



NEWSLETTER

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2021.09

立方要闻周报

Weekly News By Lifang & Partners

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Several Policies and Measures for Shanghai to Promote Urban Digital Transformation Put into Effect

浙江省关于萌菌大作战等85款App违法违规收集使用个人信息情况的通报

Zhejiang Notifies 85 Apps Illegally Collecting and Using PI

重庆新东方教培机构因非法收集、使用消费者信息被罚

Chongqing New Oriental Education and Training Institution Fined for Illegally Collecting and Using Consumers' Information

“颜值检测”软件实为窃取用户照片 开发者被判有期徒刑三年

One Sentenced to Three Years in Prison for Using the “Facial Attractiveness Detection” Software to Steal Users' Photos

爱尔兰对WhatsApp违反GDPR透明度义务行为罚款2.25亿欧元



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IE DPA Fines WhatsApp € 225 Million for Violations of GDPR Transparency Obligations

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Facebook、Twitter和WhatsApp三社交媒体巨头因违反数据本地化在俄被罚

Facebook, Twitter and WhatsApp Fined in Russia for Violations of Data Localization

知识产权 Intellectual Property

《市场监督管理严重违法失信名单管理办法》9月1日起实施

《市场监督管理严重违法失信名单管理办法》自2021年9月1日起施行。《办法》明确：侵犯商业秘密、商业诋毁、组织虚假交易等严重破坏公平竞争秩序的不正当竞争行为；故意侵犯知识产权；提交非正常专利申请、恶意商标注册申请损害社会公共利益；从事严重违法专利、商标代理行为，情节严重的，将列入严重违法失信名单。

来源：[国家市场监督管理总局](#)

Measures for the Administration of The List of Serious Law-breaking and Trust-breaking for market supervision and administration will come into force on September 1

Measures for the Administration of the List of Serious Violations and Trust-breaking in Market Supervision and Administration, will come into force on September 1, 2021. The Measures stipulates that: infringement of trade secrets, commercial slander, organization of false transactions and other acts of unfair competition that seriously undermine the order of fair competition, willful infringement of intellectual property rights, filing abnormal patent applications and malicious trademark registration applications damages social and public interests, those who engage in acts of seriously violating patent or trademark agency, if the circumstances are serious, shall be listed in the list of seriously violating law and trust-breaking.

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

Intel第三次无效中科院微电子所FinFET核心专利的申请被驳回

9月3日，国家知识产权局发出第51731号复审决定，裁定由英特尔（中国）有限公司于2020年12月4日提出的，针对中国科学院微电子研究所的发明名称为“半导体器件及其制作方法、及半导体鳍制作方法”的ZL201110240931.5号发明专利的无效宣告申请，维持专利权有效。据悉，这已经是英特尔针对中国科学院微电子研究所该项专利提出的第三次无效宣告申请。

来源：[国家知识产权局](#)

Intel's third invalidation application against FinFET core patent of Institute of Microelectronics of The Chinese Academy of Sciences was rejected

On September 3, China National Intellectual Property Administration issued a review decision No. 51731, it was ruled that the application for invalidation of invention patent NO. ZL201110240931.5, which was filed by Intel (China) Co., Ltd. on December 4, 2020, for the invention named "semiconductor device and fabrication Method, and fabrication method of semiconductor fin" of Institute Of Microelectronics Of The Chinese Academy Of Sciences, was maintained to be valid. It is reported that this is already the third invalidation of the patent filed by Intel.

Source: [China National Intellectual Property Administration](#)

最高院在OPPO夏普案终裁明确中国具有SEP全球费率管辖权

2021年8月19日，最高人民法院知识产权法庭就上诉人夏普株式会社、赛恩倍吉日本株式会社与被上诉人OPPO广东移动通信有限公司、OPPO广东移动通信有限公司深圳分公司标准必要专利许可纠纷管辖权异议一案作出终审裁定，驳回夏普株式会社、赛恩倍吉日本株式会社的上诉请求。

最高法院知识产权法庭在该裁定中明确了“适当联系”的判断标准，并指出当事人之间的管辖合意并非特定法院就标准必要专利全球许可条件进行管辖和处理的必要条件。在当事人具备达成全球许可的意愿且案件与中国法院具有更密切联系的情况下，中国法院适宜对涉案标准必要专利在全球范围内的许可条件作出裁决。这是我国最高司法机关首次在标准必要专利诉讼中，明确中国法院具有对全球FRAND许可条件的管辖权。

来源：[知产财经](#)

The Supreme People's Court of China final ruled in the OPPO v. Sharp case clarified that China has global jurisdiction over SEP rates

In the appeal of jurisdiction objection in the standard essential Patent Licensing dispute between Sharp, Scienbizip Japan and OPPO Guangdong Mobile Communication Co., LTD, Shenzhen branch, The Supreme Court made a final ruling rejecting the appeal requests of Sharp and Scienbizip Japan.

The Court clarified the criteria for "proper connection" and noted that jurisdictional agreement between the parties was not a requirement condition for a particular court to have jurisdiction over and deal with a global license to a standard essential patent. It is appropriate for Chinese courts to rule on global licensing conditions for the standard essential patents involved, provided that the parties are willing to reach global licensing and the case has closer links with Chinese courts. This is the first time that China's top judicial authority has made it clear that Chinese courts have jurisdiction over global FRAND licensing conditions in standard essential patent litigation.

Source: [IP Economy](#)

宝马中国斥资16.33亿元收购华晨“中华”品牌

8月31日上午，华晨集团等12家企业实质合并重整案召开了第二次债权人大会，包括宝马中国收购“中华”汽车品牌等三项议案在会上已经全部通过。据悉，宝马中国将以16.33亿元人民币收购“中华”汽车品牌。公开资料显示，截至2020年11月20日，“中华”汽车品牌生产相关部分资产为12.33亿元。

来源：[知产财经](#)

BMW China will purchase Brilliance's Zhonghua brand for RMB 1.633 billion

On the morning of August 31st, the second creditors' meeting was held on the substantive merger and reorganization plan of 12 enterprises including Brilliance Group. All three proposals, including BMW China's acquisition of "China" automobile brand, were passed at the meeting. It is reported that BMW

China will acquire zhonghua automobile brand for RMB 1.633 billion. Public information shows that as of November 20, 2020, the assets related to the production of "Zhonghua" automobile brand amounted to RMB 1.233 billion.

Source: IP Economy

虎牙直播被诉商标侵权，一审判决驳回原告全部诉讼请求

2020年10月，杭州虎牙广告有限公司（以下简称“杭州虎牙”）以商标侵权为由将国内知名直播平台虎牙直播的运营主体广州市虎牙信息科技有限公司（以下简称“广州虎牙”）诉至杭州市滨江区人民法院，并向法院提出行为保全申请。2021年1月，滨江法院裁定驳回该行为保全申请。近日，滨江法院作出一审判决，判决认定被告广州虎牙通过网络直播进行的在线推销服务与第35类“广告策划”服务不属于类似服务，且“虎牙直播”等被诉标识在呼叫方式和含义上与原告“虎牙”商标未构成近似，广州虎牙的行为不构成侵权，驳回了原告杭州虎牙的全部诉讼请求。

来源：知产力

Huya streaming platform was accused of trademark infringement, the court rejected all the plaintiff's claims in the first instance

In October 2020, Hangzhou Huya Company filed a lawsuit with The Binjiang District People's Court of Hangzhou against Guangzhou Huya Company, the operating subject of huya Live, a well-known live streaming platform, for trademark infringement, and applied to the court for behavior preservation. In January 2021, binjiang Court rejected the application for preservation. Recently, the court of first instance rejected Hangzhou Huya's lawsuit request. The reason is that the online marketing service provided by the defendant Guangzhou Huya through network broadcasting is not similar to the category 35 "advertising planning" service, and the accused logos such as "Huya Live Broadcasting" are not similar to the plaintiff's "Huya" trademark in terms of calling mode and meaning.

Source: IPhouse

新百伦公司诉国知局“New bunren”商标权无效宣告案，法院二审驳回其上诉请求

新平衡体育运动公司针对新百伦（中国）体育用品有限公司注册的第7976197号“New bunren”商标向国家知识产权局提起无效宣告申请，国知局裁定“New bunren”商标构成对新平衡公司驰名商标“NEW BALANCE”的抄袭、摹仿，违反了2001年商标法第十三条第二款的规定，予以无效宣告。新百伦公司不服该裁定，向北京知识产权法院提起行政诉讼，一审法院驳回其诉讼请求。近日，北京市高级人民法院针对本案作出二审判决，驳回新百伦公司的上诉请求，维持原判。

来源：知产宝

New Bunren company v. China National Intellectual Property Administration invalidation of the trademark right of "New Bunren", the court rejected its appeal in the second instance

New Balance Sports Company filed an application for invalidation of the trademark "New Bunren" registered by New BALANCE (China) Sporting Goods Co., LTD., no. 7976197, and the China National Intellectual Property Administration ruled that the trademark "New Bunren" constituted a copy of the famous trademark "New BALANCE " of New BALANCE, and violated the provisions of the Second paragraph of Article 13 of the Trademark Law of 2001, so it was declared invalid. New Balance filed an administrative lawsuit with the Beijing Intellectual Property Court, and the first-instance court rejected its claim. Recently, the Beijing High People's Court made a second judgment on the case, rejecting New Balance's appeal and upholding the original judgment.

Source: IPhouse

宁波博威价值1.69亿商业秘密被侵权案宣判

原告宁波博威合金材料股份有限公司系知名上市公司，2019年4月起，浙江某材料有限公司通过高薪利诱的方式，先后招募博威公司核心管理、技术人员共六人，借此获取博威公司的技术资料，并以博威公司的技术秘密为基础，在新公司进行类似项目论证，涉及的商业秘密虚拟许可价值合计1.69亿余元。鄞州区人民检察院依法向鄞州区人民法院提起公诉，法院经审理认定：六被告人以不正当手段获取权利人的商业秘密，造成特别严重后果，其行为均已构成侵犯商业秘密罪，依法判处六名被告人有期徒刑并处罚金。该案系宁波市迄今为止涉案金额最高的知识产权刑事案件。

来源：宁波鄞州法院

The judgment on the case of infringement of trade secrets in the value of RMB 169 million enjoyed by Ningbo Boway was made

Since April 2019, a Zhejiang material Co., Ltd. recruited six core management and technical personnel of Boway by the way of high salary to obtain the technical information of Boway and carry out new projects with the virtual license value of trade secrets involved totaling more than RMB 169 million. In this regard, Yinzhou District People's Procuratorate made a prosecution to Yinzhou District People's Court, the court determined that the six defendants obtained the business secrets of the right holders by improper means, which caused especially serious consequences and constituted the crime of infringing on business secrets, and sentenced the six defendants to fixed-term imprisonment and fine. The case is the largest criminal case involving intellectual property rights in Ningbo so far.

Source: Ningbo Yinzhou District People's Court

Linux二十年产权官司告终，IBM赔偿近亿元

8月30日下午，代表 SCO 公司的 TSG 集团与 IBM 达成了和解，承诺SCO 将放弃，并再也不会对 Linux 进行违反 Unix 或 Unixware 知识产权的指控。同时，IBM 也将支付 1425 万美金

(折合人民币 9217 万元)，作为对 SCO 的全部赔偿，这起近二十年的知识产权官司告一段落。

来源: ZD Net

Linux lawsuit: 20 years later, SCO vs IBM may finally be ending

On the afternoon of August 30, TSG Group, representing SCO, reached a settlement with IBM, promising that SCO would drop and never again claim that Linux violated Unix or Unixware intellectual property rights. IBM will also pay \$14.25 million (RMB 92.17 million) in full compensation to SCO, which brought to an end to this nearly two decades of intellectual property litigation.

Source: ZD Net

美国第十巡回法院称《兰哈姆法》适用于外国活动

8月24日，针对地方法院有关《兰哈姆法》适用于外国销售活动的判决，美国第十巡回上诉法院作出部分维持决定，维持了被告向原告支付1.13亿美元赔偿金的判决。对于被告辩称美国《兰哈姆法》不具备适用于海外活动的域外法权，第十巡回法院对此不予认可，认为该地区法院根据《联邦民事诉讼规则》对Fuchs和ABI拥有属人管辖权的认定是正确的。

来源: ManagingIP

US Tenth Circuit claimed Lanham Act applies to foreign activity

On August 24, US Court of Appeals for the Tenth Circuit upheld the \$113 million damages awarded to plaintiffs in response to a District Court decision that the Lanham Act applied to foreign sales activities. The 10th Circuit rejected the defendant's argument that the United States Lanham Act did not have extraterritorial jurisdiction to apply to overseas activities, holding that the District court was correct in holding that Fuchs and ABI had personal jurisdiction under the Federal Rules of Civil Procedure.

Source: ManagingIP

Facebook旗下平台因违反GDPR被罚款2.67亿美元

Facebook旗下即时聊天软件WhatsApp因在数据保护方面存在诸多问题，违反欧盟《一般数据保护条例》，近日被爱尔兰数据保护监管机构（DPC）处以创纪录的2.25亿欧元罚款。

来源: Cyber Threat Intelligence

DPC rendered WhatsApp GDPR fine of 267 million dollars

WhatsApp, the facebook-owned messaging service, has been fined a record €225m (267 million dollars) by Data Protection Commission for breaches of the European privacy laws and regulations recently.

Source: Cyber Threat Intelligence

竞争法 Overseas News

中宣部答记者问：平台反垄断一视同仁

2021年8月26日，中共中央宣传部发布《中国共产党的历史使命与行动价值》并答记者问。针对媒体提到的“中国政府的反垄断措施是对民营企业的管控收紧”，发言人表示，反垄断是市场经济国家通行的做法，是中国政府一项重要的常态化工作。对于加强互联网平台等大型科技企业的监管和防止垄断和资本无序扩张，中国坚持规范和发展并行。针对互联网平台企业的规范政策一视同仁，而不区别是国有企业、民营企业或是外资企业。（[查看更多](#)）

The Propaganda Department Answers the Press Expressing It Makes No Exception to the Platforms Anti-monopoly

On August 26, 2021, the Propaganda Department of the CPC Central Committee issued “*The Historical Mission and Action Value of the CPC of China*” and meets the press. In response to the statement that “the anti-monopoly measures in China are deliberately targeting the private enterprises” from media, the spokesman said that antitrust is a common practice in market economy countries and an important regular work of the Chinese government. It was also said that regulation and development should be followed at the same time for strengthening the supervision of large science and technology enterprises such as internet platforms and preventing monopoly and disorderly capital expansion. The regulations and laws targeting platforms are equally applicable only for violations, with no discrimination among state-owned enterprises, private enterprises and foreign-funded enterprises. ([More](#))

前市场监管总局局长：加强反垄断和反不正当竞争执法

2021年8月31日，前市场监督管理总局（“市场监管总局”）局长张茅表示，中共十八大以来，市场监管部门加大反垄断与反不正当竞争执法力度，旨在保障各类市场主体公平参与市场竞争，有力维护了公平竞争的市场环境。下一步要加强平台经济、高新技术、知识产权和医药、教育等重点领域竞争执法；完善高标准竞争法制规则；实施高质量竞争政策；提升竞争执法能力水平；加强对企业的合规引导。（[查看更多](#)）

The Former Director of SAMR: Strengthening Anti-monopoly and Anti-unfair Competition Enforcement

On August 31, 2021, at the CPPCC meeting, the former director of the State Administration for Market Regulation (“SAMR”), Zhang Mao, said that since the 18th CPC National Congress, Market Supervision Authorities have strengthened anti-monopoly and anti-unfair competition enforcement, aiming to ensure various market players can participate in market competition fairly, which effectively maintains the market environment of fair competition. The next step is to strengthen law enforcement in key areas such as platform economy, high-tech, intellectual property rights & medicine and education; improve high-standard competition legal rules; implement high-quality competition policies; improve the capability of law enforcement; and strengthen compliance guidance for enterprises. ([More](#))

《关于强化反垄断深入推进公平竞争政策实施的意见》通过

2021年8月30日，习近平总书记主持召开中央全面深化改革委员会第二十一次会议，审议通过了《关于强化反垄断深入推进公平竞争政策实施的意见》。习总书记强调，强化反垄断、深入推进公平竞争政策实施，是完善社会主义市场经济体制的内在要求。针对一些平台企业存在野蛮生长、无序扩张等突出问题，会加大反垄断监管力度。（[查看更多](#)）

Opinions on Strengthening Anti-monopoly and Further Promoting the Implementation of Fair Competition Policy Passed

On August 30, 2021, General Secretary Xi Jinping presided over the 21st meeting of the Central Committee for Comprehensively Deepening Reform, and the *Opinions on Strengthening Anti-Monopoly and Promoting Fair Competition Policy* was deliberated and passed. Xi stressed that strengthening anti-monopoly and deepening the implementation of fair competition policies are the inherent requirements for improving the socialist market economy system. For prominent problems such as brutal growth and disorderly expansion of some platform enterprises, China will intensify anti-monopoly supervision, investigate and punish monopoly and unfair competition of relevant platform enterprises in accordance with the law. ([More](#))

市场监管总局发布中国航空油料有限责任公司云南分公司滥用市场支配地位案行政处罚决定书

2021年8月31日，市场监管总局发布云南省市场监督管理局（“云南省市监局”）对中国航空油料有限责任公司云南分公司滥用市场支配地位案作出的行政处罚决定书。经调查，该公司在云南省内航空煤油供应和加注服务市场具有市场支配地位，其在正常收取航空煤油费用外再额外收取公路运输等第三方费用的行为违反了《反垄断法》，云南省市监局责令其停止违法行为并罚没共计234万余元。（[查看更多](#)）

SAMR Issues the Administrative Punishment Decision against Yunnan Branch of China Aviation Oil Co., Ltd.

On August 31, 2021, SAMR issued the administrative punishment decision made by Yunnan Administration for Market Regulation (“**Yunnan AMR**”) against the abuse of dominance by Yunnan Branch of China Aviation Oil Co., Ltd. After investigation, it was found that the company holds full dominance in the aviation kerosene supply and filling service market in Yunnan Province and its practice of charging additional third-party fees such as road transportation fees in addition to the normal charge of aviation kerosene is in violation of Article 17 of the *Anti-monopoly Law*. Therefore, Yunnan AMR ordered the company to stop illegal behavior, and totally fined and confiscated around CNY 2.34 million. ([More](#))

广东省市监局依法纠正深圳市交通运输局和交通警察局行政垄断行为

2021年8月27日，广东省市场监督管理局（“广东省市监局”）发布公告称其已建议深圳市人民政府责令深圳市交通运输局和深圳市公安局交通警察局停止行政垄断行为，废止或修改有关文件并消除相关后果。经查，2012年以来，深圳市交通运输局印发系列文件，违法增设行政许可，提高市场准入门槛限制外地经营者进入本地市场从事砂石渣土运输。2018年7月，深圳市交通警察局将建设工程运输车辆协会出具的车辆安全检查结果作为办理临时通行证的前置条件，提高市场准入门槛。（[查看更多](#)）

Guangdong AMR Corrects the Administrative Monopoly Behaviors of Shenzhen Municipal Transport Bureau and the Traffic Police Bureau

On August 24, 2021, the Administration for Market Regulation of Guangdong Province (“Guangdong AMR”) issued a notice stating that it had suggested Shenzhen Government requiring Shenzhen Municipal Transport Bureau and the Traffic Police Bureau of the Shenzhen Municipal Public Security Bureau to stop administrative monopoly behavior in the May of 2020, abolish or modify the relevant documents and eliminate the relevant consequences. After investigation, Shenzhen Municipal Transport Bureau had issued a series of documents since 2012, illegally adding administrative license, and restricted non-local operators to enter the local market to engage in sand and muck transportation. In the July of 2018, Shenzhen Municipal Traffic Police Bureau illegally authorized the vehicle safety inspection result issued by the industry association as a precondition for the pass, which raise the threshold for market entry. ([More](#))

CMA认定JD Sports与Footasylum的合并存在竞争担忧

2021年9月2日，英国竞争与市场管理局（“CMA”）发布临时报告，认为英国体育装备零售商JD Sports和Footasylum的合并会引发严重竞争担忧。此前，JD Sports曾就CMA对此合并作出的最终决定向竞争上诉法庭提出上诉，法庭将本案发回CMA复议。经评估，CMA认为在新冠疫情影响下，体育时尚产品的商业模式更侧重于线上零售，而JD Sports和Footasylum是最紧密的线上零售竞争者，二者的合并意味着消费者将面临更高的价格、更少的折扣和产品选择，合并还会减少公司用于改善用户服务的投资。（[查看更多](#)）

CMA Finds Competition Concerns Remain over the Merger Between JD Sports and Footasylum

On September 2, 2021, the Competition and Markets Authority (“CMA”) issued a provisionally report saying that it found the merger between JD Sports and Footasylum, the UK sports equipment retailers, would lead to competition concerns. Previously, JD Sports appealed to the Competition Appeal Tribunal, which remitted the case back to the CMA for reconsideration. After reconsideration, CMA alleges that the business model of sports fashion products focuses more on online retail under the impact of COVID-19, and JD Sports and Footasylum are close competitors, whose merger means customers could find themselves facing higher prices, fewer discounts and less choice of products in store. It could also result in the merged company investing less in improvements to customer service. ([More](#))

印度将对苹果滥用应用市场支配地位行为展开反垄断调查

2021年9月2日，据报道，苹果公司在印度遭控涉嫌滥用在应用程序市场中的支配地位，强迫开发者使用其自营的应用内购买系统。本案为印度一非营利组织提起，其认为苹果收取的高达30%的佣金通过提高APP开发者和用户的成本而损害了竞争，同时也成为市场进入壁垒。印度竞争委员会将对此案展开调查，并可能命令其调查部门进行更广泛的调查。（[查看更多](#)）

Apple Faces Antitrust Case in India for Abusing Dominant Position in the Apps Market

On September 2, 2021, it was reported that Apple Inc is facing an antitrust challenge in India for allegedly abusing its dominant position in the apps market by forcing developers to use its proprietary in-app purchase system. The Indian case was filed by a non-profit group which argues Apple's fee of up to 30 per cent hurts competition by raising costs for app developers and customers, while also acting as a barrier to market entry. The Competition Commission of India will review the case and could order its investigations arm to conduct a wider probe. ([More](#))

俄罗斯反垄断局向苹果发出警告

2021年8月30日，据报道，俄罗斯联邦反垄断局（“FAS”）向苹果发出警告，因其禁止其应用商店内的软件开发者告知购买者其他支付途径。此前，FAS收到IOS系统用户和相关开发者的申请，其中提到，有时先在卖家网站购买产品，再在苹果终端设备上登录账号使用APP更便宜，因为苹果对其应用商店中的每笔付款收取15%到30%的佣金，而苹果却禁止开发者告知用户在应用商店外购买的选项。上述行为限制了开发者独立性，并对竞争产生负面影响，最终可能导致产品价格上涨。FAS要求苹果在9月30日之前完成整改。（[查看更多](#)）

FAS Issues a Warning to Apple

On August 30, 2021, it is reported that the Federal Anti-monopoly Service of Russia (“FAS”) has issued a warning to Apple because the company prohibits software developers from informing buyers of applications in the App Store about alternative payment methods. Previously, the FAS received applications from users of devices based on iOS and application developers in this regard. Applicants note that in some cases it is cheaper to buy a product, such as an e-book, on the seller's website, and then start reading in the application on an iPhone or iPad, logging in under your account. This is due to the fact that Apple provides a commission from 15% to 30% on each payment in the App Store. But software developers cannot inform users about the possibility of purchases outside the App Store, according to Apple's rules. Practices above by Apple restricts developers in independent behavior, which negatively affects competition and may lead to an increase in prices for developers' products. The company must fulfill the rectification no later than September 30, 2021. ([More](#))

Booking.com因滥用行为被俄罗斯监管机构处罚约人民币1.13亿

2021年8月27日，据报道，俄罗斯联邦反垄断局表示已对在线旅行社Booking.com处以1750万美元（约合人民币1.13亿）罚款，因其滥用在俄罗斯服务提供市场中的支配地位。监管机构指控

这家位于阿姆斯特丹的在线旅行社施加了“提供和遵守平价”的义务，这意味着这些酒店无法在其他销售渠道以低于Booking.com的价格进行销售。这一行为损害了市场竞争并侵犯了酒店的利益。 ([查看更多](#))

Russia Fines Booking.com about CNY 113 Million for Abusing Dominant Position

On August 27, 2021, it is reported that the FAS said that it had imposed a fine of USD 17.5 million (about CNY 113 million) on Booking.com for abusing its dominant position in the Russian market for the provision of services. It accused the Amsterdam-based travel site of having imposed on hotels and hostels “the obligation to provide and comply with price parity”, which means that they could not price their services in other sales channels lower than on the Booking.com aggregator. The practice damaged the market competition and violated the interests of the hotels. ([More](#))

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

中消协支持重庆市消委会提起个人信息保护公益诉讼

2021年9月3日，中国消费者协会发布消息称对重庆市消费者权益保护委员会（“重庆市消委会”）就重庆扬启企业营销策划有限公司非法泄漏万名消费者个人信息提起的消费民事公益诉讼表示支持。被告公司通过其经营的公众号文章非法泄露了众多消费者个人信息，严重损害社会公共利益。该案于9月2日开庭审理，是重庆市首例消费民事公益诉讼案件，并由重庆市人民检察院第一分院支持诉讼。同时，本案以消费公益宣传活动补偿损失的诉求在消费民事公益诉讼领域也具有显著创新性。 ([查看更多](#))

CCA Supports the Consumer Civil Public Interest Litigation Filed by Chongqing CRPC

On September 3, 2021, the China Consumer Association (“CCA”) publicly expressed support for the consumer civil public interest litigation filed by the Chongqing Consumer Rights Protection Commission (“Chongqing CRPC”) on the illegal leakage of Chongqing Yangqi Enterprise Marketing Planning Co., Ltd. The defendant illegally leaked a lot of consumer personal information through its public account article, seriously infringing the social and public interests. The litigation, brought for trial on September 2 and supported by the First Branch of Chongqing Municipal People's Procuratorate, is the first consumer civil public interest litigation in Chongqing. At the same time, the appeal of compensating loss by conducting consumption public interest publicity activities is also significantly innovative in the field of consumer civil public interest litigation. ([More](#))

五部门联合约谈网约车平台，保障用户信息和数据安全

2021年9月1日上午，交通运输部会同中央网信办、工业和信息化部、公安部、国家市场监督管理总局等交通运输新业态协同监管部际联席会议成员单位，对美团出行、曹操出行、高德、滴滴出行等11家网约车平台公司进行联合约谈。约谈要求，各平台公司要严格落实用户信息和数据安全

全相关法律法规要求，认真履行个人信息保护责任，未经用户同意，不得向第三方提供用户个人信息。各平台公司在用户数据处理各个环节，要依法建立相关数据安全管理制度，采取必要的安全技术和管理措施。约谈强调，各平台公司应加快排查和整改，依法合规开展经营，促进网约车行业规范健康持续发展。（[查看更多](#)）

Five Departments Jointly Interview the Online Car-hailing Platforms to Ensure Users' Information and Data Security

On September 1, 2021, the Ministry of Transport, together with the Cyberspace Administration of China, the Ministry of Industry and Information Technology (“MIIT”), the Ministry of Public Security, the State Administration for Market Regulation and other member units of the Inter-ministerial Joint Conference on coordinated supervision of new forms of transportation, jointly held joint interviews with 11 online car-hailing platform companies including Meituan Travel, Caocao Travel, Gaud and Didi Travel. According to the interview requirements, all platform companies should strictly implement the relevant laws and regulations on users' information and data security, conscientiously fulfill the responsibility of personal information protection, and shall not provide users' personal information to third parties without consent; establish a relevant data security management system in accordance with the law, and take necessary security technology and management measures in each link of users' data processing. It is stressed that all platform companies should speed up the screening and rectification, carry out compliant operations legally, and promote the standardized, healthy and sustainable development of the online car-hailing industry. ([More](#))

工信部网络安全威胁和漏洞信息共享平台正式上线运行

2021年9月1日，工业和信息化部（“工信部”）网络安全管理局发布公告称，为落实《网络产品安全漏洞管理规定》（“《规定》”）有关要求，该局组织建设的工业和信息化部网络安全威胁和漏洞信息共享平台（“平台”）于2021年9月1日正式上线运行。根据《规定》，网络产品提供者应当及时向平台报送相关漏洞信息，鼓励漏洞收集平台和其他发现漏洞的组织或个人向平台报送漏洞信息。平台包括通用网络产品安全漏洞专业库、工业控制产品安全漏洞专业库、移动互联网APP产品安全漏洞专业库、车联网产品安全漏洞专业库等，支持开展网络产品安全漏洞技术评估，督促网络产品提供者及时修补和合理发布自身产品安全漏洞。（[查看更多](#)）

MIIT: the Cybersecurity Threat and Vulnerability Information Sharing Platform in Operation

On September 1, 2021, the Cybersecurity Bureau of the MIIT released a notice stating that, in order to implement the relevant requirements of the *Administrative Provisions on Security Vulnerabilities of Cyber Products* (“*Provisions*”), the cybersecurity threat and vulnerability information sharing platform (“*Platform*”) organized by the Bureau was officially put into operation on September 1, 2021. According to the *Provisions*, cyber product providers shall timely submit relevant vulnerability information to the platform, and the vulnerability collection platforms and other organizations or individuals that find vulnerabilities are encouraged to report vulnerability information to the Platform. The Platform concludes the professional databases of security vulnerabilities of general cyber products, industrial control, mobile Internet App, and Internet of vehicles, etc., which supports the technical evaluation of cyber product's security vulnerabilities, and urge cyber product providers to repair and reasonably release

their own product security vulnerabilities in a timely manner. ([More](#))

《广东省数字经济促进条例》施行

2021年9月1日，《广东省数字经济促进条例》（“《条例》”）施行，条例是“十四五”期间，国家公布数字经济及其核心产业统计分类以来的首部促进数字经济发展的地方性法规，聚焦“数字产业化、产业数字化”两大核心，依托“数据、技术”两大要素驱动，整体构建“两大核心、两大要素、一个支撑、一个保障”的框架结构。《条例》明确了数字经济发展的原则和重点、政府及部门的职责；明确了数字产业化方向，培育发展数字产业集群。 ([查看更多](#))

Regulations on the Promotion of Digital Economy in Guangdong Province in Effect

On September 1, 2021, the *Regulations on the Promotion of Digital Economy in Guangdong Province* (“*Regulations*”) came into effect. The *Regulations*, the first local regulations to promote the development of the digital economy since the state has released the statistical classification of the digital economy and its core industries during the 14th Five-Year Plan period, focus on the two cores of “digital industrialization and industrial digitalization”, driven by the two main elements of “data and technology”, and build an overall framework structure of “two cores, two elements, one support and one guarantee”. The *Regulations* defines the principles and key points of the development of digital economy, and the responsibilities of the government and departments; clarify the direction of digital industrialization, and focus on cultivating and developing digital industrial clusters. ([More](#))

《上海市促进城市数字化转型的若干政策措施》实施

2021年9月1日，《上海市促进城市数字化转型的若干政策措施》（“《措施》”）正式实施，《措施》提出5个方面27项政策制度和保障措施，其中，关于建立全面提高治理数字化管理效能的新机制，《措施》规定一是开展政府自动化审批和监管改革试点。二是加强公共数据赋能基层治理。三是建立数据要素交易流通体系。推动建立上海数据交易所，探索数据资产化的实施路径。四是健全人脸等生物特征信息使用规则。探索建立全市人脸识别统一认证平台和相关认证机制；统一全市人脸识别应用管理标准，对不同采集主体进行分级分类管理。 ([查看更多](#))

Several Policies and Measures for Shanghai to Promote Urban Digital Transformation Put into Effect

On September 1, 2021, *Several Policies and Measures for Shanghai to Promote Urban Digital Transformation* (“*Measures*”) officially implemented. The *Measures* put forward 27 policies, systems and safeguard measures in five aspects. With the regard to establish a new mechanism to comprehensively improve the efficiency of governance and digital management, the *Measures* stipulates that: the first is to carry out a pilot program for automated government approval and regulatory reforms; the second is to let the public data to empower grassroots governance; the third is to establish a data element transaction and circulation system and promote the establishment of the Shanghai Data Exchange and explore the implementation path of data assetization; the fourth is to improve the rules for the use of biometric information such as human faces, explore the establishment of a city-wide face recognition unified authentication platform and related authentication mechanisms, unify the city’s face recognition applica-

tion management standards, and conduct hierarchical and classified management of different collection subjects. ([More](#))

浙江省关于萌菌大作战等85款App违法违规收集使用个人信息情况的通报

2021年8月29日，互联网信息办公室发布通告称，近期，针对群众反映强烈的App非法获取、超范围收集、过度索权等侵害个人信息权益的现象，浙江省App违法违规收集使用个人信息专项治理工作组依据《网络安全法》《数据安全法》《App违法违规收集使用个人信息行为认定方法》《常见类型移动互联网应用程序必要个人信息范围规定》等法律和有关规定，组织对网络游戏、实用工具、即时通信等常见类型且公众大量使用的部分App的个人信息收集使用情况进行检测。检测发现，萌菌大作战等85款App违法违规收集使用个人信息，存在的主要问题包括未经用户同意收集使用个人信息、违反最小必要原则和存在信息泄露的安全漏洞等。 ([查看更多](#))

Zhejiang Notifies 85 Apps Illegally Collecting and Using PI

On August 29, 2021, the Cyberspace Administration of China issued a notice stating that, recently, in response to the phenomenons in violation of the rights and interests of personal information (“PI”) such as illegal accessing to PI by App, collecting PI beyond the scope and over-demand authorization with people’s strong complaints, the App Special Governance Working Group for the Illegal Collection and Use of PI of Zhejiang Province organized to detect the PI collection and use of some Apps in common types of online games, utilities, instant communication, which are widely used by the public, according to the *Cybersecurity Law*, the *Data Security Law*, the *Measures for the Determination of the Collection and Use of Personal Information by Apps in Violation of Laws and Regulations*, the *Provisions on the Scope of Necessary Personal Information Required for Common Types of Mobile Internet Applications* and other laws and regulations. After detection, “Cute-man Big Fight” and other 84 Apps illegally collected and used PI with the main problems of collecting and using PI without consent, violating the principle of necessity and existing security loopholes on information leakage, etc. ([More](#))

重庆新东方教培机构因非法收集、使用消费者信息被罚

2021年8月28日，国家企业信用信息公示系统公示，重庆新东方教育培训学校有限公司渝北区分公司未经消费者同意，非法收集、使用1053条消费者个人信息，涉嫌违反了《消费者权益保护法》相关规定，构成侵害消费者个人信息依法得到保护的权利的违法行为。基于其违法事实，8月10日，重庆市市场监督管理局作出行政处罚，对该教培公司罚款34万元，并责令其消除影响。 ([查看更多](#))

Chongqing New Oriental Education and Training Institution Fined for Illegally Collecting and Using Consumers’ Information

On August 28, 2021, the National Enterprise Credit Information Publicity System shows that the Yubei District Branch of Chongqing New Oriental Education and Training School Co., Ltd. illegally collected and used 1053 pieces of consumers’ personal information without consent, which is suspected of violat-

ing the relevant provisions of the *Law on the Protection of Consumer Rights and Interests*, to the detriment of the right of consumers' personal information to be protected legally. According to the illegal facts, the Administration for Market Regulation of Chongqing made the administrative punishment, fining the company CNY 340,000 and ordering it to eliminate the impact. ([More](#))

“颜值检测”软件实为窃取用户照片 开发者被判有期徒刑三年

近日，上海市奉贤区人民法院针对利用“颜值检测”软件窃取用户信息一案作出一审判决。经审理查明，2020年6月至9月，李某将其开发的一款具有非法窃取安装者相册照片功能的手机软件伪装成“颜值检测”软件并提供免费下载，窃取安装者照片共计1751张，其中部分照片含有人脸信息、自然人姓名、身份证号码、家庭住址等100余条公民个人信息。此外，2021年2月，李某将从暗网购买的含有户籍信息、借贷信息等内容的“某库资料”分享至业主交流群，侵害了不特定公民的隐私权，损害社会公共利益。法院判决李某犯侵犯公民个人信息罪，判处有期徒刑三年，宣告缓刑三年，并处罚金1万元。 ([查看更多](#))

One Sentenced to Three Years in Prison for Using the “Facial Attractiveness Detection” Software to Steal Users’ Photos

Recently, the Fengxian District People’s Court of Shanghai made the first-instance judgment on the case of using the “facial attractiveness detection” software to steal user information. It is found that, from June to September 2020, Li disguised a mobile phone software developed with the function of illegally stealing the album photos of installers as a “facial attractiveness detection” software and provided free download, with the consequences of stealing a total of 1751 photos of installers, part of that contained face information, natural person name, ID number, home address and other more than 100 citizens’ personal information. In addition, in February 2021, Li shared a “database” brought from the dark web containing household registration information, lending information and other contents to owner exchange group, to the detriment of the privacy rights of unspecified citizens and the social and public interests. The court sentenced Li to be guilty of infringing on citizens’ personal information, sentenced to fixed-term imprisonment for three years and suspended for three years, and fined 10,000 yuan. ([More](#))

爱尔兰对WhatsApp违反GDPR透明度义务行为罚款2.25亿欧元

2021年9月2日，爱尔兰数据保护委员会（“DPC”）宣布对WhatsApp爱尔兰有限公司进行的GDPR调查结论。DPC的调查始于2018年12月，审查了WhatsApp在提供信息和该信息对用户和非用户的透明度方面是否履行了GDPR下的透明度义务。其中包含WhatsApp和其他Facebook旗下公司共同处理的信息。经过漫长调查，DPC向所有相关监管机构提供了一个决定草案，但各方未能达成共识，最后启动了争议解决程序。欧洲数据保护委员会于今年7月28日通过了一项有约束力的决定，DPC经该决定指示对此案进行了重新评估，最终对WhatsApp罚款2.25亿欧元。此外，DPC还对WhatsApp进行了谴责，并命令后者通过采取一系列特定的补救措施使其处理行为符合规定。

([查看更多](#))

IE DPA Fines WhatsApp €225 Million for Violations of GDPR Transparency Obligations

On September 2, 2021, the Data Protection Commission (“DPC”) has announced a conclusion to a GDPR investigation it conducted into WhatsApp Ireland Ltd. The DPC’s investigation commenced on December 2018 and it examined whether WhatsApp has discharged its GDPR transparency obligations with regard to the provision of information and the transparency of that information to both users and non-users of WhatsApp’s service. This includes information provided to data subjects about the processing of information between WhatsApp and other Facebook companies. Following a lengthy and comprehensive investigation, the DPC submitted a draft decision to all Concerned Supervisory Authorities, but consensus was failed to reach, which triggered the dispute resolution process. On 28 July 2021, the European Data Protection Board adopted a binding decision containing a clear instruction according to that the DPC has imposed a fine of € 225 million on WhatsApp. In addition, the DPC has also imposed a reprimand along with an order for WhatsApp to bring its processing into compliance by taking a range of specified remedial actions. ([More](#))

瑞士批准使用欧盟委员会制定的SCCs

2021年8月31日，瑞士联邦数据保护和信息委员会（“FDPIC”）宣布将承认欧盟委员会更新的标准合同条款作为一种数据传输机制。FDPIC指出，只有在“必要的调整和修改”符合瑞士法律的保护水平时，才会通过此项批准。（[查看更多](#)）

Swiss Approves Use of European Commission’s SCCs

On August 31, 2021, Switzerland’s Federal Data Protection and Information Commissioner (“FDPIC”) announced it will recognize the European Commission’s updated standard contractual clauses (“SCCs”) as a data transfer mechanism. FDPIC noted this approval is only granted if “necessary adaptations and amendments are made” to level with Swiss law. ([More](#))

Facebook、Twitter和WhatsApp三社交媒体巨头因违反数据本地化在俄被罚

2021年8月26日，俄罗斯联邦通信、信息技术和大众媒体监督局（“Roskomnadzor”）发布声明确认，莫斯科塔甘斯基法院对三家头部美国社交平台Twitter、Facebook和WhatsApp分别处以约23万、20万和54000美元的经济罚款，因其违反了数据本地化要求。根据2015年立法，科技巨头必须在俄罗斯境内的服务器上处理俄罗斯用户的数据，而不能首先将这些数据传输出境。据Roskomnadzor称，目前，俄罗斯用户的个人数据的储存已由大约600家外国公司在俄罗斯的代表处进行本地化处理，其中包括苹果、微软、LG、三星、PayPal、Booking.com等。而这三家美国公司一致拒绝遵守数据本地化规定，且Twitter和Facebook此前已因违规而被罚款。今年早些时候，监管机构开始放缓访问Twitter在该国服务器的速度，理由是它未能删除禁止的内容，据了解，该公司正在与官员合作以满足删除要求。（[查看更多](#)）

Facebook, Twitter and WhatsApp Fined in Russia for Violations of Data Localization

On August 26, 2021, Russian media watchdog Roskomnadzor issued a statement confirming that Moscow's Tagansky Court had slapped steep fines on three American social platforms, Twitter, WhatsApp and Facebook, about \$230,000, \$200,000 and \$54,000 for violating data localization requirements. Under the rules established in 2015, tech giants must process Russian users' data on servers within the country, rather than sending it abroad in the first instance. According to Roskomnadzor, to date, the storage of personal data of Russian users has been localized by about 600 representative offices of foreign companies in the Russia, including Apple, Microsoft, LG, Samsung, PayPal, Booking.com and others. However, the three US firms have continually refused to abide by the rules, and both Twitter and Facebook have been previously fined for breaches. The regulator began slowing access to Twitter's servers in the country earlier this year, over claims it was failing to remove banned content, and the firm is understood to now be working with officials to meet the takedown requests. ([More](#))

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