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Intellectual Property

The First Industry IP Licensing Guide Issued by China Video Industry Association

Recently, China Video Industry Association (CVIA) , together with the leading companies of consumer electronics, issued the "Guide to IP Licensing Mechanism in Consumer Electronics" at the AVF Forum. The Guide is the world's first industry specification on IP licensing in the industry, which proposed a Chinese solution for IP governance, that may play a positive role in protecting IP, strengthening industry self-regulation and promoting scientific and technological innovation.

For the first time, this Guide proposes to adhere to the four principles of respect, equality, fairness and reasonableness and development; it also clarifies the status of the licensing parties, the basis of licensing negotiations, and the constraints and orientation of licensing agreements; it respects the interests of multiple parties such as licensors, licensees, users and the market. In the identification of the subject matter of the license, the Guide clarifies for the first time that the "smallest saleable unit" attached to the patent and technical contribution is the subject matter of the license, and the technical contribution matches the revenue. The Guide also clarifies the boundary of the rights and obligations of both parties, and reasonably limits the obligations of the licensor in terms of information disclosure, so as to improve the reciprocity of information between the two parties and facilitate a fair and reasonable license agreement. In terms of specific implementation rules for license negotiations, the Guide specifies specific requirements including personnel management, confidentiality management, process document management, and license agreement management and enforcement, providing a reference basis for both parties to the license.

Source: [Securities Daily](#)

6 Invention Patents Compulsory Auction Starting Price of RMB 1.49 Billion, A Record Ali Judicial Auction Patent Price

From November 19, 2021 to November 20, 2021, Dongying Intermediate People's Court, Shandong will conduct a public auction on Alibaba's judicial auction platform for six invention patents, owned by Shandong Keerui Petroleum Equipment Co.. This is the highest price of Alibaba judicial auction on patents,. The cause for the auction was the result of the creditors of Kerry applying for judgment enforcement for insolvency.

Source: [CQCB.COM](#)

Little Red Book suing Senser app, a global fashion luxury E-commerce platform, for pirating pictures, with claimed damages of RMB 30 million Little Red Book

Recently, Little Red Book announced that it has filed a lawsuit of unfair competition and trademark infringement by SENSER app, which is a global fashion luxury E-commerce platform, demanding the defendant to immediately stop the infringement, publish an apology statement, and compensate for economic losses of 30 million yuan, and Shanghai Pudong New Area People's Court has officially accepted the lawsuit.

Little Red Book claimed that the accused app had pirated the pictures from the Little Red Book platform without permission, which seriously infringed the copyright of Little Red Book users. The accused app also placed the stolen pictures from the Little Red Book platform on its own app to enhance its competitive advantage, which shall constitute unfair competition.

Source: [ChinaNews.com](#)

Beijing Intellectual Property Court accepts the first "drug patent linkage" case

Recently, Beijing Intellectual Property Court accepted the first case of "drug patent linkage" after the implementation of the new patent law. The plaintiff, Chugai Pharmaceutical Co., Ltd, claimed that it was the holder of the marketing license for the listed patented drug "Eldecacitol", and also the patentee of the patent involved in the drug. The plaintiff found that the defendant, Wenzhou Haihe Pharmaceutical Co., Ltd., applied to the State Drug Administration for a marketing license for a generic version of the drug named "Eldecacitol". The patent information registration platform of listed drugs in China showed that the defendant made a 4.2 class declaration for the generic drug. Therefore, the plaintiff filed a lawsuit with the Beijing Intellectual Property Court in accordance with Article 76 of the new Patent Law, requesting the court to confirm that the generic drug "Eldecacitol" applied for registration by the defendant fell within the scope of patent protection of the plaintiff's invention patent. Beijing Intellectual Property Court found that the plaintiff's lawsuit met the requirements of drug patent linkage lawsuit and registered the case in accordance with the law. At present, the case is under further trial.

Source: [IP Beijing](#)

UK court rejects OPPO's objection against court jurisdiction over global FRAND license rates

Recently, the UK High Court made public a decision that in the UK lawsuit between Nokia and OPPO, the UK judge did not support OPPO's claim against the UK court's jurisdiction over global FRAND license rates, ruling that the UK court had jurisdiction over the case, and is a convenient court to hear the case, and that the UK court would not suspend the global rate proceedings during the hearing of the global rate lawsuit in the Chongqing court in China.

Previously, the Chinese Supreme People's Court ruled in the OPPO v Sharp case, that the Chinese courts had jurisdiction to determine global FRAND license rates, and in the current Nokia and OPPO litigation, the UK judge acknowledged that the Chinese courts had jurisdiction and the ability to determine FRAND rates. OPPO is also likely to appeal the decision, but this does not affect the jurisdiction of the UK courts, and it is to be expected that parallel litigations may eventually result in conflicting judgments of different courts in different countries.

Source: [IP Finance](#)

UK Government Seeks Public Input on AI Copyright and Patent Legislation

Recently, the UK government consulted the public on how the copyright and patent system should deal with artificial intelligence. The consultation seeks public evidence and views on: (1) the extent to which patents and copyright should protect inventions and creative works created by AI; and (2) measures to promote the use of copyrighted material in AI development, innovation and research.

The consultation, led by the UK Intellectual Property Office (UKIPO), is a commitment by the UK government in its recently launched Innovation Strategy to ensure that the UK's IP environment continues to lead the world. The consultation will run for 10 weeks, ending on January 7, 2022.

Source: www.gov.uk

Judge Bars PepsiCo from using Mtn Dew Rise Energy Name

Rise Brewing, based in Stamford, Connecticut, sued PepsiCo in June for infringement of its trademark rights. Manhattan federal court has ruled that PepsiCo must stop using the name "Mtn Dew Rise Energy" on its morning energy drinks due to a trademark dispute with can coffee maker Rise Brewing. Lorna Schofield, a US District Judge in the US District Court for the Southern District of New York, granted Rise Brewing's application for a preliminary injunction on Nov. 3. The judge found that the drinks mar-

keted by PepsiCo in March were likely to mislead customer and that Rise Brewing had provided credible evidence that Mtn Dew Rise posed an "existential threat" to its business. The judge ordered that PepsiCo be prohibited from using the Mtn Dew Rise name in commerce and from selling goods under any other name similar to the 'Rise' trademark while the proceedings are ongoing.

Source: [Food Business News](#)

The European General Court Upholds the Fine of €2.42 Billion Imposed on Google

On 10 November, the European General Court in Luxembourg issued a statement, saying that "The General Court finds that, by favoring its own comparison shopping service on its general results pages through more favorable display and positioning, while relegating the results from competing comparison services in those pages by means of ranking algorithms, Google departed from competition on the merits."

The court also confirmed the fine at 2.42 billion euros. "The General Court concludes its analysis by finding that the amount of the pecuniary penalty imposed on Google must be confirmed," the court added.

The investigation, which began in 2010, made its final determination in 2017. The European Commission said that Google had unfairly directed customers to its own shopping services by manipulating search results by prominently placing its own price comparison service, Google Shopping, in user searches.

Source: [CNBC](#)

Google Wins UK Data Privacy Appeal Makes Free Use of User Data by Large Platforms Becomes Possible

On 10 November 2021, the UK Supreme Court issued a judgement that Google had won its appeal in a data privacy class action lawsuit, and did not have to pay the plaintiffs' claim for potentially up to £3 billion in damages. The judgement has also sparked much concern in the industry, particularly among several large companies or platforms that are in the midst of similar data privacy class action cases, including Marriott, Facebook, YouTube and others.

The plaintiff in this case, Richard Lloyd, brought a class action in the UK High Court in 2017 on behalf of a UK consumer organisation. The acts complained of took place over a period of several months between late 2011 and early 2012, when Google tracked the internet activity of four million UK iPhone users without their knowledge or consent, collecting data about their web traces for commercial purposes such as the delivery of accurate personalised advertising. The plaintiff argued that these actions breached Section 13 of the UK Data Protection Act 1998 and sought £750 per person for all affected users, totalling approximately £3 billion.

After a years-long appeal and trial process, Google was finally upheld by the court, which dismissed the plaintiff's appeal and claims and reinstated the first instance judgment.

Source: [China Law Review](#)

Cybersecurity and Data Protection

CAC Issued the *Regulations on Network Data Security Management (Exposure Draft)*

On November 14, 2021, in order to implement the *Cybersecurity Law*, *Data Security Law* and *Personal Information Protection Law* and other laws and regulations on data security management, regulate network data processing activities, protect the legitimate rights and interests of individuals and organizations in cyberspace, and safeguard national security and public interests, according to the State Council's legislative plan for 2021, the Cyberspace Administration of China (CAC), in conjunction with relevant departments, studies and drafted the *Regulations on Network Data Security Management (Exposure Draft)*, and is now seeking public comments thereon. ([More](#))

CAICT issued a white paper on the governance of personal information protection of mobile Internet applications (APPs)

Recently, China Academy of Information and Communications Technology (CAICT) issued the White Paper on the Governance of Personal Information Protection for Mobile Internet Applications (APPs), which points out that from 2012 to 2021, China has successively launched and implemented the *Cybersecurity Law*, *Data Security Law* and *Personal Information Protection Law*, which means that the top-level design of the current national legal system on personal information protection has basically taken shape, and the relevant regulations for personal information protection in the industries, the relevant management regulations are also in the process of active promotion. The white paper shows that in the past period, relying on special rectification, the protection of user rights and interests has improved significantly, so far 21 batches of special spot checks have been carried out, a total of 5,406 Apps were notified for rectification, 2,049 Apps were publicly notified for inadequate rectification, and 540 Apps have been removed from the mobile market. ([More](#))

NISSTC solicits public opinions on the technical document: *Guidelines for the Identification of Personal Information on Instant Messaging Service Platforms (Exposure Draft)*

On November 12, 2021, National Information Security Standardization Technical Committee (NISSTC) published the drafted technical document, *Guidelines for the Identification of Personal Information on Instant Messaging Service Platforms* to seek public comments thereon. The *Guidelines for the Identification of Personal Information on Instant Messaging Service Platforms (Exposure Draft)* gives guidelines for the identification of personal information in instant messaging service platforms, which apply to the design, development, operation and other activities of instant messaging service platforms. On the instant messaging service platform, the information sent by the sender to a specific recipient and cannot be retransmitted by the recipient, can be identified as personal information. ([More](#))

CVERC monitors and finds 12 illegal mobile applications for e-commerce shopping

The National Computer Virus Emergency Response Center (CVERC) recently found 12 e-commerce shopping mobile applications, including "Yiwu Shopping" (version 3.6.1, Vivo App Store) and "Convenience Bee" (version 5.8.1, Vivo App Store), with privacy non-compliance through Internet monitoring, violating the relevant provisions of the *Cybersecurity Law* and *Personal Information Protection Law*, and are suspected of over-scope collection of personal information. Experts remind publics to raise awareness of personal information protection and avoid personal privacy leakage. ([More](#))

Eefung Sued Weibo Corp. for Data Monopoly Because of Refusing to License Data

Recently, Hunan Eefung Software Co., Ltd. and its Beijing branch ("Eefung") filed a lawsuit in Changsha Intermediate People's Court for Weibo Corp., the operator of Weibo's alleged monopolistic behavior of refusing to license data access to Eefung, requesting the court to order Weibo Corp. to allow Eefung to use Weibo data under reasonable conditions, and to compensate Eefung for its economic losses

and reasonable costs totaling RMB 5.5 million. It was reported that Changsha Intermediate People's Court has officially filed the case. ([More](#))

Washington data breaches rose 500% in 2021

Washington state experienced a growth in data breaches across the board in 2021, according to the newly released 2021 Data Breach Report from the attorney general's office. Organizations sent out 6.3 million data breach notices to individuals across the state, topping 2018's high of 3.5 million. There was a 500% increase in data breaches reported to the attorney general's office, going from 60 in 2020 to 280 in 2021. The report also includes data-protective practices for consumers and recommendations for policy-makers. ([More](#))

UK Supreme Court halts billion-dollar privacy class action against Google

On November 10, 2021, the United Kingdom's Supreme Court denied a claim that sought billions of dollars in damages in a class-action lawsuit against Google over alleged illegal tracking of millions of iPhone users. The 3 billion GBP lawsuit, which was filed on behalf of 4.4 million residents in England and Wales, had implications for other class-action lawsuits filed in the U.K. Judge George Leggatt said the claimant did not prove damages to the individuals involved in the data collection. ([More](#))

Dutch DPA fines Transavia €400,000 for poor personal data security

The Dutch data protection authority (DPA) published, on 12 November 2021, its decision, in which it imposed a fine of €400,000 to Transavia Airlines C.V. DPA noted that it received a breach notification from Transavia notifying that a malicious third party had gained unauthorised access to Transavia's systems, where the hacker had downloaded personal data of approximately 83,000 people, including the health data of 367 individuals. ([More](#))

OAIC orders deletion of scraped pics from facial recognition database

The Office of the Australian Information Commissioner (OAIC) published its ruling on November 3, 2021, following a joint investigation by the OAIC and the UK Information Commissioner's Office (ICO). OAIC has found that Clearview AI, Inc. breached Australians' privacy by scraping their biometric information from the web and disclosing it through a facial recognition tool. OAIC found that Clearview AI breached the Australian Privacy Act 1988 by:

collecting Australians' sensitive information without consent

collecting personal information by unfair means

not taking reasonable steps to notify individuals of the collection of personal information

not taking reasonable steps to ensure that personal information it disclosed was accurate, having regard to the purpose of disclosure

not taking reasonable steps to implement practices, procedures and systems to ensure compliance with the Australian Privacy Principles.

The determination orders Clearview AI to cease collecting facial images and biometric templates from individuals in Australia, and to destroy existing images and templates collected from Australia. ([More](#))

European Commission pursues action against Belgium over independence of DPA

The European Commission is pursuing legal action against Belgium over concerns its Data Protection Authority is not operating independently as required under the EU General Data Protection Regulation. The commission said some members of the DPA "cannot be regarded as free from external influence"

as they either report to a management committee, have participated in COVID-19 contact tracing or are members of the Information Security Committee. Belgium has two months to take action, or the case may be referred to the Court of Justice of the European Union. ([More](#))

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