



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No. **127**

2020.03

立方网络安全与数据合规周报

Weekly Cybersecurity and Data Protection Review

国内要闻 Domestic News

信安标委发布《网络安全标准实践指南—移动互联网应用程序（App）

NISSTC Releases the *Practice Guidelines for Cybersecurity Standards—Self-assessment Guidelines for Collecting Personal Information in Mobile Internet Applications (Exposure Draft)*

工信部印发《中小企业数字化赋能专项行动方案》

MIIT Publishes the *Special Action Plan for Digital Empowerment of SMEs*

天津市疫情防控App专项治理情况通报

Tianjin CAC Issues the First Report on the Rectification of COVID-19 Prevention APPs

京沪两地50余万条学生信息遭倒卖，上海地方检察院发起公益诉讼，当庭获判

A District Procuratorate in Shanghai Institutes Public Interest Litigation for Infringing on Personal Information

海外动态 Overseas News

欧洲数据保护委员会发布关于新冠肺炎疫情下处理个人数据的声明

EDPB Issues the Statement on the Processing of Personal Data in the Context of the COVID-19 Outbreak

国内要闻 Domestic News

信安标委发布《网络安全标准实践指南—移动互联网应用程序（App）收集使用个人信息自评估指南（征求意见稿）》

2020年3月19日，全国信息安全标准化技术委员会（“信安标委”）发布《网络安全标准实践指南—移动互联网应用程序（App）收集使用个人信息自评估指南（征求意见稿）》（“《指南》”），向社会公开征求意见。《指南》在《App违法违规收集使用个人信息自评估指南》的基础上，依据《网络安全法》等法律法规要求，参照《App违法违规收集使用个人信息行为认定方法》和相关国家标准，结合目前实务发展，归纳总结出了APP收集使用个人信息的六个评估点：（1）是否公开收集使用个人信息的规则；（2）是否明示收集使用个人信息的目的、方式、范围；（3）收集使用个人信息是否征得用户同意；（4）是否遵循必要原则，仅收集与提供的服务直接相关的个人信息；（5）是否未经同意向他人提供个人信息；（6）是否按法律规定提供删除或更正个人信息功能，或公布投诉、举报方式等信息。（[查看更多](#)）

NISSTC Releases the Practice Guidelines for Cybersecurity Standards—Self-assessment Guidelines for Collecting Personal Information in Mobile Internet Applications (Exposure Draft)

On March 19, 2020, the National Information Security Standardization Technical Committee (“NISSTC”) released the *Practice Guidelines for Cybersecurity Standards—Self-assessment Guidelines for Collecting Personal Information in Mobile Internet Applications (Exposure Draft)* (“**Guidelines**”) to solicit opinions from the public. Based on increasing practical experience and in accordance with the requirements of laws and regulations such as the *Guide to the Self-Assessment of Illegal Collection and Use of Personal Information by Apps*, the *Cybersecurity Law of the People’s Republic of China*, and the *Method for Identifying the Illegal Collection and Use of Personal Information by Apps* and other national standards, the *Guidelines* provides six aspects to be assessed in collecting personal information in APPs: (1) whether to publicly disclose rules regarding the collection and use of personal information; (2) whether to clearly indicate the purposes, methods and scopes of the collection; (3) whether to obtain the consents of users before collection; (4) whether to comply with the principle of necessity only to collect personal information related to the services provided; (5) whether to provide personal information to others without consent; (6) whether to provide the function of deleting or correcting personal information in accordance with laws or to publish the channels for complaints and whistleblowing reports. ([More](#))

工信部印发《中小企业数字化赋能专项行动方案》

2020年3月19日，工业和信息化部（“工信部”）印发《中小企业数字化赋能专项行动方案》（“《方案》”），以数字化赋能中小企业，助力疫情防控、复工复产和可持续发展。《方案》将加强网络和数据安全保障作为重点任务之一，提出要推动中小企业落实《网络安全法》等法律法规和技术标准的要求，强化网络与数据安全保障措施，建设工业互联网安全公共服务

平台，面向广大中小企业提供网络和数据安全技术支持服务，鼓励安全服务商创新安全服务模式，提升安全服务供给能力，为中小企业量身定制全天候、全方位、立体化的安全解决方案。

([查看更多](#))

MIIT Publishes the Special Action Plan for Digital Empowerment of SMEs

On March 19, 2020, the Ministry of Industry and Information Technology of China (“MIIT”) published the *Special Action Plan for Digital Empowerment of Small and Medium Enterprises* (“SMEs”) (“Plan”) to enhance the digital capabilities of SMEs to cope with COVID-19 preventions, resume production and maintain business growth. To strengthen cybersecurity and data protection of SMEs is one of the main tasks under the Plan. The Plan proposes that SMEs shall implement the requirements under the *Cybersecurity law* and other laws, regulations and technical standards. It further points out that it is important to build public service platform providing support services of cybersecurity and data protection for SMEs, encourage security service providers to develop innovative security service model and improve security service supply capacity, and finally provide customized and comprehensive security solutions for SMEs. ([More](#))

天津市疫情防控App专项治理情况通报

2020年3月16日，天津市互联网信息办公室（“天津市网信办”）发布第一期疫情防控APP专项治理情况通报。自3月9日开展专项治理以来，天津市网信办对网民举报的疫情防控APP（含小程序、网页工具等）进行评估和检测。经评估，发现7款App存在的违法违规收集使用个人信息问题。问题主要涉及在小程序中无法找到隐私政策，在收集用户个人信息时未同步告知使用目的、方式、范围，以及未按法律规定提供删除或更正个人信息功能、或未公布投诉、举报方式等。（[查看更多](#)）

Tianjin CAC Issues the First Report on the Rectification of COVID-19 Prevention APPs

On March 16, 2020, the Cyberspace Administration of Tianjin (“Tianjin CAC”) issued the first Report on the Rectification of COVID-19 Prevention APPs. Since March 9, when the special campaign of rectification was carried out, the Tianjin CAC has evaluated and tested the COVID-19 prevention APPs (including applets, web tools, etc.) reported by netizens. After evaluation, it was found that 7 apps conducted illegal collection and use of personal information. The issues mainly include the lack of privacy policy in Apps, the failure to notify users of the purpose, methods and scope of collection and use of personal information, and the failure to provide the function of deleting or correcting personal information in accordance with laws, or the failure to publish the channels for complaints and whistleblowing reports. ([More](#))

京沪两地50余万条学生信息遭倒卖，上海地方检察院发起公益诉讼，当庭获判

2020年3月12日，上海市虹口区检察院以侵犯公民个人信息罪对三名教育培训机构从业人员提起刑事附带民事公益诉讼。案件在上海市虹口区法院开庭审理并当庭获判。该案件涉及京沪两地

50余万条学生个人信息遭倒卖交换，最终判决支持检察机关作为公益诉讼起诉人提出的包括民事公益诉讼赔偿在内的全部诉讼请求，三名被告人除承担相应刑事责任外，还被责令要求在国家级新闻媒体上公开赔礼道歉以及承担民事赔偿责任。这也是上海市检察院集中组织通过公益诉讼加强公民信息保护的系列案件。（[查看更多](#)）

A District Procuratorate in Shanghai Institutes Public Interest Litigation for Infringing on Personal Information

On March 12, 2020, the People's Procuratorate of Hongkou District of Shanghai filed a merger of action in criminal prosecution, also a public interest suit, against the accused, three employees of education and training organizations for the crime of infringing upon citizens' personal information. The Hongkou District People's Court heard the case and pronounced judgment in court. More than 500,000 students' personal information was resold and exchanged in Beijing and Shanghai in this case. The final judgment supported all claims, including civil compensation liability, brought by the procuratorate as a public interest litigation prosecutor. In addition to assuming corresponding criminal responsibility, the three defendants were also required to make a public apology on national news media and paying compensation for damages.

This was also one of a series of public interest litigations instituted by Shanghai procuratorate to strengthen citizens' information protection. ([More](#))

海外动态 Overseas News

欧洲数据保护委员会发布关于新冠肺炎疫情下处理个人数据的声明

2020年3月16日，欧洲数据保护委员会（European Data Protection Board, “EDPB”）主席Andrea Jelinek发表了《关于在新冠肺炎疫情期间处理个人数据的声明》（“《声明》”）。《声明》指出包括《通用数据保护条例》（*General Data Protection Regulation*, “GDPR”）在内的欧盟数据保护规则，与对抗新冠肺炎疫情所采取的措施并不冲突。即使在这样的特殊时期，仍需确保个人信息处理的合法化。

首先，GDPR为雇主和公共卫生主管部门能够在疫情期间不需要征得数据主体同意的情况下处理个人数据提供了若干法律依据。这适用于雇主出于公共卫生领域的公共利益考虑、保护重大利益（GDPR第六条、第九条）或遵守其他法律义务的情况。

就电子通讯数据（如手机位置数据）处理问题，《电子隐私法令》（*ePrivacy Directive*）规定只有在匿名处理或征得数据主体同意的情况下，运营者才能够使用位置数据。执法机构应以匿名化处理数据的方式生成关于某一地点移动设备集中度报告。

当数据无法进行匿名化处理的情况下，《电子隐私法令》赋予了欧盟成员国为保护国家和公共安全的紧急立法权。如果采取此类措施，成员国有义务采取适当的保障措施，如赋予个人司法救济权。（[查看更多](#)）

EDPB Issues the Statement on the Processing of Personal Data in the Context of the COVID-19 Outbreak

On March 16, 2020, Andrea Jelinek, Chair of the European Data Protection Board (“EDPB”) issued the Statement on the Processing of Personal Data in the Context of the COVID-19 Outbreak (“Statement”). He said that data protection rules (such as *General Data Protection Regulation* (“GDPR”)) did not hinder measures taken in the fight against the coronavirus pandemic. Even in these exceptional times, a number of considerations should be taken into account to guarantee the lawful processing of personal data.

The *GDPR* provides for the legal grounds to enable the employers and the competent public health authorities to process personal data in the context of epidemics, without the need to obtain the consent of the data subject. This applies for instance when the processing of personal data is necessary for the employers for reasons of public interest in the area of public health or to protect vital interests (Art. 6 and 9 of the *GDPR*) or to comply with another legal obligation.

For the processing of electronic communication data, such as mobile location data, additional rules apply. The national laws implementing the *ePrivacy Directive* provide for the principle that the location data can only be used by the operator when they are made anonymous, or with the consent of the individuals. The public authorities should first aim for the processing of location data in an anonymous way. This could enable to generate reports on the concentration of mobile devices at a certain location.

When it is not possible to only process anonymous data, Art. 15 of the *ePrivacy Directive* enables the member states to introduce legislative measures pursuing national security and public security. If such measures are introduced, a Member State is obliged to put in place adequate safeguards, such as granting individuals the right to judicial remedy. ([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。



This Newsletter has been prepared for clients and professional associates of Lifang & Partners. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.





Subscribe to our WeChat community

扫码关注公众号“立方律师事务所”和“竞争法视界”

北京 | 上海 | 武汉 | 广州 | 深圳 | 韩国
Beijing | Shanghai | Wuhan | Guangzhou | Shenzhen | Korea

 www.lifanglaw.com
 Email: info@lifanglaw.com

 Tel: +8610 64096099
 Fax: +8610 64096260/64096261