



# NEWSLETTER

LIFANG & PARTNERS **立方观评**



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No.259

2021.07

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## 知识产权 Intellectual Property

### 市场监管总局依法对腾讯作出责令解除网络音乐独家版权等处罚

2021年1月，市场监管总局根据举报，对腾讯控股有限公司2016年7月收购中国音乐集团股权涉嫌违法实施经营者集中行为立案调查。调查表明，2016年腾讯和中国音乐集团在相关市场份额分别为30%和40%左右，腾讯通过与市场主要竞争对手合并，获得较高的市场份额，集中后实体占有的独家曲库资源超过80%，对相关市场具有或者可能具有排除、限制竞争效果。

市场监管总局于2021年7月24日作出行政处罚决定，责令腾讯及关联公司采取三十日内解除独家音乐版权、停止高额预付金等版权费用支付方式、无正当理由不得要求上游版权方给予其优于竞争对手的条件等恢复市场竞争状态的措施。腾讯三年内需每年向市场监管总局报告履行义务情况，市场监管总局将依法严格监督其执行情况。

来源：[国家市场监督管理总局](#)

### SAMR Issues Fines and Makes Orders against Tencent

In January 2021, the State Administration for Market Regulation (“SAMR”) acted on a tip-off and started to investigate Tencent’s 2016 acquisition of China Music Group’s shares for illegal market concentration activities. According to a 2016 survey, Tencent and China Music Group held about 30% and 40% of the relevant market, respectively. Tencent acquired a higher market share through mergers with its main competitors and, as a result, occupied more than 80% of exclusive music rights. This had the effect of eliminating and restricting competition in the relevant market.

On 24 July 2021, SAMR fined Tencent and its affiliates and ordered them to surrender their exclusive music rights within 30 days, stop paying copyright fees, and cease asking copyright owners to give them better licensing conditions than their competitors without justification. Tencent will report to SAMR annually on its implementation of the order for three years. SAMR will strictly supervise Tencent’s implementation.

Source: [State Administration for Market Regulation](#)

### 宁德时代起诉中航锂电专利侵权

7月21日，有媒体报道称，宁德时代已正式起诉中航锂电专利侵权，报道称，中航锂电涉嫌侵权范围覆盖其全系产品。宁德时代称，涉案专利涉及发明与实用新型专利，此次涉嫌专利侵权的电池已搭载在数万辆车上。7月21日晚间，中航锂电官方微信公众号发布声明称，该公司尚未接到起诉状。

来源：[网易新闻](#)

### CATL Sues CALB for Patent Infringement

On 21 July, media sources reported that CATL sued CALB for patent infringement. It was reported that the infringement allegations involve all CALB products. CATL stated that the patents involved inven-

tion and utility model patents. The batteries that infringe the patents have been installed in tens of thousands of vehicles. CALB issued a statement on its official WeChat account claiming that it had not received any complaint.

Source: Netease News

### “茶颜” VS “茶颜悦色” 构成使用在类似商品和服务上的近似商标

日前，由北京知识产权法院一审审理的原告湖南茶悦餐饮管理有限公司诉被告国家知识产权局、第三人广州洛旗餐饮管理有限公司商标权无效宣告请求行政纠纷一案，经审理，最终维持一审判决。

法院认为，“茶颜”商标与“茶颜悦色”商标在文字构成、呼叫、含义等方面极为相近，构成近似商标。“茶颜”商标核定使用的“茶馆、咖啡馆、流动饮食供应”等全部服务，与“茶颜悦色”等商标核定使用的“咖啡饮料、茶饮料、可可饮料、茶、面包”等商品，在服务内容、服务对象、功能用途、销售渠道、消费群体等方面具有较强的关联性。“茶颜”与“茶颜悦色”构成近似商标。

来源：北京知识产权法院

### “Cha Yan” & “Cha Yan Yue Se” Trademarks Deemed Similar

The Beijing Intellectual Property Court upheld the first instance judgment in Hunan Chaiyue Catering Management Co Ltd v CNIPA and the third party Guangzhou Luoqi Catering Management Co Ltd, an administrative trademark dispute.

The Court held that the “Cha Yan” trademark was very similar to the “Cha Yan Yue Se” trademark in terms of text composition, pronunciation and meaning, and therefore constituted a similar trademark.

The “teahouse, cafe, mobile catering” services covered by the “Cha Yan” trademark are similar to the “coffee drinks, tea drinks, cocoa drinks, tea, bread” services covered by the “Cha Yan Yue Se” trademark because the types of goods involved have a strong correlation in terms of service content, service objects, functional use, sales channels, consumer groups, and other aspects. Therefore, the “Cha Yan” and “Cha Yan Yue Se” trademarks were deemed similar.

Source: Beijing Intellectual Property Court

### 法院全额支持施耐德公司300万元经济损失主张

知名品牌施耐德再次因商标被侵权引发诉讼。7月21日，北京朝阳法院作出判决，全额支持了施耐德中国公司主张的经济损失数额300万元。

朝阳法院审理认为：东恒公司在网站、网页中使用“施耐德”“Schneider/施耐德”标识来宣传介绍其断路器、继电器、开关等商品，属于在相同、类似商品上使用与原告相同或近似的商

标识，易使相关公众对商品来源产生误认，侵害了施耐德中国公司对涉案五枚商标享有的权利，东恒公司应当承担停止侵权、赔偿损失的法律責任。

在权利人实际损失、侵权人获利、商标许可使用费均难以确定的情况下，法院综合考虑东恒公司属于重复侵权、主观恶意明显，且持续时间较长，并考虑到施耐德中国公司涉案商标的知名度等因素，最终对其要求的300万元赔偿予以全额支持。

来源：[北京青年报官网](#)

### **Schneider Awarded \$3 Million in Damages**

Renowned brand Schneider filed a trademark infringement lawsuit and, on 21 July, the Chaoyang Primary People's Court upheld Schneider's claim for \$3 million in economic damages.

The Court held that:

*The use of "Schneider" logos by Dongheng on its website and webpage to promote and introduce its circuit breakers, relays, switches and other goods, which is the use of same or similar trademark logo with the plaintiff on the same or similar goods, that easily caused the relevant public to misunderstand the source of the goods and infringed the rights of Schneider China to the five trademarks involved in the case, and Dongheng should bear the legal responsibility of stopping the infringement and compensating for the damages.*

Because it was difficult to determine Schneider's actual losses, the infringer's profits, or a trademark license fee, the Court considered Dongheng history of repeated infringement, had obvious subjective malice, and committed infringement for a long time, and that the trademark-in-suit was popular. The Court fully upheld Schneider's claim for \$3 million in damages.

Source: [Beijing Youth Daily official website](#)

### **全国首例去除短视频水印不正当竞争纠纷案宣判，快手获赔11万元**

据北京海淀法院消息，因认为上海互盾信息科技有限公司开发并运营的“视频去水印大师”App中提供的去除快手平台短视频水印的服务构成不正当竞争，北京快手科技有限公司将互盾公司诉至法院，要求互盾公司公开刊登声明，为快手公司消除影响，并赔偿快手公司10万元经济损失及1万元合理开支。海淀法院经审理，一审判决互盾公司就其不正当竞争行为赔偿快手公司经济损失10万元及合理开支1万元。

来源：[IT之家](#)

### **Kuaishou wins short video watermark removal case**

According to Haidian Primary People's Court, Beijing Kuaishou Technology Co Ltd believed that the provision of the Video Watermarking Master app - developed and published by Shanghai Hudun Information Technology Co Ltd to remove watermarks from short videos on the Kuaishou platform - is an act of unfair competition. Therefore, Kuaishou sued Hudun.

In its judgment, the Court ordered Hudun to publish a public statement to eliminate the impact of its acts against Kuaishou and pay damages to Kuaishou, consisting of RMB 100,000 in compensation and



RMB 10,000 in reasonable expenses.

Source: IT House

## 全国首例“先行判决+临时禁令”案二审：1000万赔偿改判为300余万

原告上海恺英网络科技有限公司、浙江盛和网络科技有限公司系知名网络游戏《蓝月传奇》的著作权利人，被告苏州仙峰网络科技有限公司系《烈焰武尊》游戏的运营方。原告认为《烈焰武尊》涉嫌抄袭《蓝月传奇》，遂提起著作权侵权诉讼，要求停止侵权，并主张3000万元损害赔偿。杭州中院一审判决被告赔偿原告经济损失1000万元。2019年4月26日先行判决的同时，杭州中院作出了诉中临时禁令，后因被告拒不履行临时禁令，杭州中院对其处罚款100万元。

近日，浙江省高级人民法院做出二审判决，认为一审法院适用裁量性赔偿方法确定赔偿数额不当，本案应当以被告违法所得为依据确定赔偿数额。在确定侵权人违法所得需要依据侵权人因侵权行为所获得的利润予以计算，计算公式应为：违法所得=总流水收入×利润率×综合贡献率，最终确定被告的违法所得即赔偿数额为3239388.48元。

来源：知产宝

## Damages Reduced in Legend of Blue Moon Appeal

The plaintiffs, Shanghai Kingnet Co Ltd and Zhejiang Sheng He Network Co Ltd, are the copyright holders of the well-known online game “Legend of Blue Moon”. The defendant, Suzhou Xian Feng Network Co Ltd, is the publisher of “Lie Yan Wu Zun”, another game.

The plaintiff claimed that “Lie Yan Wu Zun” copied “Legend of blue Moon” and filed a copyright infringement lawsuit at Hangzhou Intermediate People’s Court. The plaintiff asked the Court to grant an injunction and to award RMB 30 million in damages.

The Court ordered the defendant to pay the plaintiff RMB 10 million in damages. On 26 April 2019, the Court issued an interim injunction against the defendant and then imposed an RMB 1 million fine against them for breaching the interim injunction.

Recently, the Zhejiang High People’s Court heard the case on appeal and held that the original judgment was inappropriate and the first-instance court should not have used a discretionary compensation method to award damages. The Appeal Court held that damages should be based on the defendant’s illegal gains. The infringers illegal gains should have been calculated according to the infringer’s infringement profits. The calculation should use the formula: Illegal Income = Total Revenue \* Profit Margin \* Comprehensive Contribution Rate. Using the formula, the Appeal Court determines that RMB 3,239,388.48 in damages was appropriate.

Source: IPHOUSE

## 爱立信与TCL在专利诉讼上达成和解

据外媒7月22日报道，爱立信与中国通信技术公司TCL就一项电信发明专利的特许权使用费的诉讼纠纷为时已久。在最新进展中，两家公司于7月16日星期五联合提交申请，以终止美国加利福尼亚州地区地方法院的诉讼，称他们已就此案达成和解。在路透社报道的一份简短声明中，爱立信发言人Mikaela Idermark本周证实，双方之间“所有与专利相关的法律纠纷”已在达成和解协议后撤回，但该协议的细节是“机密”的。

来源：[世界知识产权评论](#)

## Ericsson and TCL Settle

Foreign media sources reported on 22 July that Ericsson and TCL, a Chinese communications technology company, settled a long-standing dispute over telecommunications patent royalty fees. The two companies had jointly applied on 16 July to terminate a lawsuit at the District Court of California because they had settled. In a brief statement to Reuters, Ericsson spokesperson Mikaela Idermark confirmed that “all patent-related legal disputes” between the parties had been withdrawn after reaching a settlement agreement and that the details of the agreement were “confidential”.

Source: [World IP Review](#)

## 诺华在抗癌药物专利纠纷中被判赔1.78亿美元

据外媒7月22日报道，加利福尼亚联邦陪审团周四裁定，瑞士制药公司诺华（Novartis）的抗癌药物达拉非尼（Tafinlar）侵犯了日本制药公司第一三共（Daiichi Sankyo）的子公司Plexxikon Inc所拥有的2项专利，并判给Plexxikon 1.78亿美元的赔偿金。

Plexxikon于2017年起诉诺华，指控该公司侵犯了Plexxikon的黑色素瘤药物维罗非尼（Zelboraf）的2项专利，该药物抑制具有某种基因突变形式的癌细胞的生长。

来源：[路透社](#)

## Novartis to Pay \$178 Million in Cancer Drug Dispute

Foreign media sources reported on 22 July that a California federal jury had determined that the anti-cancer drug Tafinlar produced by Novartis, a Swiss pharmaceutical company, had violated two patents owned by Plexxikon, a subsidiary of Daiichi Sankyo, a Japanese pharmaceutical company. The jury awarded Plexxikon \$178 million in damages.

Plexxikon had sued Novartis in 2017 and accused them of infringing two patents related to Plexxikon’s melanoma drug Zelboraf, which inhibits the growth of cancer cells with a particular genetic mutation.

Source: [Reuters](#)



## 美国联邦最高法院批准复审H&M版权案

Unicolors公司于2016年在洛杉矶联邦法院起诉H&M，指控H&M服装侵犯其面料设计的版权。2017年法院裁定Unicolors胜诉，获得超过80万美元的赔偿金。后来H&M提出上诉，该损害赔偿于2020年被法院撤销。Unicolors公司于2021年1月向美国最高法院提出复审此裁决。美国最高法院于2021年7月1日批准复议。

原审法院裁决认定Unicolors公司的版权申请基础存在不准确之处，该裁决使H&M避免了一项认定其侵犯Unicolors公司版权罪名成立的判决。Unicolors公司对此不认可，而H&M据说曾在4月的一份简报中反驳说，原审法院认为欺诈意图并非必要条件的判定是正确的，而Unicolors公司无论其意图如何，都曾试图欺诈过版权局。

来源：[中国保护知识产权网](#)

## US Supreme Court to Review H&M Copyright Case

Unicolors, a fabric company, sued H&M in Los Angeles Federal Court in 2016. It accused H&M of infringing its copyright in a fabric design. A jury ruled in favor of Unicolors in 2017 and awarded it over \$800,000 in damages. H&M appealed, and the award was reversed in 2020. Unicolors filed for a review of the decision by the US Supreme Court in January 2021. The US Supreme Court granted the review on 1 July 2021.

The previous judgment allowed H&M to escape liability for infringing Unicolors' copyright because of inaccuracies in the fabric company's copyright application. Such a result was unacceptable to Unicolors.

Meanwhile, H&M argued in an April brief that the 9th Circuit was right in deciding that an intent to defraud isn't necessary and that Unicolors had tried to defraud the Copyright Office regardless of their intentions.

Source: [China Intellectual Property Right Protection Net](#)

## 竞争法 Overseas News

### 天津市召开药品生产企业反垄断合规提醒告诫暨培训会

2021年7月21日，据报导称，天津市市场监督管理委员会（“天津市市监局”）联合市药品监督管理局，组织召开药品生产企业反垄断合规提醒告诫暨培训会，天津市58家药品生产企业的63名代表参会。会上，天津市市监局反垄断处结合近期国家和天津市原料药反垄断执法情况对《反垄断法》进行宣讲，提醒参会企业要重视企业反垄断合规。（[查看更多](#)）

### Tianjin Holds an Anti-monopoly Compliance and Training Session for Drug Manufacturers

On July 21, 2021, it was reported that the Administration for Market Regulation of Tianjin (“Tianjin AMR”), in conjunction with the Tianjin Medical Products Administration, organized a reminder and

training session on anti-monopoly compliance for drug manufacturers, with 63 representatives from 58 drug manufacturers in Tianjin attending the session. At the meeting, the Anti-monopoly Bureau of Tianjin AMR combining with the recent national and Tianjin's API anti-monopoly enforcement preached the *Anti-monopoly Law* and reminded the participating enterprises to pay attention to anti-monopoly compliance. ([More](#))

### 三家樟脑销售企业因达成并实施垄断协议被罚没近1700万元

2021年7月16日，国家市场监督管理总局（“市场监管总局”）发布梧州黄埔化工药业有限公司（“梧州黄埔”）等3家企业达成并实施垄断协议案的行政处罚决定书。经江苏省市监局调查，梧州黄埔与苏州优合科技有限公司（“苏州优合”）签订了《樟脑委托加工合同的补充协议》（“《补充协议》”），《补充协议》中就CP樟脑市场份额及销售价格进行了约定。此外，梧州黄埔、苏州优合以及江苏嘉福制药有限公司（“江苏嘉福”）通过会面、微信、电话等方式互相询问市场行情，协商CP樟脑销售价格。江苏省市监局认定梧州黄埔与苏州优合签订的《补充协议》本质上属于分割CP樟脑销售市场的行为；而梧州黄埔、苏州优合以及江苏嘉福的行为构成了协商、固定销售价格行为。江苏省市监局根据违法性行为性质、程度和持续时间等因素，对梧州黄埔、苏州优合以及江苏嘉福分别处以上一年度销售额5%、3%和1%的罚款并没收违法所得。（[查看更多](#)）

### Three Camphor Sales Companies Fined Nearly CNY 17 Million for Reaching and Implementing Monopoly Agreements

On July 16, 2021, the State Administration for Market Regulation (“SAMR”) issued a decision on administrative penalties in the case of three enterprises, including Wuzhou Huangpu Chemical Pharmaceutical Company Limited (“Wuzhou Huangpu”), which entered into and implemented a monopoly agreement. After the investigation of Jiangsu AMR, Wuzhou Huangpu and Suzhou Youhe Technology Co., Ltd (“Suzhou Youhe”) signed the Supplementary Agreement of Camphor Commission Processing Contract (“Supplementary Agreement”), in which the market share of CP camphor and The Supplementary Agreement provides for the market share and sales price of CP camphor. In addition, Wuzhou Huangpu, Suzhou Youhe and Jiangsu Jiafu Pharmaceutical Co., Ltd (“Jiangsu Jiafu”) asked each other about the market situation and negotiated the sales price of CP camphor through meetings, WeChat and telephone calls. Jiangsu AMR found that the Supplementary Agreement signed between Wuzhou Huangpu and Suzhou Youhe essentially belonged to the act of dividing the sales market of CP camphor; and the acts of Wuzhou Huangpu, Suzhou Youhe and Jiangsu Jiafu constituted the act of negotiating and fixing the sales price. According to the nature, extent and duration of the illegal acts, Jiangsu AMR imposed fines of 5%, 3% and 1% of the previous year's sales on Wuzhou Huangpu, Suzhou Youhe and Jiangsu Jiafu respectively and confiscated the illegal income. ([More](#))

### 欧委会对因美纳拟收购Grail案展开进一步调查

2021年7月22日，欧盟委员会称已根据《合并控制条例》就因美纳（Illumina）收购Grail案展开进一步调查。此前，美国联邦贸易委员会曾于今年3月对该交易提起行政诉讼。经初步调查，欧

委会担忧，鉴于因美纳在NGS系统供应中的优势地位以及NGS是癌症检测实验中的关键投入，交易后因美纳可能利用纵向整合实施“原料”封锁策略，排斥Grail的竞争对手，影响基于NGS技术的癌症检测实验的开发和供应。拟议交易还有可能通过限制相关新兴市场上的竞争和创新，建立市场壁垒，减少患者、医生和医疗系统可供选择的产品种类和性能。 ([查看更多](#))

## EC Launches Further Investigation into the Proposed Acquisition of Grail by Illumina

On July 22, 2021, the European Commission said it had opened a further investigation into the acquisition of Grail by Illumina under the Merger Control Regulation. This follows an administrative proceeding filed by the U.S. Federal Trade Commission against the transaction in March of this year. After a preliminary investigation, the EC was concerned that, given its dominant position in the supply of NGS systems and the fact that NGS is a key input in cancer testing experiments, the transaction could lead to a "raw material" blocking strategy by vertical integration to exclude Grail's competitors and affect the development and supply of cancer testing experiments based on NGS technology. The proposed transaction also has the potential to create market barriers by limiting competition and innovation in relevant emerging markets, reducing the range and performance of product options available to patients, physicians and health systems. ([More](#))

## 英国政府发布数字市场竞争新规则

2021年7月20日，英国政府发布鼓励数字市场竞争机制的新提案，并就此展开公众咨询。根据提案，数字市场部门将有权指定具有实质的、根深蒂固市场力量的科技公司拥有“战略性市场地位”，而这些公司将会被要求遵守和竞争者、消费者之间可接受行为的新规则。此举将有利于公众，并促进经济的增长和创新。同时，监管机构还被提议赋予新的权力以及时暂停、阻止和推翻科技巨头做出的损害市场竞争和消费者利益的决策，并有权对严重违法行为处以高达营业额10%的罚款。 ([查看更多](#))

## UK Government Issues New Rules for Digital Market Competition

On July 20, 2021, the UK government released new proposals for a public consultation on mechanisms to encourage competition in the digital marketplace. Under the proposals, the Digital Markets Unit ("DMU") will have the power to designate technology companies with substantial and entrenched market power to have "Strategic Market Status", and these companies will be required to comply with new rules of acceptable behavior with their competitors and consumers. This would benefit the public and promote economic growth and innovation. At the same time, the regulator is also proposed to be given new powers to suspend, block and reverse in a timely manner decisions made by technology giants that harm competition in the market and the interests of consumers, as well as the power to impose fines of up to 10% of turnover for serious violations. ([More](#))

## 荷兰对意大利药品制造商利迪安特处以近2000万欧元的罚款

2021年7月19日，荷兰消费者与市场管理局（“ACM”）作出处罚决定，对利迪安特（Lediant）制药公司处以1956万欧元的罚款，原因在于其在2017年6月至2019年12月期间滥用市场支配地位

对处方药鹅去氧胆酸（CDCA）采取过高定价。ACM认为定价过高的原因在于该药物的低成本与低风险的特点，而定价不公平的原因在于不同名称的同款药物已经在市场上低价销售多年并且CTX患者无法从将相关药物注册为孤儿药的这一事项中享受到好处。（[查看更多](#)）

## The Netherlands Imposes a Fine of almost Euro 20 Million on a Italian Drug Manufacturer

On July 19, 2021, the Dutch Authority for Consumer and Markets (“ACM”) issued a penalty decision imposing a fine of €19.56 million on Leadiant Pharmaceuticals for abusing its dominant market position between June 2017 and December 2019 in relation to the prescription drug chenodeoxycholic acid (CDCA) between June 2017 and December 2019 for abusing its dominant market position by overpricing the prescription drug chenodeoxycholic acid (CDCA). The ACM believes that Lidiante is overpriced and unfairly priced due to the low cost and low risk profile of the drug, and unfairly priced due to the fact that the same drug under a different name has been on the market for many years at a lower price and that CTX patients do not benefit from the registration of the drug as an orphan drug. ([More](#))

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

### 工信部通报145款侵害用户权益的APP

2021年7月19日，工业和信息化部（“工信部”）发布通告称，依据《网络安全法》《电信条例》《电信和互联网用户个人信息保护规定》等法律法规，按照《关于开展纵深推进APP侵害用户权益专项整治行动的通知》工作部署，工信部及各地方通信管理局近期针对用户反映问题较多的医疗健康、电子商务、实用工具等类型手机应用软件进行了专项检查，并通知相关企业进行了整改。截至目前，尚有71款为经工信部委托第三方机构核查仍未完成整改；另有74款则为经辽宁、浙江、广东、四川省和宁夏回族自治区通信管理局开展手机应用软件监督检查认定存在问题且未完成整改。工信部要求上述145款APP应在7月26日前完成整改落实工作，逾期不整改的将被依法处置。（[查看更多](#)）

### MIIT Notifies 145 APPs in Violation of Users’ Rights and Interests

On July 19, 2021, the Ministry of Industry and Information Technology (“MIIT”) released a notice, stating that, under the *Cybersecurity Law*, the *Telecommunication Regulation*, the *Provisions on Protecting the Personal Information of Telecommunications and Internet Users* and other laws and regulations, and in accordance with the *Notice on Carrying out Special Rectification Actions in Depth against the Infringement upon Users’ Rights and Interests by Apps*, MIIT and local Communications Administrations have recently carried out special inspections on mobile applications of medical and health, e-commerce, utility tools and other types on which users reflect more problems, and have required relevant operators to make rectifications. Up to now, 71 apps failed to carry out rectification after the verification by third-party agencies entrusted by MIIT; 74 apps were held problematic by the Communications Administrations of Liaoning, Zhejiang, Guangdong, Sichuan and Ningxia Province after the inspection of mobile applications and had not yet completed the rectification. MIIT required the above 145 apps to complete the rectification and implementation work before July 26, otherwise they will be disposed of in accordance with laws. ([More](#))



### 三部委联合发布《数字经济对外投资合作工作指引》

2021年7月21日，商务部、中央网信办、工信部联合印发《数字经济对外投资合作工作指引》（“《工作指引》”）。《工作指引》提出，要做好数字经济走出去风险防范。鼓励数字经济企业完善内部合规制度，严格落实我国法律法规有关数据出境安全管理的规定，遵守东道国法律法规及国际通行规则，妥善应对数字经济领域审查和监管措施。提高知识产权保护意识，健全数据安全管理制度，保护数据安全和个人信息，支持企业通过法律手段维权。（[查看更多](#)）

### Three Ministries Jointly Issue the *Cooperative Work Guidelines for Investment Abroad in the Digital Economy*

On July 21, 2021, the Ministry of Commerce, the Cyberspace Administration of China (“CAC”), and the MIIT jointly issued the *Cooperative Work Guidelines for Investment Abroad in the Digital Economy* (“*Work Guidelines*”). The *Work Guidelines* put forward that it is necessary to prevent risks of going global in the digital economy; encourage digital economy enterprises to improve their internal compliance systems, strictly implement the domestic laws and regulations on the security management of data export, abide by the laws and regulations of the host country and prevailing international rules, and properly respond to review and regulatory measures in the digital economy; improve the awareness of intellectual property protection, improve the data security management system, protect data security and personal information, and support enterprises to protect their rights through legal means. ([More](#))

### 网信办启动“清朗·暑期未成年人网络环境整治”专项行动

2021年7月21日，网信办宣布，决定即日起启动“清朗·暑期未成年人网络环境整治”专项行动。此次专项行动聚焦解决7类网上危害未成年人身心健康的突出问题，如直播、短视频平台涉未成年人问题、未成年人在线教育平台问题、网络“饭圈”乱象问题等。近期，针对快手、腾讯QQ、淘宝等平台传播儿童软色情表情包、利用未成年人性暗示短视频引流等问题，网信部门依法责令其限期整改，全面清理处置相关违法违规信息和账号，并对平台处以罚款。网信办要求各网络平台依法履行主体责任，切实为未成年人营造文明、健康、向上的网络环境。（[查看更多](#)）

### CAC Launches a Special Activity to Create a Healthy Cyber Environment for Juveniles

On July 21, 2021, the CAC announced that it has decided to launch a special activity to create a healthy cyber environment for juveniles in their summer vacation from now on. The special activity would focus on seven types of prominent problems to the detriment of the juveniles' physical and mental health, such as live broadcast and short video platform involving juveniles, online education platforms of juveniles and the chaotic phenomena of “fans culture”. Recently, for problems like spreading children's soft pornography emojis and using juvenile sexual implication short videos to attract traffic conducted by Kuaishou, QQ, Taobao and other platforms, the authority legally requires relevant platforms to make rectifications within a prescribed time limit, comprehensively clean up and dispose relevant illegal information and accounts, and fines these platforms. CAC orders the cyber platforms to perform the principal responsibilities down to earth and create an enlightened, healthy and positive cyber environment for juveniles. ([More](#))

## 广西网信部门依法处置“香蕉漫画”等违法违规网站和账号

2021年7月22日，广西网信部门发布通知称，2021年第二季度，广西网信部门共收到网民举报信息1241条，查处违法违规网站、APP和账号143个。经核查，“香蕉漫画”“嘿咻漫画”等6家网站和软件含有色情信息。“百思特网”发布大量黑客盗取微信和定位手机的信息，严重侵犯个人隐私。“中海国际APP”等4款App涉嫌诈骗。以上网站、APP、账号均被注销备案并关闭。广西网信部门表示，将继续加大对互联网违法和不良信息举报线索的受理处置力度，鼓励网民举报各类违法和不良信息，倡导共同维护清朗网络空间。（[查看更多](#)）

## Guangxi Cyber Administrative Legally Disposes Websites and Accounts in Violation of Laws and Regulations including “Banana Comics”

On July 22, 2021, the Guangxi Cyberspace Administration issued a notice stating that, in the second quarter of 2021, the authority received a total of 1,241 pieces of information reported by netizens, and investigated and dealt with 143 illegal websites, apps and accounts. After verification, 6 websites and softwares, including “Banana Comics” and “Hyxiu Comics”, contained pornographic information; “Bestnet” released amounts of information about WeChat accounts and mobile phones locations stole by hackers, which was in violation of personal privacy seriously; 4 apps including “China Shipping International APP” were suspected of fraud. The above websites, apps, and accounts have all been cancelled for filing and closed. The Guangxi Cyberspace Administration stated that it will continue to intensify the acceptance and handling of Internet illegal and bad information reports, encourage netizens to report all kinds of these information, and advocate the joint maintenance of a clean cyberspace. ([More](#))

## 欧盟议会通过《数据治理法案》

2021年7月16日，欧洲议会通过了欧盟《数据治理法案》（the *EU Data Governance Act*, “DGA”），DGA旨在增加数据共享信赖、创造欧盟关于数据市场中立的新规则以及促进对公共部门所持有数据的再利用，如某些健康数据、农业数据和环境数据，这些数据过去在《数据开放指令》下是无法使用的。议会成员明确了立法范围，并特别指出其适用于数据中介服务，以确保大型科技公司能够被纳入该法框架。在该法框架下，公共部门应避免协议产生创设“排他性数据重复使用权”的法律效果，通过将排他协议期限限制在12个月内，让中小企业和初创企业有机会获得更多数据。同时，敏感公共部门数据只能向与欧盟提供同等保护水平的国家进行传输。（[查看更多](#)）

## EDPB Adopts the EU Data Governance Act

On July 16, 2021, the EU Parliament adopted the *EU Data Governance Act* (“DGA”), aimed at increasing trust in data sharing, create new EU rules on neutrality of data marketplaces and facilitate the reuse of certain data held by the public sector e.g. certain health, agricultural or environmental data, which were previously not available under the *Open Data Directive*. Members of EU Parliament (“MEPs”) clarified the scope of the legislation especially regarding data intermediation services, in order to make sure that big tech companies are covered by the framework. Public sector bodies should avoid the conclusion of agreements creating exclusive rights for the re-use of certain data, under the act, which also



set a 12-month time limit for exclusive agreements, in an effort to make more data available to SMEs and start-ups. Also, sensitive public sector data may be transferred to third countries only where it benefits from a similar level of protection as in the EU. ([More](#))

## 美国联邦贸易委员会公布2021年隐私大会议程

2021年7月20日，美国联邦贸易委员会公布了第六届年度隐私大会的最终议程，该活动将于7月27日在线上举行。今年的会议将突出新兴研究，并围绕与消费者隐私和数据安全有关的国内与国际趋势进行讨论。讨论将分为六个小组进行，分别将围绕算法、隐私担忧与谅解、广告技术、物联网、儿童与青少年隐私问题、隐私与流行病等主题进行。 ([查看更多](#))

## FTC Releases the Final Agenda of PrivacyCon 2021

On July 20, 2021, the Federal Trade Commission (“FTC”) has released the final agenda for its sixth annual PrivacyCon event, which will be held online on July 27. PrivacyCon 2021 will highlight exciting new research and build on discussions in the United States and around the globe on trends related to consumer privacy and data security. The discussion will be divided into six panels, which respectively focus on algorithms, privacy considerations and understanding, advertising technology, the Internet of Things, privacy issues related to children and teens, and privacy and the pandemic. ([More](#))

## 奥地利最高法向欧盟法院询问Facebook案中GDPR法律适用问题

2021年7月21日，就马克斯·施雷姆斯（欧洲隐私保护非营利组织NOYB的主席）和Facebook之间为时甚久的民事案件，奥地利最高法院（“OGH”）同意了施雷姆斯的请求，向欧盟法院（“CJEU”）询问案件问题。询问的核心问题是《通用数据保护条例》（“GDPR”）第6（1）条的适用，其他三个问题则涉及数据最小化和敏感数据，这四个问题引发了人们对Facebook使用欧盟消费者数据行为合法性的根本质疑。根据GDPR，有6种合法处理个人数据的途径，其中包括“同意”与“合同”，前者不仅要求同意的有效性，还赋予用户任意撤销权、知情权和“无偿使用”权。在GDPR生效后，Facebook不再声称依赖同意推送个性化广告，而是认为必须将同意条款视为用户“订阅”个性化广告的“合同”。奥地利最高法院和原告担忧Facebook试图将同意简单的“重新解释”为民事合同，以剥夺用户在GDPR保护下本应享有的权利。 ([查看更多](#))

## Austrian Supreme Court Asks CJEU If Facebook “Undermines” the GDPR by Confusing “Consent” with an Alleged “Contract”

On July 21, 2021, in a long-standing civil case between Max Schrems who is the chairman of NOYB and Facebook, the Austrian Supreme Court (“OGH”) has accepted Mr Schrems’ request to refer a number of questions to the Court of Justice of the European Union (“CJEU”). The core question refers to the application of GDPR 6(1), and further three questions on data minimization and sensitive data, which raise fundamental doubts over the legality of Facebook’s data use of all EU customers. The GDPR lists six options to legally process personal data, amongst them “consent” and “contract”, and the

former clause requires consent to be valid and gives users the right to withdraw their consent at any time, the right to be informed and to be “given freely”. When the GDPR became applicable, Facebook no longer claimed to rely on consent, instead, the company said the consent clauses must be seen as a “contract” where users “ordered” personalized advertising. OGH and the plaintiff are both concerned about that Facebook tries to strip users of many GDPR rights by simply “reinterpreting” consent to be a civil law contract. ([More](#))

## 荷兰数据保护局因侵犯儿童隐私对TikTok处以罚款

2021年7月22日，荷兰数据保护局（Dutch Data Protection Authority, “DPA”）因TikTok侵犯儿童隐私而对其处以75万欧元罚款。当荷兰用户（其中许多是儿童）安装和使用TikTok app时，后者提供的是不易理解的英文信息。由于没有向用户提供荷兰语版的隐私声明，TikTok未能就app如何收集、处理和使用个人数据作出充分说明，这违反了隐私法，其基本原则是：人们必须始终清楚地知道他们的个人数据以何种方式被使用。儿童在法律中被视为易受侵害群体，去年，由于担心儿童隐私问题，DPA对TikTok展开深入调查。在欧盟，如果一公司未在欧盟境内设立总部，则任何成员国均有权对其行使管辖权，否则应由其总部所在地国家进行管辖。由于在调查过程中，TikTok在爱尔兰设立了总部，故DPA目前正将调查移交给爱尔兰数据保护委员会。  
([查看更多](#))

## TikTok Fined for Violating Children’s Privacy

On July 22, 2021, the Dutch Data Protection Authority (“DPA”) has imposed a fine of € 750,000 on TikTok for violating the privacy of young children. The information provided by TikTok to Dutch users - many of whom are young children - when installing and using the app was in English and thus not readily understandable. By not offering their privacy statement in Dutch, TikTok failed to provide an adequate explanation of how the app collects, processes and uses personal data. This is an infringement of privacy legislation, which is based on the principle that people must always be given a clear idea of what is being done with their personal data. Last year the DPA launched an in-depth investigation of the app because of concerns regarding the privacy of children, who are treated as an especially vulnerable category under the law. In EU, if a company does not have its headquarters in Europe, any EU member state can engage in oversight with regard to its activities. In the case of companies that do have their headquarters in Europe, this responsibility would fall mainly to the country where the headquarters are located. In the course of the DPA’s investigation, TikTok established operations in Ireland, which contributes a investigation transfer between the DPA and Ireland Data Protection Commission. ([More](#))

## 俄罗斯因未删除非法内容对Facebook和Twitter处以罚款

2021年7月22日，俄罗斯地区法院针对美国社交媒体公司Facebook和推特未能删除非法内容的行为处以罚款。近几个月，俄罗斯当局采取行动对科技巨头加强监管，对内容违法处以小额罚款的同时，也试图迫使外国公司在俄罗斯设立机构并在俄境内储存个人数据。根据俄罗斯行政规定，网站所有者应当删除被禁信息，如包含儿童色情、毒品滥用、呼吁未成年人自杀等内容的信息，否则将面临罚款。其他国家也呼吁社交媒体在平台内容监管上有更多作为，如英国首相

上周约谈了相关平台负责人并警告他们如果不删除含有仇恨和种族主义内容的信息将会面临多达其全球收入10%的罚款。 ([查看更多](#))

### **Russia Fines Facebook and Twitter for Failing to Delete Illegal Content**

On July 22, 2021, a Russian district court fined U.S. social media firms Facebook and Twitter for failing to delete illegal content. Russian authorities have taken steps in recent months to regulate technology giants more closely by imposing small fines for content violations, while also seeking to force foreign companies to open offices in Russia and store Russians' personal data on its territory. According to Russia's administrative stipulation, website owners should delete banned information containing child pornography, drug abuse information and calls for minors to commit suicide etc., or face penalties. Other countries have called upon social media firms to do more to police content. British Prime Minister met representatives of platforms last week and warned that they would face fines amounting to 10% of their global revenues unless they removed hateful and racist content. ([More](#))

立方律师事务所编写《立方观评》的目的仅为帮助客户及时了解中国法律及实务的最新动态和发展，上述有关信息不应被看作是特定事务的法律意见或法律依据，上述内容仅供参考。



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