，构成驰名商标。其次驰名商标的跨类保护应主要从驰名商标核定使用或实际使用的商品与被控侵权产品之间关联性进行判定，以确定能否进行跨类保护。第9类与第28类“奥特曼”商标指定的商品范围分别为动画与玩具类，虽然与被控侵权商品“儿童电动牙刷”（21类）属于不相同也不相似的商品，但两者在商品的生产、流通及消费人群上存在较大的重合度，容易造成消费者的混淆或误认。

来源：北京高院

## **Beijing High People's Court Affirmed Multiple "Ultraman" Trademarks on Different Classes Constitute a Well-known Trademark**

Recently, the Beijing High People's Court made a second instance judgment on the case of trademark infringement and unfair competition disputes, and upheld the original judgment. The court ruled that the defendant shall stop the infringement and pay the damages.

The court held that when a plaintiff claims the recognition of its several trademarks in different classes constituting well-known trademarks in the same case, the actual use of such trademarks in different

classes shall be respectively examined. In this case, in addition to providing numerous evidences to prove the popularity of "Ultraman" in China, the plaintiff also provided a large amount of evidences such as the licence for the screening of the Ultraman films and TV series, and proof of the popularity of the film on various major video website, and etc. The above evidences can prove that the plaintiff has been using the trademarks in mainland China for a long time, and that the "Ultraman" trademarks have long established its market popularity and constitutes well-known trademarks.

The cross class protection of well-known trademarks shall be judged mainly from the relevance between the products approved or actually used by well-known trademarks, and the accused infringing products to determine whether cross class protection is necessary. Although the class for which the plaintiff's "Ultraman" trademarks are designated are class 9 and 28, i.e., cartoon and toy, which are different from the alleged infringing goods of electric toothbrush for kids, confusion and misleading still would arise among consumers.

Source: Beijing High People's Court

### 浙江高院：酒店经营者提供带有视频软件的投影仪供消费者观看电影侵害放映权

浙江省高级人民法院就捷成华视网聚（北京）文化传媒有限公司（原审原告）与金华市雷火酒店管理有限公司（原审被告）著作权侵权纠纷案作出判决，认定原审被告提供带有视频软件的投影仪供消费者观看电影，不侵害信息网络传播权，侵害放映权。

浙江高院认为，信息网络传播权中的“提供行为”首先是将作品置于信息网络中进行传播的行为，其次，这种交互式的传播方式能够使公众在其选定的时间和地点获得该作品。本案中，被告在其经营的酒店客房内提供带有案外人“云视听极光”软件的智能投影仪，使得入住者能够播放已经通过上述软件在互联网上传播的作品。该被诉行为是通过能够联网的技术设备向入住者再现已然置于信息网络中的涉案电影，但并未直接将涉案电影置于信息网络中，因此不受信息网络传播权的控制，但落入放映权的控制范围。根据原告一审提交的授权书，其对涉案电影作品享有的仅限于中国大陆地区独家信息网络传播权，不包括放映权，因此，即使被诉行为落入放映权的控制范围，原告亦无权要求被告承担侵权责任。

来源：浙江高院

### Zhejiang High People's Court: Ruled that Hotel operators provide projectors with video software for consumers to watch movies, infringing the Copyrights of screening

The Zhejiang High People's Court made a second instance judgment on the copyright infringement dispute case, holding that the defendant in the original trial provided a projector with video software for consumers to watch movies, which did not infringe the network dissemination of information, but violated the right of projection.

The court held that the "act of provision" in the right of network dissemination of information is, first of all, the act of placing the works in the network for dissemination, and second, such interactive dis-

semination enables the public to access the works at a time and place chosen by them. In this case, the defendant provided a smart projector with third party software in a hotel room, enabling the occupants to play the work that had been disseminated on the Internet through the software. This act is to reproduce the movie that has been placed on the network for the occupant through the technical device that can be connected to the network, but it does not place the movie directly on the network, so it is not controlled by the right of network dissemination of information, but falls within the scope of the screening right. According to the authorization submitted by the plaintiff in the first instance, its exclusive right to the film in question is limited to the right of network dissemination of information in mainland China, excluding the screening right. Therefore, even if the sued act falls within the scope of the screening right, the plaintiff has no right to hold the defendant liable for the infringement.

Source: Zhejiang High People's Court

### 最高院：大型施工项目产品的专利侵权判定

日前，最高院就江苏双发机械有限公司（原审原告）与江苏华航新材料科技集团有限公司（原审被告）侵害实用新型专利权纠纷案作出判决，责令被告立即停止制造、销售、侵害原告的专利产品，并赔偿经济损失。

法院认为，对于大型施工项目的侵权产品，在产品上没有贴附商业标识或施工企业的情况下，即使侵权产品无法与被告侵权唯一指向关联，在专利权人已经穷尽举证能力，证明被告公司在此工程项目上施工的初步证据后，被告公司对不存在侵权行为具有举证责任。

同时，对于大型施工项目的侵权产品，由于侵权产品存在施工进度的特殊性，在施工过程中难以对包含全部技术特征的技术方案进行保全，而一旦施工完毕后，会导致部分技术特征被覆盖在产品内部而无法进行比对，可以根据本领域技术人员对侵权产品的认知，考虑侵权产品施工步骤进行的必然性，推定侵权产品必然包括某些技术特征，进而判定侵权产品是否落入涉案专利的保护范围。

来源：最高院

### SPC Clarified the Affirmation of Patent Infringement regarding Large-scale Construction Project Products

Recently, the SPC made a judgment on the dispute over infringement of the patent right of utility models, ordering the defendant to immediately stop manufacturing, selling and infringing the plaintiff's patented products, and pay the damages.

The court held that, for the infringing products of a large-scale construction project, in the event that no commercial logo was affixed on the products or a construction company was attached to the products, even though the infringing products cannot be solely related to the defendant's infringement, the defendant shall bear the burden of proof for the non-infringement after the patentee has exhausted the burden of proof on the preliminary evidence that the defendant had carried out construction on the project.



Meanwhile, in respect of the infringing products of a large-scale construction project, due to the particularity of the construction progress of the infringing products, it is difficult to preserve the technical solution containing all technical features during the construction process, and once the construction is completed, part of the technical features will be covered within the products and could not be compared. Therefore, based on the recognition of the infringing products by the technical personnel in the field, and taking into consideration the inevitability of the construction steps of the infringing products, it can be affirmed that the infringing products contain certain technical features, and thus it can be determined whether the infringing products fall within the protection scope of the patent.

Source: SPC

## 罗马初审法院认为非同质代币（NFTs）内容可能会侵害商标权

在一起关于非同质代币（NFTs）的商标权纠纷中，罗马初审法院批准了尤文图斯足球俱乐部提出的初步禁令申请，禁止区块链平台Blockeras销售使用了尤文图斯足球俱乐部商标的NFTs电子虚拟足球人物卡，前述卡片上显示了尤文图斯（Juventus）和尤文（Juve）等字样标志，以及该俱乐部黑白两星球衣的设计。Blockeras辩称该项禁令不能被颁布，因为诉争商标无法在可下载的虚拟商品上注册。

罗马初审法院认为，Blockeras制造和销售68张NFTs电子虚拟足球人物卡（从中获得了近3.6万美元的收入）可能侵犯了尤文图斯的商标权，由于案件情况紧急，且有初步证据证明尤文图斯的商标权受到了Blockeras的侵害，该项初步禁令申请理应获准。据悉，这是欧洲法院第一次裁定NFTs未经授权复制第三方商标可能构成商标侵权。

来源：TFL

## The Court of First Instance in Rome Held that the Content of NFTs May Infringe the Trademark Rights

The Rome Court of First Instance granted the Turin-based football club's bid for a preliminary injunction, barring Binance-hosted Blockeras s.r.l. from offering up NFTs that make use of the Italian club's trademarks, including the Juventus and "Juve" word marks, as well as the design of its two-star-bearing black-and-white jersey. Blockeras asserted that an injunction shall not be granted because, among other things, Juventus does not have registrations for the trademarks at issue for use on "downloadable virtual goods." The Court of Rome held that by minting and selling 68 NFT cards (from which it generated nearly \$36,000), Blockeras ran afoul of Juventus' trademark rights. As the case is urgent and there is preliminary evidence proving that the trademark right of Juventus has been infringed by Blockeras, the preliminary injunction application shall be approved. It is reported that this is the first time that the European Court has ruled that unauthorized copying of third-party trademarks by NFTs may constitute trademark infringement.

Source: TFL

## 英国知识产权局发布保留欧盟法律和知识产权指南

英国政府于2022年9月22日提出了《保留欧盟法律（撤销和改革）法案》，并于2022年10月25日获得二次解读。该法案将于2022年11月通过下议院委员会。该法案的目的是推动对英国法规中原欧盟法律的修改、废除或取代，以减轻英国企业的监管负担和成本。法案将对所有知识产权产生影响，包括对商标、设计、版权、专利、SPC和商业秘密的保护和执行。

来源：[GOV.UK](https://www.gov.uk)

### **UK Intellectual Property Office Release the Retained EU Law (Revocation and Reform) Bill**

The UK government introduced the Retained EU Law (Revocation and Reform) Bill on 22 September 2022, and it received its second reading on 25 October 2022. The Bill will be proceeding through Commons Committee stage during November 2022. The aim of the Bill is to make it easier to amend, repeal or replace EU law retained on the UK statute book to reduce regulatory burdens and costs on UK businesses. The Bill will have an impact across all intellectual property rights. This includes protection and enforcement of trade marks, designs, copyright, patents, Supplementary Protection Certificates (SPC) and trade secrets.

Source: [GOV.UK](https://www.gov.uk)

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