



# NEWSLETTER

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

### 江苏省发布反垄断反不正当竞争执法工作情况及典型案例

2022年11月29日，江苏省市场监督管理局（“江苏省市监局”）联合江苏省高级人民法院举行新闻发布会，通报2019年以来全省反垄断与反不正当竞争执法司法工作情况，并发布典型案例。2019年至2022年10月底，江苏省市监局共查处市场垄断案件9件，其中垄断协议案件4件、滥用市场支配地位案件5件，罚没款约1.51亿元。下一步，江苏省市监局还将不断健全反垄断案件办案规则，强化公平竞争执法，推进竞争合规倡导，增强公平竞争监管合力。（[查看更多](#)）

### Jiangsu Reports Anti-monopoly and Anti-unfair Competition Law Enforcement Working Situation and Publishes Typical Cases

On November 29, 2022, the Jiangsu Provincial Administration for Market Regulation (“Jiangsu AMR”) and the Jiangsu Provincial Higher People’s Court jointly held a press conference to report the province’s anti-monopoly and anti-unfair competition law enforcement and judicial work since 2019, and published typical cases. From 2019 to the end of October 2022, Jiangsu AMR investigated and handled 9 market monopoly cases, including 4 cases of monopoly agreement and 5 cases of abuse of market dominance, with fines and confiscations of about CNY 151 million. In the future, Jiangsu AMR will continue to improve the rules for handling anti-monopoly cases, strengthen fair competition law enforcement, promote competition compliance, and strengthen the joint efforts of fair competition regulation. ([More](#))

### 香港多部门对海鲜批发商涉嫌合谋定价行为展开调查

2022年11月27日，香港竞争事务委员会（“竞委会”）发布通告，宣布其于当日清晨与其他政府部门一同在香港仔鱼类批发市场采取了联合行动，主要针对部分批发商涉嫌在制定海鲜批发价时实施合谋定价行为，这一行为违反了香港《竞争条例》下的第一行为守则。在联合行动中，竞委会以问卷调查等方式从超过30间鱼类批发商处收集了相关数据，目前正向社会公开征求数据线索，并呼吁涉案人士尽快向竞委会申请宽大或提供合作。（[查看更多](#)）

### Hong Kong Competition Commission and Government Departments Conduct Joint Operation at Aberdeen Wholesale Fish Market

On November 27, 2022, the Hong Kong Competition Commission (“HKCC”) issued a circular announcing that it had taken joint action with other government departments at the Aberdeen Wholesale Fish Market in the early morning of the day, mainly targeting some wholesalers suspected of carrying out price fixing when setting wholesale seafood prices, which violates the First Conduct Rule under the Hong Kong Competition Ordinance. In the joint action, HKCC collected relevant data from more than 30 fish wholesalers through questionnaires and other methods, and is currently soliciting data clues from the public, and appeals to those involved in the case to apply for leniency or provide cooperation to HKCC as soon as possible. ([More](#))

## 市场监管总局发布第四批滥用行政权力处罚决定

2022年11月25日，国家市场监督管理总局（“市场监管总局”）发布了第四批制止滥用行政权力排除、限制竞争的执法专项案件，涉及江苏、宁夏、黑龙江、天津、福建、湖南、安徽、河南等多个省市，涉及工程建设、安防设备、卫生健康、教育、资源回收等多个行业领域。从目前已发布的行政垄断案件看，行政垄断高发于医疗、教育和建筑工程领域。（[查看更多](#)）

## SAMR Publishes the 4<sup>th</sup> Batch of Administrative Penalty Decisions Against Administrative Monopoly

On November 25, 2022, the State Administration for Market Regulation (“SAMR”) issued the fourth batch of special law enforcement cases stopping the abuse of administrative power which excludes and restricts competition, covering Jiangsu, Ningxia, Heilongjiang, Tianjin, Fujian, Hunan, Anhui, Henan and other provinces and cities, involving engineering construction, security equipment, health care, education, resource recovery and other industries. Judging from the administrative monopoly cases that have been published so far, administrative monopoly occurs frequently in the fields of medical care, education and construction engineering. ([More](#))

## 日本拟对电力公司卡特尔案处以52.2亿元罚款，或将刷新反垄断处罚记录

2022年12月1日，据媒体报道，日本公平贸易委员会已通知国内三大电力公司，计划对其实施价格卡特尔的行为处以约1000亿日元（约合人民币52.2亿元）反垄断罚款，若正式实施将刷新2019年日本固定沥青价格横向垄断协议案罚款399亿日元（约合人民币20.8亿元）的记录。据透露，日本中国电力株式会社将被处以700亿日元罚款，中部电力株式会社及其子公司可能被处以共计约275亿日元罚款，九州电力公司预计将被罚款约27亿日元。日本公平贸易委员会将在听取每家企业意见后作出最终决定。（[查看更多](#)）

## Major Japan Power Utility Providers Likely Fined over \$730 Million for Forming Cartel, Setting New Penalty Record

On December 1, 2022, according to news report, Japan’s Fair Trade Commission told three major domestic power utilities that it plans to impose a record antitrust fine of about 100 billion yen (about CNY 5.22 billion) on them for forming a price cartel. If the decision is formally implemented, it will refresh the record of a fine of 39.9 billion yen (about CNY 2.08 billion) in Japan’s horizontal monopoly agreement case of fixing asphalt prices in 2019. It is reported that Chugoku Electric Power Co. is expected to be slapped with a fine of some 70 billion yen, the sources said. Chubu Electric Power Co. and a subsidiary will likely be fined a total of around 27.5 billion yen, while Kyushu Electric Power Co. is expected to be ordered to pay around 2.7 billion yen. The antitrust watchdog will make a final decision after listening to the opinion of each company. ([More](#))

## 欧盟对法国传媒龙头威望迪收购拉加代尔集团展开调查

2022年11月30日，欧盟委员会发布公告，宣布对威望迪环球集团（Vivendi）收购拉加代尔集团

(Lagardère) 展开调查。威望迪和拉加代尔集团都是活跃于书籍和杂志出版等领域的法国多媒体集团，为欧盟法语书籍出版业的龙头企业，参与版权获取、市场营销、分销到图书零售的整个图书产业链。初步调查表明，该交易可能会显著减少欧盟以下市场中的竞争：（1）法语书籍作者版权购买市场；（2）法语书籍分销和营销市场；（3）法语书籍零售市场。此外，欧盟委员会认为该交易可能还会导致与名人杂志销售相关的竞争担忧。（[查看更多](#)）

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

On November 30, 2022, the European Commission announced to open investigation on the proposed acquisition of Lagardère by Vivendi. Vivendi and Lagardère are both French multi-media groups active, among others, in book and magazine publishing, and are leading players in the publishing of French-language books in French-speaking countries of the European Union. Both companies are active throughout the book value chain, from the acquisition of publishing rights to the marketing, distribution and sale of books to retailers. The Commission's preliminary market investigation indicates that the transaction may significantly reduce competition on the markets for (1) the purchasing of authors' rights for French-language books, (2) the distribution and marketing of French-language books, and (3) the sales of French-language books to retailers. The Commission also identified competition concerns in relation to the sale of celebrity magazines. ([More](#))

### **欧盟对苯乙烯采购卡特尔案作出处罚决定，英力士得豁免**

2022年11月29日，欧盟委员会宣布对6家化工公司在苯乙烯单体商业市场实施采购卡特尔的行为进行处罚，对Sunpor、Synbra、Synthomer、Synthos和Trinseo五家公司罚款共计1.57亿欧元，英力士（INEOS）因适用宽大计划向欧盟委员会披露了该卡特尔而得以完全豁免。苯乙烯单体是一种中间化学产品，是塑料、树脂、橡胶、乳胶等其他化学品的关键原料。自2012年5月1日至2018年6月30日，6家公司持续交换敏感商业信息，并就苯乙烯行业参考价格（即苯乙烯月度合同价格）协调谈判策略。除Synbra外，其他公司都申请适用了宽大政策，获得了减免罚款10%-40%不等的宽大处理，英力士因主动向委员会披露该卡特尔获得了完全豁免。（[查看更多](#)）

## **Antitrust: Commission Fines Styrene Purchasers EUR157 Million in Cartel Settlement, INEOS Receives Full Immunity**

On November 29, 2022, the European Commission announced to impose penalties on 6 chemical companies for participating in a cartel concerning purchases on the styrene monomer merchant market, fining Sunpor, Synbra, Synthomer, Synthos and Trinseo a total of EUR 157 million, with INEOS receiving full immunity for revealing the cartel to the Commission. Styrene monomer (“styrene”) is an intermediate chemical product that serves as a key input for many other chemicals, such as plastics, resins, rubbers and latexes. Spanning from 1 May 2012 to 30 June 2018, the 6 companies constantly exchanged sensitive commercial information and coordinated their price negotiation strategies on an industry reference price of styrene (the Styrene Monthly Contract Price or “SMCP”). All companies except for Synbra applied for an application of leniency policy, receiving reductions of their fine ranging

from 10%-40%, while INEOS received full immunity for revealing the cartel to the Commission. ([More](#))

### 微软或将向欧盟就收购动视暴雪提出救济承诺

2022年11月28日，据媒体报道，微软可能将在未来数周内向欧盟反垄断监管者提出救济承诺，避免欧盟对其以690亿美元收购动视暴雪（Activision Blizzard）提出正式反对意见。该交易于2022年1月宣布，随后在欧盟、英国和美国都面临了监管阻力。知情人士透露，微软的救济承诺主要包括与拥有Playstation的企业索尼签订为期十年的许可协议。微软表示正与欧盟委员会协调工作，以解决关于有效竞争市场的竞争担忧。 ([查看更多](#))

### Microsoft May Offer EU Concessions Soon Regarding Acquisition of Activision Blizzard

On November 28, 2022, according to news report, Microsoft is likely to offer remedies to EU antitrust regulators in the coming weeks to stave off formal objections to its USD 69 billion bid for Activision Blizzard. Announced in January 2022, the deal has since faced regulatory headwinds in the EU, UK and US. Microsoft's remedy would consist mainly of a 10-year licensing deal to Playstation owner Sony, a person with direct knowledge said. Microsoft said it was working with the Commission to address valid marketplace concerns. ([More](#))

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

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### 交通运输部发布《铁路旅客车票实名制管理办法》

2022年11月18日，交通运输部发布了《铁路旅客车票实名制管理办法》（以下简称《办法》），自2023年1月1日起施行。《办法》主要包括：调整车票实名制管理范围、细化车票实名购买要求、完善车票实名查验规定、增加法律责任的内容等方面。其中《办法》明确铁路运输企业对其获得的旅客个人信息应当严格保密，不得非法收集、使用、加工、传输、买卖、提供或者公开；对不落实车票实名制管理要求的铁路运输企业按照《中华人民共和国反恐怖主义法》进行处理；对泄露旅客个人信息的，移交有关部门处理。 ([查看更多](#))

### Ministry of Transport Issued the Administrative Measures for Real Name Registration of Railway Passenger Tickets

On 18 November 2022, the Ministry of Transport issued the *Administrative Measures for Real Name Registration of Railway Passenger Tickets (the "Measures")*, which will come into force on 1 January 2023. The Measures mainly include adjusting the scope of real-name registration of ticket management, detailing the requirements for real-name ticket purchasing, improving the provisions for real-name ticket examination and verification, and increasing the legal liability, etc. In particular, the Measures clarify

that railway transport enterprises shall keep passengers' personal information they have accessed in strict confidence and shall not illegally collect, use, process, transmit, sell, provide or disclose such information; any railway transport enterprise that fails to implement the real-name ticket management system shall be punished in accordance with the *Anti-terrorism Law of the People's Republic of China*; where the personal information of travelers is disclosed, the case shall be handed over to the relevant department for handling. ([More](#))

## 《软件开发包（SDK）个人信息处理规范》等9项电信团体标准发布

2022年11月25日，电信终端产业协会发布9项电信领域团体标准，包括：T/TAF 014—2022《移动智能终端应用软件分类与可卸载实施规范》、T/TAF 077.1—2022 APP《收集使用个人信息最小必要评估规范 第1部分：总则》、T/TAF 078.7—2022《APP用户权益保护测评规范 第7部分：欺骗误导强迫行为》、T/TAF 123—2022《软件开发包（SDK）个人信息处理规范》、T/TAF 137—2022《基于差分隐私的用户个人信息保护技术要求》、T/TAF 138—2022《App推荐算法用户权益保护技术要求及测评规范》、T/TAF 139—2022《电信和互联网个人信息保护能力审计规范》、T/TAF 140—2022《智能手表用户权益保护测评规范》以及T/TAF 141—2022《智能电视用户权益保护测评规范》等。其中《软件开发包(SDK)个人信息处理规范》主要规定了对外提供服务的软件开发包(SDK)个人信息处理规范，包括软件开发包(SDK)处理个人信息的基本要求、软件开发包(SDK)提供者的基本要求以及保障及时响应用户权利的要求。以上标准均自发布之日起实施。 ([查看更多](#))

## Release of Nine Telecommunication Group Standards Including Processing Specification for Personal Information of Software Development Kit (SDK)

On 25 November 2022, the Telecommunication Terminal Industry Forum Association (TAF) issued nine telecommunication group standards including: T/TAF 014—2022 *the Implementation specifications of smart mobile terminal application software classification and uninstallation*; T/TAF 077.1—2022 *APP the Application software user personal information collection and usage minimization and necessity evaluation specification—Part 1: General principle*; T/TAF 078.7—2022 *the Application software user rights protection evaluation specification—Part 7: Deception, misleading and coercion behavior*; T/TAF 123—2022 *the Processing specification for personal information of software development kit (SDK)(the “Specification”)*; T/TAF 137—2022 *the Technical requirements for Differential Privacy-based user personal information protection*; T/TAF 138—2022 *the App user rights protection requirements and evaluation specification in recommendation algorithm*; T/TAF 139—2022 *the Telecommunications and internet personal information protection compliance audit specification*; T/TAF 140—2022 *the User rights protection evaluation specification for smart watch* and T/TAF 141—2022 *the User rights protection evaluation specification for smart TV*. The Specification mainly stipulates the rules when processing personal information in software development kits (SDKs) that provide services externally, including the basic requirements of SDKs for processing personal information, the basic requirements for SDKs providers, and the requirements for ensuring timely response to user rights. The above standards shall be implemented as of the date of promulgation. ([More](#))



## 国内首个数据知识产权登记系统正式上线

2022年11月29日，在国家知识产权局、深圳市市场监督管理局（深圳市知识产权局）指导下，深圳市标准技术研究院开发建设的国内首个专注数据知识产权登记的信息化系统“数据知识产权登记系统”（<https://sjdj.sist.org.cn/>）正式上线。登记系统上线后，将为经过一定规则处理的、具有商业价值的非公开数据提供数据知识产权登记服务，向提出登记申请的数据处理者颁发数据知识产权登记证书，并依托深圳市知识产权保护综合服务平台和数据知识产权登记系统，为数据处理者提供“数据哈希值存证——登记申请——材料审核——信息公示——证书发放”全流程服务。（[查看更多](#)）

## The First Domestic Data Intellectual Property Registration System Officially Launched

On 29 November 2022, under the guidance of the China National Intellectual Property Administration (CNIPA) and Shenzhen Administration for Market Regulation (Shenzhen Intellectual Property Administration), the first domestic information system focusing on intellectual property registration, the "Data Intellectual Property Registration System" developed and built by the Shenzhen Institute of Standards Technology, has been officially put online (<https://sjdj.sist.org.cn/>). After the Registration System goes online, it will provide registration services of data intellectual property rights to the non-public data which has been processed under certain rules and has commercial value, and will issue the registration certificates of data intellectual property rights to the data processors filing the registration applications. And it provides data processors with whole-process services, including data hash code preservation, application for registration, examination of materials, publicity of information and issuance of certificates, based on the Shenzhen comprehensive IP protection service platform and the data IP registration system. ([More](#))

## 上海发布智能网联汽车规定

2022年11月23日，《上海市浦东新区促进无驾驶人智能网联汽车创新应用规定》（以下简称《规定》）已由上海市第十五届人民代表大会常务委员会第四十六次会议通过，自2023年2月1日起施行。《规定》共三十四条，其中规定了，车路协同基础设施和车路协同云控平台应当实现数据交互加密、通信网络防护、实时安全监测，有效防范数据篡改、数据泄露和网络攻击等风险。开展智能网联汽车创新应用的企业应当按照有关规定，严格保护高精度地图数据安全等内容。（[查看更多](#)）

## Shanghai Issues the Regulation on Intelligent and connected vehicles

On 23 November 2022, the Provisions of Shanghai Pudong New Area on Promoting the Innovative Application of Unmanned Intelligent and Connected Vehicles (the "Provisions"), adopted at the 46th Session of the Standing Committee of the 15th Shanghai Municipal People's Congress, shall come into force on 1 February 2023. The Provisions consist of 34 articles, stipulating that the infrastructure for vehicle and road cooperative management and the platform for vehicle and road cooperative control shall realize data interactive encryption, communication network protection and real-time safety moni-

toring, so as to effectively prevent such risks as data falsification, data leakage and cyber-attacks. Enterprises engaged in the innovative application of intelligent and connected vehicles shall strictly protect the safety of high-precision map data and other contents in accordance with the relevant provisions. ([More](#))

## 浙江省网信办开展数据出境安全评估申报工作问答

2022年11月22日，浙江省网信办开展数据出境安全评估申报工作问答。浙江省网信办就数据处理器如何进行数据出境安全评估、申报材料、方式、经办人、是否指定了第三方协助数据处理器进行数据出境安全评估以及哪些情形是数据出境行为等问题给予了详细的回答。明确2022年9月1日前已经完成的数据出境活动不需要申报，但尚未完成的数据出境活动仍需申报，且已出境数据在此后申报中需计入上一年1月1日后的累计出境数量。 ([查看更多](#))

## Questions and Answers on the Applications for Security Assessment of Outbound Data Transfers by Cyberspace Administration of Zhejiang Province

On 22 November 2022, the Cyberspace Administration of Zhejiang Province (“CAZ”) organized questions and answers on the applications for security assessment of outbound data transfers. CAZ provided detailed answers to a number of questions including how the data processor conducts the applications for security assessment of outbound data transfers, application materials, method, who is in charge, whether a third party is designated to assist the data processor in the applications for security assessment of outbound data transfers, and under what circumstances the data is to be transferred abroad. It is made clear that the activities of outbound data transfers that are completed before 1 September 2022 are not required to apply; however, the activities of outbound data transfers that have not been completed yet are still required to apply, and the data has already been transferred abroad will be included in the cumulative number of outbound data transfers after 1 January 2022 for future applications. ([More](#))

## 海南网信办通报23款违规收集个人信息小程序

2022年11月23日，海南省网信办为进一步整治移动互联网应用程序违法违规收集使用个人信息乱象，组织对省内各类应用程序收集使用个人信息情况进行了技术检测。经检测，23款小程序存在不同程度违法违规收集使用个人信息的行为。主要存在的问题包括：小程序未经用户阅读并同意隐私政策，申请获取位置权限；未提供退出或关闭个性化推荐模式的选项；未向用户明示小程序收集使用个人信息的目的、方式和范围；未经用户同意，存在收集设备信息和剪切板的行为等。针对检测发现的问题，各运营单位应在通报发布之日起15个工作日内完成整改，逾期未完成整改的，将依法依规组织开展相关处置工作。 ([查看更多](#))

## Cyberspace Administration of Hainan Province Informs 23 APPs of Illegal Collection of Personal Information

On 23 November 2022, in order to further rectify the illegal collection and use of personal information by mobile Internet APPs, the Cyberspace Administration of Hainan Province organized technical test-

ing of the collection and use of personal information by various APPs in Hainan Province. After being tested, 23 APPs have been found to collect and use personal information in various degrees of violation of laws and regulations. The main problems include the APPs fail to have users read and agree to the privacy policy before applying for the permission of location, fail to provide the option to exit or turn off the personalized recommendation mode, and fail to explicitly indicate to users the purpose, method, and scope of personal information collection and use by the APPs; without the consent of the user, there are collection of equipment information and clipboard behavior. For any problem found out in the testing, each operator is required to complete the rectification within 15 working days from the date the notice is released; if it fails to do so within the prescribed time limit, the relevant disposal work will be organized and carried out according to laws and regulations. ([More](#))

### 广东省通管局通报下架11款侵害用户权益APP

2022年11月23日，据报道，广东省通信管理局持续开展APP隐私合规和数据安全专项整治行动，通报下架11款未按照要求完成整改的APP，所涉问题包括：违规收集、使用个人信息；强制用户使用定向推送功能；APP频繁自启动和关联启动；超范围收集个人信息；APP强制、频繁、过度索取权限；账号注销难。 ([查看更多](#))

### Guangdong Communication Administration Informs and Takes Down 11 Apps Infringing upon Users' Rights and Interests

On 23 November 2022, it is reported that the Guangdong Communications Administration has been continuously carrying out special rectification actions on the privacy compliance and data security of Apps, and notified the withdrawal of 11 Apps that fail to complete rectification as required. The problems include illegal collection and use of personal information; forcing users to use the directional push function; frequent self-start and the associated start of Apps; collection of personal information beyond the scope; forced, frequent and excessive requests for authorization by Apps; and difficulty in deregistering accounts. ([More](#))

### 沃达丰在促销活动中非法使用个人数据的行为被罚款50万欧元

2022年11月28日，意大利数据保护机构（Garante）在月度通讯中公布了第379号决定，其中决定对沃达丰意大利公司（Vodafone）处以50万欧元罚款。调查发现，Vodafone违反了《通用数据保护条例》（GDPR）以及《个人数据保护法（包含使国家立法适应GDPR的规定）》的规定。Vodafone在没有向相关方告知规定的必要信息且未获得必要同意的情况下与个人信息主体进行了促销接触，但其处理个人数据的目的是与个人信息主体签订激活固定电话服务合同，该行为违反了处理个人数据的公平性和透明性原则。 ([查看更多](#))

### Vodafone Was Fined 500,000 Euro for Unlawful Use of Personal Data in Promotional Campaigns

On 28 November 2022, the Italian data protection authority ('Garante') announced, in its monthly newsletter, the publication of its Decision No. 379, in which it imposed a fine of 500,000 euro on Vodafone. Vodafone violated the General Data Protection Regulation and Personal Data Protection

Code. Vodafone made a promotional contact with the complainant without having given the interested party the necessary information and without having acquired the required consent from the complainant. It aimed at concluding a contract for the activation of telephone services for the complainant, but in violation of the principles of fairness and transparency of personal data processing. ([More](#))

## Meta因 Facebook违反 GDPR被罚款2.65亿欧元

2022年11月28日，Meta因旗下Facebook产品违反 GDPR被爱尔兰数据保护委员会（DPC）罚款2.65亿欧元，罚款与Meta在2018年和2019年期间的数据处理行为有关。超过5亿Facebook用户的详细信息被在网上披露，包括姓名、Facebook ID、手机号码、真实地址、出生日期和电子邮件地址。据Meta称，这些数据是通过搜索和联系人导入工具从Facebook平台上获取的。除了罚款外，DPC还采取了各种纠正措施，要求Meta“通过在特定时间范围内采取一系列特定的补救行动，使其处理行为合规”。([查看更多](#))

## Meta Fined 265 Million Euro for Facebook GDPR Breaches

On 28 November 2022, Facebook's owner Meta has been fined 265 million Euro for the period of 2018 and 2019 by the Irish Data Protection Commission (DPC) for breaching the General Data Protection Regulation. The breach resulted in more than 500 million users' details being published online. The data was hacked and included names, Facebook IDs, mobile phone numbers, real addresses, birth dates, and email addresses of people from more than 100 countries. According to Meta, the data had been scraped from the Facebook platform through phone numbers using search and contact import features. In addition to the fine, the DPC also imposed various corrective measures. The Irish watchdog requires Meta to "bring its processing into compliance by taking a range of specified remedial actions within a particular timeframe".([More](#))

## 澳大利亚迎来《隐私法》重大修订

2022年11月28日，澳大利亚议会正式通过《2022年隐私法修订案（执行和其它措施）》（Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022）。该法案增强了澳大利亚信息专员办公室（OAIC）的监管的能力，保护了澳大利亚居民在数字环境中的隐私，并且大幅增加了对严重和或多次侵犯隐私的处罚。澳大利亚信息专员兼隐私专员Angelene Falk表示，本次修订将使澳大利亚隐私法与竞争法和消费者相关法律下的救济措施以及欧洲《通用数据保护条例》（GDPR）下的法律责任规定更加一致。([查看更多](#))

## OAIC Welcomes Passing of Privacy Bill

On 28 November 2022, The Office of the Australian Information Commissioner (OAIC) welcomes the passing of the Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022, which enhances the OAIC's ability to regulate in line with community expectations and protect Australians' privacy in the digital environment. The Bill introduces significantly increased penalties for serious and or repeated privacy breaches and greater powers for the OAIC to resolve breaches. The updated penalties will bring Australian privacy law into closer alignment with competition and consumer remedies and international penalties under Europe's General Data Protection Regulation, Australian Information Commissioner and Privacy Commissioner Angelene Falk said. ([More](#))

## 知识产权 Intellectual Property

### 国知局等5部门发布《关于加强知识产权鉴定工作衔接的意见》

近日，国家知识产权局、最高人民法院、最高人民检察院、公安部、国家市场监督管理总局联合印发《关于加强知识产权鉴定工作衔接的意见》（以下简称《意见》），深化知识产权管理执法部门与司法机关在知识产权鉴定工作中的合作，强化知识产权全链条保护。《意见》共十条，具体规定了知识产权鉴定涉及的具体领域、知识产权鉴定意见的性质、构建知识产权鉴定机构遴选荐用机制，建立知识产权鉴定机构名录库等内容。《意见》自发布之日起即2022年11月22日起施行。

来源：国知局

### CNIPA will Accelerate the Revision of the *Implementing Regulations for the Patent Law*

On November 30, the China National Intellectual Property Administration (CNIPA) held a regular press conference. Zhang Peng, Director of the Department of Law of the CNIPA, said at the meeting that the CNIPA would continue to actively cooperate with relevant departments, and accelerate the process of the revision of *the Implementing Regulations for the Patent Law*, and complete the revision as soon as possible. The revision mainly involves three aspects: first, the new punitive damages of one to five times for serious intentional infringement will be imposed, the amount of statutory damages will be increased to more than RMB 30, 000 but less than RMB 5 million, and the burden of proof will be improved. Second, to clarify the right of an organisation to dispose of creation of service invention and set up the patent open licensing system. Third, will improve the patent examination and authorization system, and add new applications for the grace period of novelty, part design patents, and improve the patent evaluation report system, and extend the patent period of designs.

Source: CNIPA

### 国知局：加快推进专利法实施细则修改

国家知识产权局30日举行11月例行新闻发布会，国家知识产权局条法司司长张鹏在会上表示，国家知识产权局将继续积极配合相关部门，加快推进专利法实施细则修改进程，尽早完成修改。《专利法》修改内容主要涉及三个方面：一、新增对严重故意侵权行为处以一至五倍的惩罚性赔偿，将法定赔偿数额提高至三万元以上五百万元以下，并完善举证责任等。二、明确单位对职务发明创造的处置权，新增开放许可制度。三、完善专利审查授权制度，新增新颖性宽限期适用情形、局部外观设计，完善专利权评价报告制度，延长外观设计专利期限。

来源：国知局

## **CNIPA Issues *Notes on Handling of Filing by Trademark Agency***

On November 30, CNIPA issued *the Notes on Handling of Filing by Trademark Agency (the "Notes")*. From December 1, 2022, trademark agencies shall handle matters relating to the record-filing of trademark agencies online through the online trademark service system, except for the cancellation of record-filing and the record-filing consolidation. The Notes shall include: application basis and application conditions; information to be completed for the record-filing of trademark agencies, record-filing of changes, record-filing of cancellation, etc.; examination procedures, etc.

Source: CNIPA

## **《我的世界》VS《迷你世界》：二审改判5000万**

近日，广东省高级人民法院对网易代理的海外游戏《我的世界》和深圳市迷你玩科技有限公司旗下国产游戏《迷你世界》之间诉讼案作出终审判决，迷你玩公司未侵犯网易公司对《我的世界》游戏整体画面享有的著作权，但迷你玩公司以不当获取他人经营利益为手段来抢夺商业机会，构成不正当竞争，全额支持网易要求赔偿5000万元的诉请。

法院认为，两款游戏整体画面构成类电作品，即新著作权法的“视听作品”，但两者的相似之处在于游戏元素设计而非游戏画面。著作权保护范围不包括玩法规则层面的游戏元素设计，不能以游戏元素的相似性直接推定游戏画面构成实质性相似。因此法院驳回网易公司关于著作权侵权的诉请。《迷你世界》与《我的世界》在玩法规则上高度相似，在游戏元素细节上诸多重合，已经超出合理借鉴的界限。迷你玩公司通过抄袭游戏元素设计的方式，直接攫取了他人智力成果中关键、核心的个性化商业价值，以不当获取他人经营利益为手段来抢夺商业机会，构成不正当竞争。

来源：广东省高院

## **Minecraft v. Miniworld, Second Instance Judgement Raised Damages to RMB 50,000,000**

Recently, the Guangdong High People's Court made a final judgment on the lawsuit between the overseas game Minecraft represented by NetEase, and the domestic game Mini World owned by Shenzhen Miniwan Technology Co., Ltd. (Miniwan). The judgement affirms that Miniwan did not infringe the copyright of NetEase on the overall frame of Minecraft, but Miniwan seized business opportunities by improperly obtaining the business interests of others, which constituted unfair competition, and the court fully support NetEase's claim for damages of RMB 50 million.

The court held that the whole frame of two games constitutes works created using methods similar to film making, that is, "audio-visual works" under the revised copyright law, but their similarities lie in the design of game elements rather than game frame. The scope of copyright protection does not include the design of game elements at the level of game rules, and the substantial similarity of game frame cannot be directly inferred from the similarity of game elements. Therefore, the court rejected Netease's claim of copyright infringement.

Mini World and Minecraft are highly similar in game rules and same in details of game elements, which has exceeded the limit of reasonable reference. By copying the design of game elements, the Miniwan company directly captured the key business value of others' intellectual achievements, and seized business opportunities by improperly obtaining others' business interests, which constituted unfair competition.

Source: Guangdong High People's Court

## 擅自将“消消乐”用作游戏类别名称的构成侵权

近日，北京知识产权法院就天津乐浣科技发展有限公司（下称“乐浣公司”）、乐元素科技（北京）股份有限公司（下称“乐元公司”）与沈阳纵艺科技有限公司（下称“纵艺公司”）侵害商标权及不正当竞争纠纷案作出二审判决，法院认定纵艺公司使用“快乐消消乐”“泡泡消消乐”“糖果消消乐”作为手机游戏名称，侵害了乐浣公司、乐元素公司就涉案商标享有的注册商标专用权。

法院认为，涉案商标“消消乐”作为一个臆造词，在被注册为商标后，经过乐浣公司、乐元素公司的持续使用，使其具有了极高的显著性和知名度。纵艺公司的被诉宣传行为，虽未发挥指示商品来源的作用，但此种将“消消乐”指代消除类、三消类游戏的使用方式，如果任其继续使用而不加以制止，则意味着放任同行业从业者可以将涉案商标作为该类游戏类别名称进行使用，这将必然不断弱化“消消乐”作为商标、品牌与乐浣公司、乐元素公司商品之间的唯一对应关系，不断弱化“消消乐”作为商标的显著性，进而退化为消除类游戏的通用名称。纵艺公司作为提供同类商品和服务的经营者，更应当负有合理的避让义务。

来源：北京知识产权法院

## Unauthorized Use of "Xiao Xiao Le " as the Category Name of Games Constitutes Infringement

The Beijing Intellectual Property Court made a second instance judgment on the case of trademark infringement and unfair competition dispute. The court held that the defendant used "Happy Xiaoxiaole", "Bubble Xiaoxiaole" and "Candy Xiaoxiaole" as the names of mobile games, which infringed the plaintiff's exclusive right to use registered trademarks.

The court held that the trademark "Xiao Xiao Le" involved in the case, as a fabricated word, had been registered as a trademark and continuously used by the plaintiff, making it highly significant and well-known.

Although the defendant's act did not play the role of indicating the source of products, such use of "Xiao Xiao Le" to refer to the game of elimination type, if allowed to continue, competitors in the same industry can use the trademark involved as the name of this type of game category, which will inevitably weaken the correlation between "Xiao Xiao Le" and the plaintiff. It will continuously weak the significance of "Xiao Xiao Le" as a trademark, and degenerate as the common name of elimination

games. As a business operator providing similar products and services, the defendant shall have a reasonable obligation to avoid.

Source: Beijing IP Court

## 将“悦城”作为楼盘名称并宣传使用的构成商标侵权

近日，北京知识产权法院就大悦城商业管理（北京）有限公司（下称原告）与成都忠捷置业有限公司、北京搜狐互联网信息服务有限公司（下称被告）侵害商标权纠纷案作出二审判决，责令被告立即停止将“悦城”标识用于楼盘商品房销售、不动产管理和不动产出租等服务中的商标侵权行为。

法院认为，本案中，被告从事的经营活动属于不动产管理和商品房销售的服务范围，与原告享有的涉案“大悦城”、“悦城”商标核定使用的服务构成类似服务。被告使用“悦城”指称其开发的房地产项目，并在其楼盘内部设施、售楼部、物业及周边广告宣传等均突出使用了“悦城”字样，构成对“悦城”的商标性使用。由于“悦城”被“大悦城”完整包含，区别仅在于“大”并未形成新的含义，两者构成近似商标。被告将“悦城”作为楼盘名称并宣传使用，容易使相关公众误认其楼盘与原告具有关联关系，存在混淆可能性，侵害了原告的注册商标专用权。

来源：北京知识产权法院

## Use of "Yuecheng" as the Name of the Real Estate and Promotion Constitute Trademark Infringement

Recently, the Beijing Intellectual Property Court has rendered its second-instance judgment in a trademark infringement dispute case, ordering the defendant to immediately stop using the "Yuecheng" logo in commercial housing sales, real estate management, real estate rental and other services.

The court held that the business activities engaged by the defendant fall within the service scope of real estate management and commercial housing sales, and constitute similar services to the services of the plaintiff's trademarks "Dayuecheng" and "Yuecheng" approved for use. The defendant used "Yuecheng" to refer to the real estate project it developed, and prominently used such word "Yuecheng" on the internal facilities of the building, the sales department, the real estate, and the advertisements and publicity around it, which constituted the trademark use of "Yuecheng". Because "Yuecheng" is completely included in "Da Yuecheng", the only difference is that "Da" has not formed a new meaning, therefore, the two constitute similar trademarks. The defendant's use of "Yuecheng" as the name of the real estate is likely to mislead the relevant public that its real estate is associated with the plaintiff, which infringed the plaintiff's exclusive right to use registered trademarks.

Source: Beijing IP Court



## 三星显示在韩国成功让LG显示一项OLED专利失效

近日，三星显示（Samsung Display）和日本化学公司 Hodogaya 的合资公司SFC已经在韩国成功使得一项与OLED中使用的氘有关的专利失效，该专利由LG显示（LG Display）和Material Science共同拥有，该专利涉及氘是一种用于增加 OLED 设备寿命的材料。据悉，LG Display去年底曾表示，计划从今年开始将氘技术应用于其所有大型OLED面板。该公司甚至有“OLED.EX”的品牌，由于使用了氘，这种 OLED 面板的亮度提高了30%。LG Display已经在美国和中国地区申请了在韩国被取消的专利。

来源：[IT之家](#)

## Samsung Display Successfully Invalidated LG Display's OLED Patent in South Korea

Recently, In South Korea, SFC, a joint venture between Samsung Display and Japanese chemical company Hodogaya, successfully invalidated a patent jointly owned by LG Display and Material Science relating to the use of deuterium in OLEDs, a material used to increase the lifetime of OLED devices. It is reported that LG Display said late last year that it plans to use deuterium technology in all of its large OLED panels starting this year. The company even has a "OLED .EX" brand, which is 30% brighter due to the use of deuterium. LG Display has filed patents in the United States and China that were cancelled in South Korea.

Source: [IT home](#)

## 苹果在与爱立信的第一起专利诉讼中败诉

德国曼海姆地区法院驳回了苹果针对爱立信的专利侵权指控，并要求其承担相关费用。除外观设计专利案件外，这是继2014年三星在圣何塞败诉后，苹果在发明专利案件中的首例判决。目前，爱立信起诉苹果的案件尚未有判决结果。慕尼黑第一地区法院在9月举行了两次听证会（尚未进行完整审判），倾向于认定iOS版WhatsApp侵犯了爱立信的一项非标准必要专利和一项标准必要专利，慕尼黑法院拒绝了苹果在现阶段驳回诉讼的动议。美国国际贸易委员会（USITC，简称 ITC）也将从下周开始审理苹果诉爱立信一案。苹果正在寻求美国对爱立信基站实施禁令。

来源：[fosspatents](#)

## Apple Loses First Patent Case against Ericsson

Recently, the Mannheim Regional Court rejected Apple's first offensive patent complaint and demanded Apple to pay the damages. Apart from design patent cases, it's the first judgment in an technical (utility) patent case brought by Apple since the second case against Samsung that went to trial in San Jose in 2014.

None of Ericsson's cases against Apple has come to judgment yet, but it's going to happen in the not too distant future. The Munich I Regional Court held two hearings (not yet full trials) in September and is inclined to find that the iOS version of WhatsApp infringes an Ericsson non-standard-essential patent (non-SEP) as well as a standard-essential patent, with respect to which the Munich court denied Apple's motion to dismiss the complaint at this stage.

The United States International Trade Commission (USITC, or just ITC) will also hold an Apple v. Ericsson trial starting next week. Apple is seeking a U.S. import ban on Ericsson's base stations.

Source: [fosspatents](#)

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 [www.lifanglaw.com](http://www.lifanglaw.com)

 Email: [info@lifanglaw.com](mailto:info@lifanglaw.com)

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261