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立方要闻周报

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法国CNIL发布关于市政机构实践的网络安全指南

The CNIL Published Cybersecurity Guide for Municipalities' Practices

Outright Games同意纠正其被儿童广告审查部门发现的违规行为

Video Game Publisher Outright Games Agreed to Take Actions to Correct the Violations of COPPA and CARU's Advertising and Privacy Guidelines

万豪国际发生一起新的数据泄露事件

Marriott International Suffered a New Data Breach

知识产权 Intellectual Property

海南自贸港成功实施首单专利开放许可交易

Hainan Free Trade Port Successfully Carried Out Its First Patent Open Licensing Transaction

最高院：假冒他人专利适用侵权责任法一般规定确定损害赔偿数额

SPC: Patent Counterfeiting shall be Applied General Provisions of Civil Law on Tort Damages to Determine the Amount of Damages

网店变造“华为”商标并伪造授权证书，适用两倍惩罚性判赔500万

Altering the Trademark of "Huawei" and Forging the Authorization Certificate: The Court Applied 2 Times Punitive Damages and Awarded Damages of RMB 5 million

《我不是药神》使用他人摄影作品被判侵权，赔偿2万

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英国知识产权局：将扩大数据挖掘版权例外的适用范围

UK to Expand Data Mining Freedoms for AI

欧盟普通法院驳回苹果对斯沃琪"Tick Different"口号侵犯商标权的上诉

Apple Fails Bid to Get 'Think Different' Trademark Restored in EU



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95年版权保护期临近，迪士尼或将失去米老鼠形象专有权

Mickey Mouse Could Soon Leave Disney As 95-Year Copyright Expiry Nears

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

网信办发布《数据出境安全评估办法》

2022年7月7日，国家互联网信息办公室发布《数据出境安全评估办法》（以下简称“《办法》”），自2022年9月1日起施行，对于9月1日之前发生的历史数据跨境传输行为给予6个月的过渡期。《办法》规定了数据出境安全评估的范围、条件和程序，为数据出境安全评估工作提供了具体指引；明确了数据处理者向境外提供在中华人民共和国境内运营中收集和产生的重要数据和个人信息的安全评估适用本办法，提出数据出境安全评估坚持事前评估和持续监督相结合、风险自评估与安全评估相结合等原则；规定了应当申报数据出境安全评估的情形，且对数据出境安全评估提出了具体要求，规定数据处理者在申报数据出境安全评估前应当开展数据出境风险自评估并明确了重点评估事项。（[查看更多](#)）

CAC Issued Security Assessment Measures for Outbound Data Transfers

On 7 July 2022, the Cyberspace Administration of China (“CAC”) issued the *Security Assessment Measures for Outbound Data Transfers* (the “Measures”), which will come into effect on 1 September 2022. A six-month transition period will be granted for historical outbound data transfers prior to 1 September. The Measures provide for the scope, conditions and procedures in respect of the security assessment for outbound data transfers, and provide specific guidelines for such security assessment. The Measures also clarify that the Measures apply to the security assessment of data processors providing important data and personal information collected and generated in the course of their operations in the People's Republic of China to foreign countries, and propose that the security assessment of outbound data transfers adheres to the principles of combining prior assessment and continuous supervision, and combining risk self-assessment and security assessment. The Measures stipulate the circumstances under which an application for data transfer security assessments should be made, and set out specific requirements for outbound data transfer security assessments, stipulating that data processors should conduct an outbound data transfer risk self-assessment before applying for security assessments for outbound data transfers and specifying the key assessment matters. ([More](#))

海南出台促进商用密码应用和产业发展15条政策措施

2022年7月6日海南省国家密码管理局等十部门联合印发《海南省促进商用密码应用和产业发展若干政策措施》，提出15条政策措施，目的是为防范海南自由贸易港建设面临的网络和数据安全风险，推进关键信息基础设施和重要领域商用密码应用，夯实智慧海南密码保障基础，服务海南经济社会数字化发展。政策从多个方面，鼓励政府、高校、科研机构进行密码研发、应用及发展。（[查看更多](#)）

Hainan Promulgated 15 Measures to Promote Application and Industry Development of Commercial Cryptography

On 6 July 2022, ten provincial departments in Hainan Province including the China Cryptography Administration of Hainan Province jointly promulgated the *Policies to Promoting the Application and Industrial Development of Commercial Cryptography in Hainan Province*, putting forward a total of 15 policies and measures. The aim is to guard against network and data security risks arising from the con-

struction of the Hainan Free Trade Port, promote the application of commercial cryptography in critical information infrastructure and key fields, consolidate the cryptography security foundation for Intelligent Hainan, and serve the digitalized economic and social development of Hainan Province. The policies are intended to encourage governments, colleges and universities and scientific research institutions to conduct the research, development, application and development of encryption in various aspects. ([More](#))

深圳将建立企业合规地方标准，网络与数据安全、个人信息保护是重点

2022年7月7日，深圳市司法局发布《企业合规管理体系（征求意见稿）》（以下简称《征求意见稿》），公开征求意见。《征求意见稿》将网络与数据安全、个人信息保护作为合规管理的重点领域，在网络与数据安全方面，《征求意见稿》明确指出经营者应采取必要措施，防范对网络的攻击、侵入、干扰、破坏和非法使用以及意外事故，并且应保护信息资产安全，加强信息数据的收集、使用、存储、共享等重点环节的管控；在个人信息保护方面，《征求意见稿》要求经营者应制定个人信息保护合规方案，建立和实施技术控制、实施控制、监控控制，保证个人信息的收集、存储、处理、报告中的数据安全及合规。（[查看更多](#)）

Shenzhen Plans to Establish Local Corporate Compliance Standards, Focusing on Security of Network and Data, and Protection of Personal Information

On 7 July 2022, Shenzhen Municipal Justice Bureau released the *Corporate Compliance Management System (Exposure Draft)* for public consultation. The Exposure Draft takes network and data security, and personal information protection as key areas of compliance management. In terms of network and data security, the Exposure Draft clarifies that business operators shall take necessary measures to prevent attacks, intrusions, interference, damage, illegal use of the network and accidents on the network. Moreover, business operators shall protect the security of information assets, and strengthen the management and control of key procedures such as the collection, storage, use and sharing of information data. With regard to the protection of personal information, the Exposure Draft requires that a business operator shall establish a compliance program for the protection of personal information, establish and implement technical control, implementation control and monitoring control, and ensure the data safety and compliance in the process of the collection, storage, processing and reporting of personal information. ([More](#))

国家计算机病毒应急处理中心通报15款App存在隐私不合规行为

2022年7月6日，国家计算机病毒应急处理中心近期通过互联网监测发现15款移动App存在隐私不合规行为，违反网络安全法、个人信息保护法相关规定，涉嫌超范围采集个人隐私信息。通报原因如下：

- 在App首次运行时未通过弹窗等明显方式提示用户阅读隐私政策等收集使用规则，或以默认选择同意隐私政策等非明示方式征求用户同意；
- 未向用户告知个人信息处理者的名称或者姓名和联系方式，或处理的个人信息种类、保存期限；

- 未向用户明示全部隐私权限；
- 向其他个人信息处理者提供其处理的个人信息的，未向个人告知接收方的名称或者姓名、联系方式、处理目的、处理方式和个人信息的种类；
- 未提供有效的更正、删除个人信息及注销用户账号功能，或注销用户账号设置不合理条件；
- 未建立并公布个人信息安全投诉、举报渠道，或超过承诺处理回复时限；
- 通过自动化决策方式向个人进行信息推送、商业营销，未提供不针对其个人特征的选项，或者向个人提供便捷的拒绝方式；
- 处理敏感个人信息未取得个人的单独同意；
- 处理不满十四周岁未成年人个人信息的，未制定专门的个人信息处理规则。 ([查看更多](#))

The CVERC Announced 15 Types of Privacy Non-Compliance in Apps

On 6 July 2022, the National Computer Virus Emergency Response Center (CVERC) found through monitoring the Internet 15 mobile Apps to have compliance issues for privacy protection, violating the relevant provisions of the *Cyber Security Law* and the *Personal Information Protection Law*, and suspected of collecting personal privacy information beyond the scope. The reasons for non-compliance are as follows:

- Failing to prompt users to read privacy policies and other collection and use rules through express means such as pop-up windows or other noticeable ways, or seeking the consent of users by non-express means such as consent to privacy policies by default, when an App is put into operation for the first time;
- Failing to inform users of the title or name and contact information of the personal information processor, or the type and storage period of the personal information processed;
- Failing to make clear to the user all of the privacy rights;
- Where processed personal information is provided to third-party processors, failing to inform the individual of the name, contact details, the processing purpose, the processing manner of and the processing type of personal information of the third-party recipients;
- Failing to provide effective functions for correction, deletion of personal information and cancellation of user accounts, or setting unreasonable conditions for cancellation of user accounts.
- Failing to establish and make public channels for complaints and reports on the security of personal information, or exceeding the promised time limit for processing responses;
- Pushing information and commercial marketing to individuals through automatic decision making, without providing options not tailored to individuals' personal characteristics, or providing convenient ways for individuals to refuse such information;
- Processing sensitive personal information without the individual's separate consent;
- Processing of the personal information of the minors under the age of 14 without establishing specific rules of personal information processing. ([More](#))

上海市开展2022年电信和互联网行业网络和数据安全检查

2022年7月7日，上海市通信管理局发布《关于开展2022年上海市电信和互联网行业网络和数据安全检查的通知》（简称《通知》）。根据《通知》，上海通信管理局决定组织开展2022年上海市电信和互联网行业网络和数据安全检查工作。此次工作的检查对象为提供公共互联网网络信息服务的基础电信企业、互联网企业（含云平台服务提供商、App和小程序运营企业、车联网平台企业、工业互联网平台和标识解析节点企业等）、域名注册服务机构。重点检查相关网络运行单位的关键信息基础设施和重要网络单元及承载的信息系统。检查内容包括：网络安全管理制度和保障体系建设落实情况、通信网络安全防护工作落实情况、数据安全保护落实情况、个人信息和用户权益保护工作情况、车联网和工业互联网企业网络安全防护情况。（[查看更多](#)）

2022 Inspection on Telecommunications and Internet Industry Network and Data Security To Be Carried Out in Shanghai

On 7 July 2022, Shanghai Communications Administration released the *Notice on Carrying Out the 2022 Network and Data Security Inspection in the Telecom and Internet Industries in Shanghai* (the "Notice"). According to the Notice, the Shanghai Communications Administration has decided to organize inspections to check the network and data security in Shanghai's telecommunications and Internet industries in 2022. The inspection will target basic telecommunications enterprises, Internet enterprises (including cloud platform services providers, App and mini-apps operating enterprises, Internet of vehicles platform providers, industrial Internet platform providers and identifier resolution node providers) and domain name registration service agencies that provide public Internet network information services. The inspection shall be focused on the key information infrastructures, important network units and carrying information systems of the relevant network operation entities. The scope of inspection includes: the implementation situation of the construction of network security management system and safeguard system, the implementation situation of the protection of communications network security, the implementation situation of the protection of data security, the protection of personal information and users' rights and interests, and the protection of network security of enterprises engaging in the Internet of vehicles and the industrial internet. ([More](#))

浙江法院发布侵犯公民个人信息犯罪十大典型案例

2022年7月4日，浙江省高级人民法院从全省法院近年来审结的有关案件中选取发布10起侵犯公民个人信息犯罪典型案例。以期进一步加大对侵犯公民个人信息犯罪行为的惩治力度，提高人民群众保护个人信息的安全意识。通过该十大典型案例，可以对“侵犯公民个人信息罪”有较为清楚的认识，例如，以非法侵入他人计算机信息系统的方式获取公民个人信息的行为构成侵犯公民个人信息罪；非法获取学生学籍等信息并出售构成侵犯公民个人信息罪；以“一买多卖”方式大规模贩卖公民个人信息构成侵犯公民个人信息罪等。（[查看更多](#)）

Zhejiang Court Publicized Ten Typical Cases of Crimes Involving Infringement on Personal Information of Citizens

On 4 July 2022, the High People's Court of Zhejiang Province publicized a selection of 10 typical cases

of crimes involving infringement of citizens' personal information from among the cases concluded by the courts in Zhejiang in recent years. The purpose is to further increase the punishment for crimes against citizens' personal information and raise the people's awareness of the protection of personal information. The ten typical cases provide a clearer understanding of the crime of infringement of citizens' personal information. For example, the act of obtaining citizens' personal information by illegally hacking into others' computer information systems constitutes the crime of infringement of citizens' personal information; illegally obtaining students' school registration and other information and selling such information constitutes the crime of infringement of citizens' personal information; the sale of personal information on a large scale by "buying once and multiple selling" constitutes the crime of infringement of personal information of citizens, etc. ([More](#))

欧洲议会通过《数字服务法》（DSA）和《数字市场法》（DMA）

2022年7月5日，欧洲议会投票通过了《数字服务法》（DSA）和《数字市场法》（DMA）。这些法律针对数字市场的竞争、透明度和消费者保护问题，并可能对Facebook、谷歌、亚马逊等科技巨头产生重大影响。《数字服务法》保护消费者的广泛权益，包括对强制性风险评估和审计、内容审核、禁止针对儿童的定向广告、基于敏感数据的定向广告和暗黑设计模式等多项具体要求。《数字市场法》着眼于竞争和互操作性，授权用户访问他们的数据权利，禁止平台因推广自身服务而排斥其竞争者，并允许用户删除预先安装的软件或应用程序。两项法律均规定了巨额罚款——《数字市场法》和《数字服务法》对其违规的罚款分别高达被处罚者全球年度营业额的10%和6%。 ([查看更多](#))

European Parliament Adopts DSA, DMA

On 5 July 2022, European Parliament voted to adopt both the Digital Services Act (DSA) and Digital Markets Act (DMA). These laws will address competition, transparency, and consumer protection in digital markets and are likely to significantly impact tech giants like Facebook, Google, Amazon, and more.

DSA has a wide consumer protection scope, including specific requirements on mandatory risk assessments and audits, content moderation, and bans on targeted advertising for children, targeted advertising based on sensitive data, and dark patterns. DMA looks to competition and interoperability by mandating user access to their data, barring platforms from favoring their own services over others, and allowing users to remove pre-installed software or apps. Both carry significant fines for violations – up to 10% of annual global turnover for DMA violations and 6% for DSA violations. ([More](#))

英国与韩国达成新的数据充分性原则协定

2022年7月5日，英国数据部长Julia Lopez和韩国个人信息保护委员会(PIPC)主席Jong In Yoon达成了英韩之间新的“数据充分性原则协定”，标志着数据充分性谈判的成功结束，这将促进两国之间数据的可信使用和交换。

在达成充分性协议的同时，两国都在修改其数据监管制度：

- 在英国，正在修改英国国家数据战略和英国通用数据保护条例；

- 在韩国，提出了个人信息保护法的修正案。

两国一致认为，个人信息的保护和个人信息的跨境自由流动可以是相互促进的优先事项。两国政府的承诺和工作巩固了数据的可信使用在国际商业、创新和研究中的重要作用，以及在增强和保护个人权益、维持民主与和平社会方面的重要作用。 ([查看更多](#))

New data adequacy agreement in principle between the UK and Republic of Korea

On 5 July 2022, UK data minister Julia Lopez and the Republic of Korea Chairperson of the Personal Information Protection Commission (PIPC), Jong In Yoon, agreed the new data adequacy agreement in principle between the UK and republic of Korea, marking the successful conclusion of data adequacy talks, which will promote the trustworthy use and exchange of data between the two countries.

Both countries are revising their data regulatory regimes as they reach adequacy agreements:

- In the UK, ongoing initiatives include upgrading the UK National Data Strategy and the UK General Data Protection Regulation.
- In South Korea, amendments have been proposed to its personal data protection law.

Both countries agree that the protection of personal data and free flow of personal data across borders can be mutually reinforcing priorities. Their governments' commitments and work underpin the important role for the trustworthy use of data in international commerce, innovation, and research as well as in empowering and protecting individuals and in sustaining democratic and peaceful societies. ([More](#))

美国CFPB发布咨询性意见重申公司须出于可允许的目的使用和共享信用报告和背景评估报告

2022年7月7日，美国消费者金融保护局(CFPB)发布了一项法律咨询意见，以确保使用、共享信用报告和背景评估报告的公司具有《公平信用报告法》所允许的目的。CFPB这项新的咨询意见明确指出，信用报告公司和使用信用报告的用户具有保护公众数据隐私的特定义务。该公告还提醒相关实体可能因某些不当行为承担刑事责任。

该意见将有助于追究任何违反《公平信用报告法》目的合法性条款而使用信用报告的公司或用户的责任。具体而言，咨询意见明确：

- 匹配程序的不充分可能导致向实体提供报告的信用报告公司不具备目的合法性，从而侵犯消费者的隐私权。
- 提供多名个人的信用报告作为“可能的匹配项”属于非法行为。
- 关于不充分的匹配程序的免责声明不能纠正不具备目的合法性的违规行为。
- 信用报告的用户必须确保他们不会在缺乏目的合法性时获取信用报告构成侵犯个人隐私。

([查看更多](#))

The CFPB Published Advisory Opinion Reaffirming Companies Use and Share

Credit Reports and Background Reports Must Do So with Permissible Purposes

On July 07, the Consumer Financial Protection Bureau (CFPB) issued a legal interpretation to ensure that companies that use and share credit reports and background reports have a permissible purpose under the Fair Credit Reporting Act. The CFPB's new advisory opinion makes clear that credit reporting companies and users of credit reports have specific obligations to protect the public's data privacy. The advisory also reminds covered entities of potential criminal liability for certain misconduct.

The opinion will help to hold responsible any company, or user of credit reports, that violates the permissible purpose provisions of the Fair Credit Reporting Act. Specifically, the advisory opinion makes clear:

- Insufficient matching procedures can result in credit reporting companies providing reports to entities without a permissible purpose, which would violate consumers' privacy rights.
- It is unlawful to provide credit reports of multiple people as "possible matches.
- Disclaimers about insufficient matching procedures do not cure permissible purpose violations.
- Users of credit reports must ensure that they do not violate a person's privacy by obtaining a credit report when they lack a permissible purpose for doing so. ([More](#))

法国CNIL发布关于市政机构实践的网络安全指南

2022年7月7日，法国数据保护机构 CNIL 和政府资助的网络犯罪防范和受害人帮助网站 Cybermalveillance.gouv.fr 联合发布了有关市政机构实践的网络安全指南。

相关研究揭示的一大发现为，除了《通用数据保护条例》(GDPR) 外，大多数受访者并不了解现行的网络安全法律框架。地方民选官员和机构人员对数字安全方面有关专业技能和责任的规定仅仅有非常局限的了解，他们认为网络安全方面的法律十分复杂。

CNIL 表示，该指南旨在让地方民选官员和机构人员加快了解网络安全相关的义务和潜在责任。具体而言，该指南概述了与数据保护、本地远程服务实施以及健康数据存储相关的责任。该指南同时重申了地方当局及其公共机构在发生网络攻击和/或损害时所面临的不同类型的法律责任，例如行政责任、民事责任和刑事责任。 ([查看更多](#))

The CNIL Published Cybersecurity Guide for Municipalities' Practices

France's data protection authority, the CNIL, and the Cybermalveillance.gouv.fr, a government-sponsored cybersecurity initiator, jointly published guidance for municipalities' cybersecurity practices.

One of the most significant points the study shows is that the majority of respondents are unaware of the cybersecurity legal framework in force, with the exception of the General Data Protection Regulation (GDPR). The provisions relating to skills and responsibilities in terms of digital security are little or not known to local elected officials and territorial agents, who consider the regulations in terms of cybersecurity particularly complex.

The CNIL said the guide aims bringing local elected officials and territorial agents up to speed on cybersecurity obligations and potential liability. Specifically on obligations, the guidance outlines responsibilities related to data protection, local teleservice implementation, and health data storage and retention. This guide also recalls the different types of legal liability to which local authorities and their public establishments are exposed in the event of cyberattacks and/or damage related to administrative responsibility, civil liability, and criminal liability. ([More](#))

视频游戏发行商Outright Games同意纠正其被美国自律商业促进组织的儿童广告审查部门发现的违规行为

2022年7月6日，美国自律商业促进组织的儿童广告审查部门 (CARU) 发现，Bratz Total Fashion Makeover 应用程序的所有者和运营商 Outright Games 违反了《儿童在线隐私保护法》(COPPA) 和 CARU 关于广告和儿童在线隐私保护方面的自律指南。

CARU发现用户在 Outright Games 开发的 Bratz Makeover 应用程序上可以无限更改年龄，这将使得儿童保护措施无效，使 13 岁以下的儿童能够在应用内购买、与社交媒体互动并同意完成行为定位。该公司的隐私声明也被该部门发现存在不合规的问题。

CARU 建议 Outright Games 采取以下纠正措施：

- 提供中立且有效的年龄筛选方式，以便应用不会在未事先获得可验证的父母同意的情况下无意收集、使用或披露或与第三方共享 13 岁以下用户的个人信息。
- 就其儿童的信息收集和使用做法提供清晰易懂的通知。
- 停止过度和操纵性的广告投放方式。
- 对所有广告以清晰和明显的方式披露。
- 确保应用程序中任何退出广告的方法都清晰明确。
- 监测并确保广告的安全性及儿童的配适性。

Outright Games 加入了 CARU 的自我监管计划，并向 CARU 提交了详细的计划以纠正违反 COPPA 和 CARU 广告和隐私指南的行为。 ([查看更多](#))

Video Game Publisher Outright Games Agreed to Take Actions to Correct the Violations of COPPA and CARU's Advertising and Privacy Guidelines

On 6 July 2022, the Children's Advertising Review Unit (CARU) of BBB National Programs has found Outright Games, owner and operator of the Bratz Total Fashion Makeover app, in violation of the Children's Online Privacy Protection Act (COPPA) and CARU's Self-Regulatory Guidelines for Advertising and for Children's Online Privacy Protection.

CARU found users could change their age an unlimited amount on Outright Games' Bratz Makeover application, which could reverse intended protections and enable children under age 13 to make in-app purchases, interact with social media and agree to behavioral targeting. The company's privacy notices were also found to be out of compliance.

CARU recommended that Outright Games take the following corrective actions:

- Provide a neutral and effective age-screen so the app doesn't inadvertently collect, use or disclose, or share with third parties, personal information of users under age 13 without first obtaining verifiable parental consent.
- Provide clear and understandable notice of its children's information collection and use practices.
- Cease excessive and manipulative means of ad serving.
- Provide clear and conspicuous disclosures of all ads.

- Ensure any methods offered by the app to exit ads are clear and conspicuous.
- Monitor and ensure advertisements are safe and appropriate for children.

Outright Games participated in CARU's self-regulatory program and provided CARU with a detailed plan to remedy the concerns raised in the decision to comply with COPPA and CARU's Advertising and Privacy Guidelines. ([More](#))

万豪国际发生一起新的数据泄露事件

2022年7月7日，酒店集团万豪国际确认了一起数据泄露事件。该漏洞能够导致20GB的敏感个人信息被泄漏，包括客人的信用卡信息和其他保密信息。万豪国际在 2018 年曾遭遇严重的数据泄露事件，并因此被罚款。

此次事件据称发生在6月，当时一个不知名黑客组织声称他们使用社会工程欺骗了万豪酒店于马里兰州的一名员工，使黑客能够访问他们的电脑。万豪公司发言人认为，攻击者无法访问万豪的核心网络。该公司表示正准备将此事通知给有关个人，并已将相关情况通知给有关执法机构。 ([查看更多](#))

Marriott International Suffered a New Data Breach

On 7 July 2022 hotel group Marriott International has confirmed data breach. The breach was able to exfiltrate 20 GB sensitive personal information, including guests' credit card information and other confidential information. Marriott International was breached in 2018 and was fined due to the incident.

The incident is said to have happened in June when an unnamed hacking group claimed they used social engineering to trick an employee at a Marriott hotel in Maryland into giving them access to their computer. The spokesperson of the company believed the threat actor did not gain access to Marriott's core network. The company said it is preparing to notify individuals regarding the incident and has notified relevant law enforcement agencies. ([More](#))

知识产权 Intellectual Property

海南自贸港成功实施首单专利开放许可交易

日前，海南核电有限公司、西安热工研究院有限公司共有的发明专利“提高钎焊司太立合金抗水蚀性能的激光熔覆涂层及制备方法”在海南国际知识产权交易所（海知所）专利开放许可交易平台达成许可交易，这是海南自贸港成功实施的首单专利开放许可交易。

海知所国际业务部负责人表示，积极开展专利开放许可试点工作，通过平台达成的开放许可交易不仅能够提高交易效率，而且可以保障资金安全。后续该所将继续探索知识产权运营新模式，促进全国乃至全球高价值专利技术入场转化，助力海南打造成为具有全球影响力知识产权集散地和定价中心。

来源：海南日报

Hainan Free Trade Port Successfully Carried Out Its First Patent Open Licensing Transaction

Recently, the patent invention of Hainan Nuclear Power Co., LTD., and Xian Thermal Research Institute Co., LTD., reached a licensing transaction on the patent open licensing on the trading platform of IP International Exchange of Hainan. This is the first successful patent open licensing transaction in Hainan free trade port.

International Business Department of IP International Exchange of Hainan said that actively carrying out the pilot work of patent opening license and the open license transaction through the platform can not only improve the transaction efficiency, but also guarantee the security of funds. In the future, the institute will continue to explore a new mode of IPR operation, promote the entrance and transformation of high-value patented technologies nationwide and globally, and help Hainan become an IPR distribution center and pricing center with global influence.

Source: Hainan Daily

最高院：假冒他人专利适用侵权责任法一般规定确定损害赔偿数额

近日，最高人民法院对嘉兴捷顺旅游制品有限公司（捷顺公司）与姚魁君等假冒他人专利纠纷案作出二审判决，判决维持原判，此前，一审判决被告赔偿经济损失及合理费用10万元。

本案中，原告捷顺公司是专利号为201420624020.1、名称为“一种自挤水平板拖把”实用新型专利的专利权人，被告姚魁君在其经营的拼多多店铺的产品页面标注“专利产品防伪必究”“自挤水平板拖把专利号201420624020.1”等字样，构成假冒他人专利。

关于赔偿数额，最高院认为，假冒他人专利未实施专利技术方案，属于侵害专利标识权，不宜适用专利法关于侵害专利权的规定计算侵权损害赔偿数额，而应根据民法关于侵权损害赔偿的一般规定，综合案件具体情况酌情确定赔偿数额，最终法院判决被告被告赔偿总额为10万元。

来源：最高人民法院

SPC: Patent Counterfeiting shall be Applied General Provisions of Civil Law on Tort Damages to Determine the Amount of Damages

Recently, the Supreme People's Court (SPC) made a judgment on the dispute over patent counterfeiting between Jiaxing Jieshun Tourism Products Co., LTD (Jieshun Company) and Yao Kuijun, upholding the first instance judgment, which ordered the defendant to pay damages of RMB 100,000.

In this case, the plaintiff Jieshun Company is the patentee of the utility model patent with the patent number of 201420624020.1 with name of "a self-extruding horizontal plate mop". The defendant Yao Kuijun marked "Patented product anti-counterfeiting" and "Self-extruding horizontal plate mop with patent number 201420624020.1" on the product pages of the Pinduoduo store he operated, which constituted patent counterfeiting.

About the damages, the court held that counterfeiting patent without implementing the patent technology solutions, is an infringement of the mark of patent, rather than infringement on patent. In respect of calculation of the amount of damages, therefore, it shall be determined in accordance with the regula-

tion of Civil Law on tort damages. Taking into account the specific circumstances of the case, the court ultimately awarded the defendant damages of RMB 100,000.

Source: SPC

网店变造“华为”商标并伪造授权证书，适用两倍惩罚性判赔500万

近日，杭州市中级人民法院审结华为技术有限公司与深圳尚派科技公司侵害商标权及不正当竞争纠纷案，判决被告停止侵权，赔偿经济损失500万元。

本案中，法院认为，被诉侵权产品为手机稳定器云台，与华为注册商标核定使用的智能手机、摄像头等属于类似商品，被告在其经营的店铺中将“华为”设置为产品搜索关键词，且在产品展示图中突出使用“华为”“”标识，同时，在店铺中宣传图中使用对华为公司“”商标花瓣数量和英文字符作了部分变造的标识“”，此外，该店铺在销售页面展示虚假的华为网络渠道销售授权书，构成对华为公司注册商标专用权的侵犯。

法院综合考虑被告销售金额（总计9173730.64元）、利润率（28.2%）、商标贡献率（80%）、主观恶性、侵权广度、侵权规模等因素，认定被告故意侵害商标权且情节严重，应当适用惩罚性赔偿，法院以侵权获利为基数（2069593.63元），适用2倍惩罚性赔偿，计算赔偿总额为6208780.90元，已超过原告诉讼请求金额，故对法院对原告华为公司提出的赔偿数额予以全额支持。

来源：杭州市中级人民法院

Altering the Trademark of "Huawei" and Forging the Authorization Certificate: The Court Applied 2 Times Punitive Damages and Awarded Damages of RMB 5 million

Recently, Hangzhou Intermediate People's Court made a judgment on the dispute over trademark infringement and unfair competition between Huawei Technologies Co., Ltd. and Shenzhen Shangpai Technology Co., Ltd., ordering the defendant to stop infringement and pay damages of RMB 5 million.

In this case, the court held that the infringing products mobile phone stabilizer gimbal constituted the similar products as the smart phones and cameras, which are approved for use by Huawei's registered trademarks.

The defendant set "Huawei" as the products search keyword in the store he operated, and prominently use the logo of "Huawei" "" in the product display pictures. And the logo "", which partially altered the number of petals and English characters of Huawei's "" trademark, was used in the promotional pictures of the store. In addition, the store displayed the fake Huawei network channel sales authorization on the sales page, the above acts constituted trademark infringement.

The court comprehensively considered the defendant's sales amount (RMB 9,173,730.64), profit rate (28.2%), trademark contribution rate (80%), malice, scale of infringement and other factors, and held that the defendant intentionally infringed trademark rights and the circumstances were serious, and punitive damages shall be applied. The court took the infringement profit as the base (RMB 2069593.63), and applies 2 times punitive damages. The calculated damages was amounting to RMB 6,208,780.90,

which exceeded the amount of the plaintiff's claim. Therefore, the court fully support the plaintiff's claim of RMB 5 million.

Source: Hangzhou Intermediate People's Court

《我不是药神》使用他人摄影作品被判侵权，赔偿2万

近日，北京市朝阳区人民法院对张列白与北京坏猴子文化产业发展有限公司著作权侵权纠纷一案作出判决，判决被告停止侵权，赔偿经济损失2万元。

本案中，被告未经许可，在电影《我不是药神》（涉案电影）中使用了原告拍摄的印度新德里建筑物照片（涉案作品），该作品在电影中出现的镜头时长为2秒，约占画面六分之一。法院审理认为，涉案电影中使用的照片与原告涉案作品画面结构、色彩、拍摄角度、光影基本一致，被诉行为侵害了原告对涉案作品享有的复制权、信息网络传播权、署名权，且涉案电影完整地展示了涉案作品，但并未对涉案作品本身进行介绍和评论，也未引用涉案作品说明其他问题，故被告提出的合理使用抗辩不能成立。

来源：北京市朝阳区人民法院

Dying to Survive Was Awarded RMB 20,000 in Damages for Using Other People's Photographic works

Recently, Beijing Chaoyang District People's Court made a judgment on the dispute over copyright infringement between Zhang Liebai and Beijing Bad Monkey Culture Industry Development Co., ordering the defendant to stop the infringement and pay damages of RMB 20,000.

In this case, the defendant used the plaintiff's photographic works of a building in New Delhi, India in the film Dying to Survive, which appeared for 2 seconds, accounting for about 1/6 of the frame. The court held that the photo in the film was basically the same as the plaintiff's in terms of frame structure, color, shooting angle, light and shadow. The defendant's act infringed the plaintiff's reproduction right, information network transmission right, authorship right, and the film directly and completely displayed the photo, but did not introduce and comment on the photo itself, and did not quote the photo to explain other issues, so the defendant's fair use defense cannot be established.

Source: Beijing Chaoyang District People's Court

英国知识产权局：将扩大数据挖掘版权例外的适用范围

6月28日，英国知识产权局（UKIPO）宣布，在审查人工智能政策后，英国将扩大数据挖掘版权例外的适用范围。

2021年10月至2022年1月期间，UKIPO 对知识产权和人工智能问题进行了磋商，在公布磋商结果时确认了上述政策。知识产权政策的最大变化将是扩大数据挖掘的版权例外，数据挖掘是一个使用软件分析数据的过程，包括用于训练人工智能。英国政府计划任何合法访问受版权保护的材料的人都可以在没有版权所有者进一步许可的情况下进行数据分析。版权所有者仍然可以控制对其数据的访问，但不能出于数据挖掘目的向相关方收取额外费用。对受版权保护的材料

进行数据挖掘在英国已经是合法的，但仅限于非商业用途，这意味着当前的例外不适用于许多人工智能程序的训练。

科学与创新部长乔治弗里曼表示，英国的版权框架将成为世界上对人工智能最友好的框架之一，他说“我们关于版权和数据挖掘的新规则将成为创新者蓬勃发展的催化剂，有助于确保英国的知识产权制度仍是突破性研发的强大推动力。”

来源：英国知识产权局

UK to Expand Data Mining Freedoms for AI

The UK will expand its data mining exception to copyright following a review of its artificial intelligence policies, the UKIPO announced, June 28. The UKIPO confirmed the policy as it published the results of its consultation, which ran from October 2021 to January 2022, on intellectual property and AI.

One of the biggest issues up for debate in the UK and internationally was whether IP offices should grant patents which list AI applications as the inventor. But the UKIPO has decided against any move in that direction and limited its most substantial policy changes to the field of copyright.

The biggest change in IP policy will be an expanded copyright exception for data mining, a process where software is used to analyse data, including for the purposes of training AI.

The government plans that anyone with lawful access to copyright-protected material will be able to carry out this analysis without further permission from the copyright owner. Copyright owners will still be able to control access to their data, but won't be able to charge interested parties extra for the purposes of mining. Data mining of copyrighted material is already legal in the UK but only for non-commercial use, meaning that the current exception doesn't apply for the training of many AI programs.

Science and innovation minister George Freeman said the UK's copyright framework would be one of the most AI-friendly in the world.

Source: UKIPO

欧盟普通法院驳回苹果对斯沃琪"Tick Different"口号侵犯商标权的上诉

欧盟普通法院驳回了苹果（Apple）对斯沃琪（Swatch）“Tick Different”商业宣传语的上诉，称其反对意见是基于对裁决的“误读”，故该公司的“Think Different”商标在该地区仍处于被撤销状态。

苹果和斯沃琪已经卷入了多起诉讼，两家公司都声称对方侵犯了自己的商标。持续时间最长的是“Tick Different”系列，苹果在2017年4月对其提起诉讼，后瑞士联邦行政法院于2019年裁定，苹果公司的“Think Different”口号在该地区的知名度不够。该案随后被提交给欧盟法院。法院并不反对苹果的标语具有显著性，但坚持认为这并不足以导致消费者会被“Tick Different”混淆。此外，苹果未能证明其商标在提起诉讼前的5年里“在相关商品上得到了真正的使

用”。苹果公司提交的关于该标语的使用比“相关期限早了10年以上”。故法院驳回了苹果的上诉请求。

来源: [Apple insider](#)

Apple Fails Bid to Get 'Think Different' Trademark Restored in EU

The EU's General Court has dismissed Apple's appeal over Swatch's "Tick Different" slogan, saying the objections are based on a "misreading" of the ruling, and the company's "Think Different" trademark remains revoked in the region.

Apple and Swatch have been involved in multiple court cases over with each company claiming the other is infringing on trademarks. The longest-running one concerned Swatch's "Tick Different" line, which Apple sued over in April 2017.

Switzerland's Federal Administrative court finally ruled in 2019 that Apple's "Think Different" slogan was not sufficiently well known in the region. Apple had been required to show that at least 50% of Swiss people associated "Think Different" with Apple, and the court ruled that this hadn't been proved.

The case then went on to the Court of Justice of the European Union, the court did not disagree that Apple's slogan was distinctive, it instead maintained that this wasn't sufficient to mean consumers would be confused by "Tick Different."

The ruling was also based on how Apple had failed to prove that its trademark "had been put to genuine use for the goods concerned" during the five years before the lawsuit was filed. Apple's submissions around the use of the phrase predated "the relevant period by over 10 years."

Source: [Apple insider](#)

95年版权保护期临近，迪士尼或将失去米老鼠形象专有权

根据美国版权法规定，艺术作品的版权保护期为95年，即从2024年开始，米老鼠将自动进入公共领域。

米老鼠第一次出现时，美国版权保护期限为56年。后1976年的《版权法》将保护期限延长至75年。1998年，迪士尼通过游说，要求进一步延长版权保护期限，将保护期限延长到95年。

目前尚还不清楚迪士尼是否计划在2023年之前采取行动，以阻止米老鼠进入公共领域。一旦版权到期，这意味着人们可以自由地使用该卡通形象，无需向迪士尼支付版权费。

来源: 英国《卫报》

Mickey Mouse Could Soon Leave Disney As 95-Year Copyright Expiry Nears

Mickey will be for the public domain in 2024, following U.S. copyright laws that state intellectual property on artistic work expires at the 95-year mark. When Mickey Mouse first appeared, Disney's copyright was protected for 56 years. The company supported the Copyright Act of 1976 which extended protections for 75 years. In 1998, Disney lobbied for a further extension. It is unclear whether the entertainment giant plans to make another move before 2023 to prevent Mickey from being moved into the public domain. Once copyright expires, anyone wishing to use characters from everyone's favorite rodent will not have to request permission or pay copyright charge.

Source: [The Guardian](#)

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