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### 立方要闻周报

## Weekly News By Lifang & Partners

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## 立方竞争法周报 Weekly Competition Law News

### 三部门发布通知严打光伏行业领域哄抬价格、垄断等行为

2022年8月24日，工业和信息化部、国家市场监督管理总局（“市场监管总局”）和国家能源局联合发布了《关于促进光伏产业链供应链协同发展的通知》（“《通知》”）。《通知》要求各地相关部门优化产业布局，避免产业趋同、恶性竞争和市场垄断，支持各类市场主体平等参与市场竞争。《通知》强调，各地市场监管部门要加强监督管理，严厉打击光伏行业领域哄抬价格、垄断等违法违规行为。（[查看更多](#)）

### Three Departments Issue Notice to Strictly Regulate Behaviors Such as Price Gouging and Monopoly in the Photovoltaic Industry

On August 24, 2022, the Ministry of Industry and Information Technology, the State Administration for Market Regulation (“SAMR”) and the National Energy Administration jointly issued the *Notice on Promoting the Coordinated Development of the Photovoltaic Supply Chain and Industry Chain* (“*Notice*”). The *Notice* requires relevant local departments to optimize the industrial layout, avoid industry homogenization, malicious competition and market monopoly, and support all kinds of market entities to participate in market competition equally. The *Notice* emphasizes that local market regulation administrations should strengthen regulation and management, and strictly regulate illegal behaviors such as price gouging and monopoly in the photovoltaic industry. ([More](#))

### 山西省7家机动车检测公司因达成并实施垄断协议被罚款总计约21万元

2022年8月22日，市场监管总局发布了山西省市场监督管理局（“山西省市监局”）对朔州市机动车检测公司垄断协议案作出的行政处罚决定书。据调查，当地7家机动车检测公司达成并实施了固定检测价格及分割销售市场的垄断协议，排除、限制了相关市场的竞争，损害了消费者利益。因此，山西省市监局责令7家公司停止违法行为，并分别处以2020年度销售额5%或3%的罚款，总计约21万元。（[查看更多](#)）

### 7 Shanxi Motor Vehicle Inspection Companies Fined About CNY 210,000 for Reaching and Implementing a Monopoly Agreement

On August 22, 2022, the SAMR issued the administrative penalty decision made by Shanxi Administration for Market Regulation (“Shanxi AMR”) on the monopoly agreement case of motor vehicle inspection companies in Shuozhou. According to the investigation, 7 local motor vehicle inspection companies reached and implemented a monopoly agreement on fixing inspection prices and dividing the sales market, which excluded and restricted the competition in the relevant market and harmed the interests of consumers. Therefore, the Shanxi AMR ordered the 7 companies to stop their illegal activities, and imposed fines of 5% or 3% of their sales in 2020, totaling about CNY 210,000. ([More](#))

### 天津市、河南省、江西省分别开展公平竞争审查评估工作

近日，天津市、河南省、江西省先后在当地组织开展了公平竞争审查制度实施情况评估工作。天津市率先开展相关工作，由政府及相关部门和第三方机构同步进行评估，于近日发布了《天

津市公平竞争审查评估报告》。而后，河南省和江西省分别印发通知，表明将委托第三方评估机构，针对本地区各级政府及其部门制定出台的涉及市场主体经济活动的文件和措施等展开分析和评估。（[查看更多](#)）

## **Tianjin, Henan and Jiangxi Respectively Carry Out Evaluation of Fair Competition Review**

Recently, Tianjin, Henan and Jiangxi have organized and carried out evaluations of the implementation of the fair competition review system. Tianjin took the lead in carrying out related work, which was evaluated by the government, relevant administrative departments and third-party organizations simultaneously. Recently, *Evaluation Report of Tianjin Fair Competition Review* was released. Later, Henan and Jiangxi issued notices respectively, indicating that they would entrust a third-party evaluation agency to analyze and evaluate the documents and measures related to the economic activities of market entities formulated by local governments at all levels and their subordinate departments. ([More](#))

## **Tinder母公司Match Group在印度对苹果提起反垄断诉讼**

2022年8月24日，据报道，Tinder母公司Match Group已向印度竞争监管机构提起了对苹果的反垄断诉讼。Match Group认为，苹果通过强制使用其专有的应用内支付系统和收取高达30%的佣金，限制了提供数字服务的应用程序开发者进行创新。苹果因为该行为已在多国被提起反垄断诉讼。Match Group是第一家在印度对苹果提起反垄断诉讼的外国公司。（[查看更多](#)）

## **Tinder Owner Files Match Group Antitrust Suit Against Apple In India**

On 24 August 2022, it was reported that Tinder-owner Match Group has filed an antitrust case against Apple with the competition regulator in India. Match Group argued Apple's conduct restricts innovation and development of app developers that offer digital services by enforcing the use of its proprietary in-app purchase system and 30% commission. Apple's behavior has been filed antitrust lawsuits in many countries. Match Group is the first foreign company to file an antitrust lawsuit against Apple in India. ([More](#))

## **索尼PlayStation在英国反垄断集体诉讼中被索赔50亿英镑**

2022年8月22日，据BBC报道，索尼PlayStation在英国被提起反垄断集体诉讼，被索赔50亿英镑（约合人民币400亿元）。提起诉讼的消费者权益联盟在其向英国竞争上诉法院递交的诉状中称，索尼PlayStation滥用市场支配地位，向游戏开发商和发行商强加条款和条件，包括对通过在线PlayStation商店购买的每款数字游戏或游戏内产品收取30%的佣金，推动了消费价格上涨。（[查看更多](#)）

## **Sony PlayStation Sued GBP 5 Billion In UK Anti-Monopoly Class Action Suit**

On August 22, 2022, according to the BBC, Sony PlayStation was filed an anti-monopoly class action lawsuit in the UK, with a claim of GBP 5 billion (about CNY 40 billion). The Consumer Rights Alliance, who filed the lawsuit, claimed in its complaint filed at the Competition Appeal Tribunal that Sony PlayStation abused its dominant market position to impose terms and conditions on games' developers and publishers, including a 30% commission on every digital game or in-game purchase made through the online PlayStation Store, which pushed up the consumer price. ([More](#))

## 英国 CMA 对卫星运营商 ViaSat 收购 Inmarsat 展开调查

2022年8月9日，英国竞争和市场管理局（“CMA”）宣布，其开始对美国卫星运营商 ViaSat 收购英国卫星通信公司 Inmarsat 展开调查，以确定该交易是否会导致“英国任何一个或多个市场内竞争的大幅减少”。2021年11月，双方达成协议，ViaSat 将以73亿美元收购Inmarsat。两家公司表示，该合并将打造出一家领先的全球通信创新企业，并希望这笔交易能在2022年年中完成。但这一交易引发了竞争担忧，多个竞争监管机构可能对此展开调查。（[查看更多](#)）

### UK CMA Probes Satellite Operator ViaSat's Acquisition of Inmarsat

On August 9, 2022, the UK Competition and Markets Authority (“CMA”) announced that it is beginning its own review into US satellite operator ViaSat's Acquisition of Inmarsat UK, seeking to ascertain if the deal represents “a substantial lessening of competition within any market or markets in the UK”. Back in November 2021, ViaSat struck a deal to acquire Inmarsat for USD 7.3 billion. The companies said that the tie-up would create a leading global communications innovator and they hoped the deal would close in mid-2022. But the deal has raised competition concerns, which could be investigated by several competition regulators. ([More](#))

## 澳洲电讯作出承诺，以解决关于5G的竞争担忧

2022年8月3日，澳大利亚竞争和消费者委员会（Australian Competition and Consumer Commission, “ACCC”）接受了澳大利亚电信公司澳洲电讯（Telstra）作出的承诺，以解决有关5G网络竞争的担忧。经调查，ACCC 认为澳洲电讯注册了多个无线电通讯站点，这一行为对于为移动服务提供核心网络覆盖和推广5G至关重要，具有阻碍澳大利亚第二大电信公司Optus部署其5G网络以及参与零售移动市场竞争的实质性目的或潜在影响。为解决这一竞争担忧，澳洲电讯承诺注销其注册的900 MHz频段的所有剩余无线电通信站点。（[查看更多](#)）

### Telstra Undertakes to Address 5G Competition Concerns

On August 3, 2022, the Australian Competition and Consumer Commission (“ACCC”) has accepted an undertaking from Telstra to address competition concerns about 5G network competition. After investigation, ACCC was concerned that Telstra registered a number of radio communication stations, which is crucial to providing core network coverage for mobile services and the rollout of 5G, and this behavior had the substantial purpose or likely effect of preventing or hindering Optus from deployment of its 5G network and from engaging in competitive conduct in the retail mobile market. To solve this concern, Telstra promised to deregister all remaining radiocommunications sites it registered in the 900 MHz spectrum. ([More](#))

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

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交通运输部发布《公路水路关键信息基础设施安全保护管理办法（征求意见稿）》

2022年8月23日，交通运输部发布了《公路水路关键信息基础设施安全保护管理办法（征求意见稿）》（“《征求意见稿》”），向社会公开征求意见，意见反馈截止时间为2022年9月26日。

《征求意见稿》规定了公路水路关键信息基础设施的认定；明确了运营者责任和义务，包括实现安全防护措施与关键信息基础设施主体工程“三同步”、建立健全网络安全保护制度和责任制、制定监测预警和信息通报制度、建立网络安全事件管理制度等；并规定了保障和监督管理和法律责任等内容。（[查看更多](#)）

### **MOT Issues the Administrative Measures for Safety Protection of Highway and Waterway Critical Information Infrastructure (Draft for Comment)**

On 23 August 2022, the Ministry of Transport (“MOT”) issued the *Administrative Measures for Safety Protection of Highway and Waterway Critical Information Infrastructure (Draft for Comment)* (“Draft”), and the deadline for submitting comments is by 26 September 2022. The *Draft* stipulates the identification of highway and waterway critical information infrastructure; clarifies the responsibilities and obligations of operators, including realizing “three synchronizations” between safety protection measures and critical information infrastructure projects, establishing and perfecting cyber security system and responsibility system, formulating monitoring and early warning and information notification system, establishing cyber security incident management system, etc; and also stipulates the guarantee, supervision, management and legal responsibility. ([More](#))

### **工信部就55项通信行业标准报批稿公开征求意见**

2022年8月22日，工业和信息化部（“工信部”）发布了55项通信行业标准的报批公示稿，自2022年8月22日至9月22日向社会公开征求意见。在此次公布的标准中，涉及数据合规的包括：

《APP收集使用个人信息最小必要评估规范 第5部分：设备信息》、《APP收集使用个人信息最小必要评估规范 第8部分：录像信息》、《APP收集使用个人信息最小必要评估规范 第10部分：通话记录》、《APP用户权益保护测评规范》和《移动应用软件安全评估方法》等。（[查看更多](#)）

### **MIIT Publicly Solicits Comments on 55 Communication Industry Standards for Approval**

On 22 August 2022, the Ministry of Industry and Information Technology (“MIIT”) issued the draft for approval and public announcement of 55 communication industry standards, and publicly solicited comments from 22 August to 22 September 2022. The standards related to data compliance include: *Minimum Necessary Evaluation Specification for Personal Information Collection and Use by APP Part 5: Equipment Information, Minimum Necessary Evaluation Specification for Personal Information Collection and Use by APP Part 8: Video Information, Minimum Necessary Evaluation Specification for Personal Information Collection and Use by APP Part 10: Call Records, Evaluation Specification for Protection of APP Users’ Rights and Interests, and Evaluation Method for Mobile Application Software Security.* ([More](#))

### **工信部通报47款侵害用户权益APP和SDK**

2022年8月26日，工信部发布了关于侵害用户权益行为的APP通报（2022年第5批，总第25

批)。通报表明,经过检查和整改,尚有47款APP(SDK)未按要求完成整改,工信部对其予以通报。这些APP(SDK)所涉问题包括:强制、频繁、过度索取权限;违规收集个人信息;超范围收集个人信息;收集个人信息明示、告知不到位;违规使用个人信息;强制用户使用定向推送功能;应用分发平台上的APP信息明示不到位等。 ([查看更多](#))

### **MIIT Notifies 47 APPs and SDKs Infringing User Rights**

On 26 August 2022, the MIIT issued a notice on APPs infringing users' rights and interests (the 5th batch in 2022, the 25th batch in total). The notice shows that after inspection and rectification, there are still 47 APPs (SDKs) that have not been rectified as required, and the MIIT has notified them. The problems of these APPs (SDKs) include: requesting for permission compulsively, frequently and excessively; collecting personal information illegally; collecting personal information beyond the scope; failing to inform users clearly and adequately when collecting personal information; using personal information illegally; forcing users to use the directional push function; failing to express APP information on the distribution platform clearly, etc. ([More](#))

### **公安部网安局发布三起侵犯公民个人信息刑事案件**

2022年8月23日,公安部网安局发布了三起侵犯公民个人信息刑事案件。涉及的违法行为包括:通过购买、交换等方式收集小区居民、培训机构和学校学生等个人信息,后贩卖给小额贷款公司、校外教育培训机构等;售楼部、装修公司、建材公司等相关行业单位违法收集住户购房信息;装修公司以非法途径获取特定人员信息,并通过买卖、交换、分筛、共享等多种方式传播扩散。 ([查看更多](#))

### **The Cybersecurity Bureau of the MPS Issues Three Criminal Cases of Infringing Citizens' Personal Information.**

On 23 August 2022, the Cybersecurity Bureau of the Ministry of Public Security ("MPS") issued three criminal cases of infringing citizens' personal information. The illegal activities involved include: collecting personal information of community residents, training institutions, and students through purchase and exchange, and then selling the information to microfinance companies, off-campus education and training institutions, etc; sales departments, decoration companies, building materials companies and other related industry units illegally collecting information on household purchase; decoration company obtaining information of specific personnel by illegal means, and spreading it through various ways, such as buying and selling, exchanging, screening and sharing. ([More](#))

### **广东省工信厅印发《广东省企业首席数据官建设指南》**

2022年8月26日,广东省工业和信息化厅(“广东省工信厅”)印发了《广东省企业首席数据官建设指南》(“《指南》”)。《指南》鼓励数字化基础较好、拥有较大规模数据资源、数据产品和服务能力较突出的企业,按照企业主导、政府推动、价值优先、多方协同的原则设立企业首席数据官(Chief Data Officer, “CDO”);明确了CDO的岗位设置、岗位能力素质要求、岗位职责等建设内容;规定了加强组织引导、建立人才资源库、强化企业培训、开展示范建设、形成优秀案例推广、加强社会多方协同引导等保障措施。 ([查看更多](#))



## **Guangdong DIIT Issues the *Guideline on the Construction of Chief Data Officer for Enterprises in Guangdong Province***

On 26 August 2022, the Department of Industry and Information Technology of Guangdong Province (“Guangdong DIIT”) issued the *Guideline on the Construction of Chief Data Officer for Enterprises in Guangdong Province* (“*Guideline*”). The *Guideline* encourages enterprises with a good digital foundation, large-scale data resources, and outstanding data products and service capabilities to set up Chief Data Officer (“CDO”) in accordance with the principles of enterprise leading, government driving value preferred, and multi-party collaboration; clarifies the CDO post setting, post ability, and quality requirements, post responsibilities and other construction contents; stipulates safeguard measures such as strengthening organizational guidance, establishing talent resource pool, strengthening enterprise training, carrying out demonstration construction, forming excellent case promotion, and strengthening coordinated guidance from various social parties. ([More](#))

## **上海市通管局通报2022年第二批侵害用户权益行为APP**

2022年8月22日，上海市通信管理局（“上海市通管局”）发布了关于侵害用户权益行为APP的通报（2022年第二批）。通报表明，上海市通管局经检测发现127款APP存在“违规收集个人信息”“违规使用个人信息”“欺骗误导用户下载APP”等问题，并已要求其进行整改。截至通报发布之日，尚有31款APP未完成整改。上海市通管局要求这些APP在8月29日前落实整改工作。逾期不整改的，将被依法处置。（[查看更多](#)）

## **Shanghai CA Reports the Second Batch of Apps Infringing on Users’ Rights and Interests in 2022**

On 22 August 2022, Shanghai Communications Administration (“Shanghai CA”) issued a notice on APPs infringing on users’ rights and interests (the second batch in 2022). The notice indicated that Shanghai CA found 127 APPs had problems such as “collecting personal information illegally”, “using personal information illegally”, “deceiving and misleading users to download APPs” and other problems and had asked them to rectify. As of the date of the notice, 31 APPs had not yet completed the required rectification. The Shanghai CA has requested these APPs to implement the rectification work by 29 August, or they will be dealt with according to law. ([More](#))

## **广东省邮政管理局联合相关部门督导邮政快递领域个人信息安全治理工作**

2022年8月24日，据报道，近日，广东省邮政管理局联合相关部门就深入推进全省邮政快递领域个人信息安全治理工作，在广州开展专项督导检查。督导组召开会议，听取申通、圆通、中通、韵达、京东、极兔等主要快递企业个人信息安全治理工作汇报，并部署下一阶段重点工作。督导组强调，要深刻认识到邮政快递领域个人信息安全治理工作的重要性和紧迫性，扎实做好内部管理、系统管理，加快隐私面单推广应用，切实提升邮政快递领域个人信息保护水平。（[查看更多](#)）

## **Guangdong PB Jointly with Relevant Departments to Supervise the Governance of Personal Information Security in the Postal Express Delivery Field**

On 24 August 2022, it was reported that recently, Guangdong Post Bureau (“Guangdong PB”), in con-

junction with relevant departments, carried out special supervision and inspection in Guangzhou to further promote personal information security management in the postal express delivery field in the whole province. The supervision team held a meeting to be briefed on the reports on personal information security management of major express delivery companies such as Shentong, Yuantong, Zhongtong, Yunda, JD, Jitu, etc., and planned for the next phase of key work. The supervision team stressed that it is necessary to have a deep understanding of the importance and urgency of personal information security management in the postal express delivery field, do a solid job in internal management and system management, speed up the promotion and application of privacy-enhanced delivery forms, and effectively improve the level of personal information protection in the postal express delivery field. ([More](#))

### 杭州互联网法院发布数据和算法十大典型案例

2022年8月24日，杭州互联网法院在其成立五周年之际，发布了数据和算法十大典型案例。这些案例涉及数据产品的法律属性及权益保护、公共数据商业化利用的合法性边界、数据权益的权属判断与分类保护、微信社交数据的性质及数据爬取行为的认定、平台算法自动化决策的司法审查标注、电子商务平台算法歧视的司法审查等内容。 ([查看更多](#))

### Hangzhou Internet Court Publicizes Ten Typical Cases of Data and Algorithms

On 24 August 2022, Hangzhou Internet Court publicized *Ten Typical Cases of Data and Algorithms* on its fifth anniversary since establishment. These cases involve the legal attributes and rights protection of data products, the legal boundary of commercial use of public data, the ownership judgment and classification protection of data rights, the identification of the nature of WeChat social data and data crawling behavior, the judicial review of platform algorithm for automated decision-making, and the judicial review of algorithm-based discrimination on e-commerce platforms. ([More](#))

### 工商银行、中信银行、台州银行因未履行客户身份识别义务等被罚款

近日，中国人民银行杭州中心支行（“央行杭州支行”）发布了其对中国工商银行股份有限公司杭州分行及其相关责任人员、中信银行股份有限公司杭州分行及其相关责任人员、台州银行股份有限公司及其责任人员作出的行政处罚决定。三家银行均涉及“未履行客户身份识别义务”的违法行为，银行及其相关责任人员均被处以罚款。 ([查看更多](#))

### ICBC, CITIC and TZB Fined for Failing to Fulfill Their Customer Identification Obligations

Recently, Hangzhou Central Sub-branch of the People's Bank of China (“Hangzhou Sub-branch of PCB”) issued its administrative punishment decision against Hangzhou Branch of Industrial and Commercial Bank of China (“ICBC”), Hangzhou Branch of China CITIC Bank and Taizhou Bank (“TZB”). All three banks were involved in the illegal act of “failing to fulfill the customer identification obligation”, and the three banks and their respective responsible personnel were all fined. ([More](#))

### 欧盟理事会在新数据法中就私人信息的政府访问作出妥协

2022年8月24日，据报道，欧盟理事会轮值主席国捷克发布了针对欧盟《数据法》（The Data Act）提案的最新妥协方案，对允许公共部门要求访问私人持有数据的条件提出了修改。妥协方

案主要针对欧盟《数据法》提案第五章，该章旨在界定公共实体在哪些条件下可以要求获取私人持有的数据。这一部分饱受争议，很多人批评认为这些规定赋予了公共机构随意且和义务不相称的权力。妥协方案试图通过澄清访问范围和引入保障措施来回应这一批评。该文件将于9月5日在会议上进行讨论。（[查看更多](#)）

## EU Council Puts Forth Compromise on Government Access to Private Information in New Data Law

On 24 August 2022, it was reported that the Czech Presidency of the EU Council presented a new partial compromise on the Data Act, and proposed amendments to the conditions for allowing the public sector to request access to privately held data. The compromise mainly concerns Chapter V, which is intended to define under which conditions public entities can demand access to privately held data. This part of the proposal is one of the most controversial, as many people have criticised the provisions as giving arbitrary and disproportionate powers to public bodies. The compromise addresses this criticism by clarifying the scope and introducing safeguards. The document is due to be discussed on 5 September in the meeting. ([More](#))

## Snap同意就隐私诉讼达成3500万美元的和解协议

2022年8月23日，据报道，Snapchat的母公司Snap与美国伊利诺伊州就一起隐私相关集体诉讼达成和解，和解金额总计为3500万美元（约合人民币2.4亿元）。在本案中，原告称Snapchat的滤镜和镜头在未经用户同意的情况下收集和存储生物识别数据，违反了伊利诺伊州的生物识别信息隐私法（Biometric Information Privacy Act, “BIPA”）。BIPA要求公司将其收集用户生物识别数据的原因及其保留这些数据的时间，以书面形式告知用户，并禁止出售和传输数据。（[查看更多](#)）

## Snap Agrees to USD 35 Million Settlement Over Privacy Lawsuit

On 23 August 2022, it was reported that Snap, the owner of Snapchat, reached a settlement with residents of Illinois, USA, on a privacy class action lawsuit, with a total settlement amount of USD 35 million. The suit alleges that Snapchat’s filters and lenses violated the state’s Biometric Information Privacy Act (“BIPA”) by collecting and storing biometric data without users’ consent. BIPA requires companies to tell people in writing why their biometric data is being collected and how long it will be kept and prohibits the sale and transfer of the data. ([More](#))

## FCC 将调查移动运营商数据共享问题

2022年8月25日，据报道，美国联邦通信委员会（Federal Communications Commission, “FCC”）主席Jessica Rosenworcel要求委员会的执法局调查移动运营商遵守FCC地理位置数据规则的情况，这些规则要求运营商告知消费者他们如何使用和共享地理位置数据。Rosenworcel表示：“我们的手机知道很多关于我们的事情，这意味着运营商知道我们是谁，我们打电话给谁，以及我们在任何特定时刻的位置。这些信息和地理位置数据非常敏感，因此FCC正在采取措施确保这些数据受到保护。”（[查看更多](#)）

## FCC To Investigate Mobile Carrier Data Sharing

On 25 August 2022, it was reported that Jessica Rosenworcel, the chairwoman of the Federal Communications Commission (“FCC”) was asking the commission’s enforcement bureau to look into mobile companies’ compliance with FCC rules that require carriers to inform consumers about how they use and share the geolocation data. Rosenworcel said, “Our mobile phones know a lot about us, which means carriers know who we are, who we call, and where we are at any given moment. This information and geolocation data is really sensitive, so the FCC is taking steps to ensure this data is protected.” ([More](#))

## Twitter前安全主管指控其存在重大网络安全问题

2022年8月23日，据报道，推特前安全主管指控Twitter存在重大安全问题，前述安全问题将危及到用户个人信息，公司股东，国家安全和民主。据该前主管表示，Twitter大量员工得以访问该平台的中央控制系统和最敏感信息的行为并没有受到充分监督；Twitter领导层向董事会和政府监管机构隐瞒了其安全漏洞，这些漏洞可能为外国间谍或操纵活动、黑客和虚假信息活动打开大门；Twitter在用户注销账户后并未确实地删除他们的数据，这是因为在某些情况下，该公司已经失去了对这些信息的跟踪，并且在是否按照要求删除数据的问题上隐瞒了监管机构。（[查看更多](#)）

## Ex-Twitter Exec Alleges Reckless and Negligent Cybersecurity Policies

On 23 August 2022, it was reported that an Ex-Twitter exec alleged Twitter has major security problems that pose a threat to its own users’ personal information, to company shareholders, to national security, and to democracy. According to the ex-exec, Twitter allows too many of its staff access to the platform’s central controls and most sensitive information without adequate oversight; Twitter’s leadership has misled its own board and government regulators about its security vulnerabilities, including some that could allegedly open the door to foreign spying or manipulation, hacking and disinformation campaigns; Twitter does not reliably delete users’ data after they cancel their accounts, in some cases because the company has lost track of the information, and that it has misled regulators about whether it deletes the data as it is required to do. ([More](#))

## 知识产权 Intellectual Property

### 北京知识产权法院发布《计算机软件著作权民事案件举证手册》

8月25日，北京知识产权法院召开发布会，发布了《计算机软件著作权民事案件举证手册》。手册内容包含计算机软件著作权权属纠纷、侵害计算机软件著作权纠纷和计算机软件著作权合同纠纷三类案由，以便引导当事人更好地诉讼及完成举证。

北京知识产权法院副院长宋鱼水表示，建院近八年来，北京知识产权法院共受理计算机软件著作权民事案件近5千件，审结近4千件，收结案数量均快速增长。今年5月1日起，《最高人民法院第一审知识产权民事、行政案件管辖的若干规定》施行，计算机软件著作权案件将由基层人民法院管辖，此类案件的上诉法院调整为北京知识产权法院。鉴于此，北京知识产权法院对多年来审理计算机软件著作权民事案件中遇到的常见问题进行梳理，形成举证手册。

来源：北京知识产权法院

## **BIPC Issued Handbook for Evidence Presentation of Parties in Civil Cases Involving Computer Software Copyright**

On August 25th, Beijing Intellectual Property Court (BIPC) held a press conference and released *Handbook for Evidence Presentation of Parties in Civil Cases Involving Computer Software Copyright*. The manual contains three types of causes of action: computer software copyright ownership dispute, computer software copyright infringement dispute and computer software contract dispute, so as to guide the parties to better litigate and complete the proof.

Song Yushui, vice president of BIPC, said that in the past eight years since its establishment, BIPC has accepted nearly 5,000 civil cases of computer software copyright, and concluded nearly 4,000 cases, with the number of closed cases increasing rapidly. Now, computer software contract cases will be under the jurisdiction of basic people's courts, and the appellate court of such cases will be adjusted to BIPC. In view of this, the BIPC sorted out the common problems encountered in the trial of computer software copyright civil cases for many years, and formed a proof manual.

Source: BIPC

## **判赔500万元:最高院明确恶意取得专利权以及滥用专利权的界定**

近日，最高人民法院知识产权庭就朱江蓉与山东省惠诺药业有限公司（以下称“惠诺药业”）侵害发明专利权纠纷一案作出二审判决，此前一审法院判决惠诺药业赔偿朱江蓉经济损失500万元。

本案是一起标准专利侵权纠纷，主要争议在于专利权人是否滥用专利权及赔偿数额是否应按已生效判决认定推算。

最高院认为，恶意取得专利权是认定构成“滥用专利权”的事实基础。朱江蓉在肝素钠封管注射液国家强制性标准发布之前将其自有相关技术申请专利，不违反法律规定，不构成恶意取得专利权以及滥用专利权。

就赔偿数额是应按已生效判决认定推算，还是按照被告不完整的财务资料核算。根据被告提供的发票销量和平均单价等证据，计算结果显示侵权获利已经明显超过法定赔偿额的上限，对此认定本案在计算赔偿数额所需的产品数量和金额确有证据支持的基础上，可以酌定公平合理的赔偿数额，最高院综合考虑后维持了一审判决的赔偿数额。

来源：最高人民法院知识产权法庭

## **Second Instance Upholding Judgement of Award for RMB 5 Million: SPC Clearly Clarifies the Malicious Acquisition and Abuse of Patent**

Recently, the Intellectual Property Tribunal of the Supreme People's Court (SPC) made a second-instance judgment over the infringement on the invention patent. Previously, the court of first instance ruled that the defendant shall compensate the plaintiff for the economic loss of RMB 5 million.

SPC held that the malicious acquisition of patent was the factual basis for the determination of "patent abuse". The plaintiff applied for a patent for its own related technology before the release of the national mandatory standard of heparin sodium injection, which did not violate the law and did not constitute

malicious patent acquisition and abuse. As for the compensation amount, according to the evidence, such as invoice sales and average unit price, the calculation results show that the profit from infringement has obviously exceeded the limit of the judicial damages by the law. Therefore, SPC upheld the damages amount of the first-instance judgment.

Source: SPC

## 二审改判50万元：浙江高院对外观设计是否相同或近似作出判断

4月11日，浙江省高级人民法院就斐洛尔（上海）贸易有限公司（以下称“斐洛尔公司”）与宁波菲莫智能科技有限公司（以下称“菲莫公司”）等侵害外观设计专利权纠纷作出二审判决，撤销原判决，责令菲莫公司等赔偿50万元。

本案中，斐洛尔公司上诉认为被诉侵权设计与涉案专利构成近似外观设计，菲莫公司等主张两者在产品整体结构、主视图刷毛所占比例、刷毛区域形状、按钮位置、按钮形状、背部外观、底部设计等处均不相同，两者不构成相同近似。根据整体观察、综合判断的原则，二审法院认为，被诉侵权设计正常使用时容易被直接观察到的部分，与涉案专利整体形状、比例较为近似，整体视觉效果上无实质性差异，细微的区别不足以对两者整体视觉效果产生实质性影响，因此构成近似外观设计。一审法院对此认定有误，应予以纠正。

来源：浙江省高级人民法院

## Awarded Damages of RMB 500,000: Zhejiang High People's Court Made a Judgment on Design Patent Infringement

Recently, Zhejiang Higher People's Court made a second-instance judgment on the disputes over infringement on patent of design, which revoked the original judgment, and ordered the defendants to pay damages of RMB 500,000, which is a high amount for design patent.

In this case, the plaintiff claimed that the accused infringing design and the patent involved constitute an approximate design. According to the principle of overall observation and comprehensive judgment, the court of second instance held that the part of the accused infringing design that is easy to be directly observed in normal use is similar to the overall shape and proportion of the patent involved, and there is no substantial difference in the overall visual effect. The slight difference is not enough to have a substantial impact on the overall visual effects of the two, and constitutes an approximate design.

Source: Zhejiang High People's Court

## 国内首起片面比价案，法院判赔480万元

北京市朝阳区人民法院就美克公司与百川时代公司、北京百川公司、百川无界公司侵害商标权及不正当竞争纠纷案作出一审判决，责令被告赔偿480万元。

法院认为，美克公司是“帕拉罗黎”的商标权人，百川时代公司在运营的家居店铺、微信公众号中大规模在产品价签、产品推介信息中等显著位置注明“帕拉罗黎”标识，属于在相同商品上使用与涉案注册商标相同的标识，构成商标侵权。

关于三被告的比价行为是否构成不正当竞争行为的认定，法院认为，对比广告提供的商品信息应当是全面、客观、充分的，不对商品作片面的宣传或者比对，或者以其他引人误解的方式进行商品宣传。本案三被告提供的比价信息并不满足前述要求，构成虚假宣传，并损害了美克公司的商誉，构成商业诋毁，最终判决三被告就商标侵权与不正当竞争行为合计赔偿480万元。

来源：北京市朝阳区人民法院

## The First Case of Non-Comprehensive Price Comparison in China

Chaoyang District People's Court of Beijing made a first-instance judgment on the case of trademark infringement and unfair competition dispute, and ordered the defendant to pay damages of RMB 4.8 million.

The court held that the plaintiff was the trademark owner, and one of the defendants used the same logo in prominent positions, such as product price tags and product promotion information, on a large scale in its operated home stores and official WeChat account, which constituted trademark infringement.

Regarding the determination of whether the price comparison acts of the three defendants constitutes unfair competition, the price comparison information provided by the three defendants can easily mislead the public, constituted false promotion and damaged the reputation of the plaintiff, which constituted commercial slander.

Source: Chaoyang District People's Court of Beijing

## 二审改判：法考机构“挖角”以及宣传使用课程名称等行为不构成不正当竞争行为

近日，北京知识产权法院就厚大公司诉瑞达公司不正当竞争纠纷案作出二审判决，判决撤销一审判决，驳回厚大公司的全部诉讼请求。

厚大公司一审起诉称瑞达公司在其提供的法考培训服务中擅自使用其图书名称、课程名称、校区名称等的行为构成不正当竞争，并聘任原为厚大公司的知名讲师，在其官方微博发布宣传上述讲师的行为违反了诚实信用原则和公认的商业道德，构成不正当竞争。一审法院经审理认定，瑞达公司聘任蔡雅奇，在其官方微博等平台对蔡雅奇讲师进行宣传，通过李晗接受采访对瑞达公司进行宣传的行为构成不正当竞争。北京知识产权法院二审审理认为，在尚没有证据证明瑞达公司聘任蔡雅奇等讲师的行为不符合行业实际情况并违反诚实信用原则和公认的商业道德的情况下，瑞达公司聘任蔡雅奇等讲师的行为不具有不正当性或可责性。在此基础上，瑞达公司对蔡雅奇等讲师的宣传行为亦不构成不正当竞争。此外，厚大公司主张的图书名称、课程名称、地点名称等因不满足“有一定影响”的要件，其行为亦不构成不正当竞争。

来源：北京知识产权法院

## BIPC Ruled That the Recruitment of Competitors' Employees and Promotion of Course Names Do Not Constitute Unfair Competition

Recently, BIPC made a second-instance judgment on the disputes over unfair competition, revoked the first instance judgment and rejected all the claims of the plaintiff.

The plaintiff filed a lawsuit, claiming that the act of the defendant using the name of its book, course, campus, etc. in the legal examination training service that it provided, constitutes unfair competition, and that the defendant engaged a famous lecturer who was originally an employee of the plaintiff, and promoted such lecturer on its official Weibo account. Such acts violated the principle of good faith and business ethics, and constituted unfair competition. The court of first-instance held that the defendant engaged the competitors' employees and promoted such lecturer on its official Weibo account, constituted unfair competition.

BIPC held that, in the absence of evidence that the defendant's engagement of the plaintiff's lecturers is not in accordance with the industry practices and in violation of the principle of good faith and recognized business ethics, such act does not constitute unfair competition. Therefore, the promotion of the defendant's act shall not constitute unfair competition. In addition, the name of the book, the name of the course, the name of the location, etc. claimed by the plaintiff did not satisfy the essential conditions of "influence", and the acts of the plaintiff did not constitute unfair competition either.

Source: BIPC

### 北京知识产权法院：不当截取赛事节目画面并向平台用户提供的行为构成侵权

北京知识产权法院就央视国际网络有限公司（以下称“央视国际”）与上海聚力传媒技术有限公司（以下称“聚力公司”）著作权权属、侵权及不正当竞争纠纷一案作出二审判决，责令被告赔偿原告经济损失400万元。

关于聚力公司截取涉案赛事节目画面制作843段GIF动图向平台用户提供行为是否侵权及其责任的认定。二审法院认为，涉案赛事节目为2010年著作权法规定的类电影作品，其保护的内容为基于连续画面形成的独创性表达。对于涉案赛事节目中的片段和部分，只要其播放的连续画面能够形成独创性表达即应当受到保护，而并不是仅能保护完整的剧集呈现。被诉GIF动图在呈现方式上亦是连续画面，且再现了涉案赛事节目中具有独创性的部分，行为构成侵权。

关于聚力公司遮挡央视台标和比分数据、不当剪裁比赛画面的被诉侵权行为是否构成不正当竞争的问题。鉴于《反不正当竞争法》对于《著作权法》等专门法律仅起到有限补充保护的作用，凡是专门法律已经规范的侵权行为，应当直接适用相关规定予以评价和保护，在无其他特殊情况和正当理由的情况下，不宜再用《中华人民共和国反不正当竞争法》予以评述。

来源：北京知识产权法院

### BIPC Ruled That Improperly Intercepting the Screen of the Event Program Constitutes Infringement

BIPC made a second-instance judgment on the disputes over copyright and unfair competition, ordering the defendant to compensate the plaintiff 4 million.

Regarding whether the defendant's act of producing 843 graphics interchange format(GIF) animations by intercepting the scene of the sport event and providing them to platform users constituted infringement and how to determine its liability, BIPC held that since the continuous picture can form an original expression, it shall be protected by the copyright law. The GIF animation is also a continuous picture in the way of presentation, and reproduces the original part of the program. Therefore, the acts of the defendant constitutes infringement.



As regards the issue of whether the alleged infringement acts of the defendant's blocking of the logo and score data of the plaintiff's television station, and making improper editing of the competition footage constitute unfair competition, given that the Anti-unfair Competition Law only plays a limited role in supplementary protection on the Copyright Law and other special laws, any infringement that has been regulated by special laws shall be beyond the regulation of Anti-unfair Competition Law. Therefore, as acts of the defendant can be regulated by Copyright Law, AUCL shall not be applied in this case.

Source: BIPC

### 莫德纳公司起诉辉瑞制药公司及Bio-N-Tech公司侵犯专利权

以信使核糖核酸（messenger ribonucleic acid，简称mRNA）技术为基础从事研制新冠病毒疫苗的莫德纳公司（Moderna, Inc.）在当地时间8月26日分别在美国位于马萨诸塞州的联邦地区法院（Massachusetts）和德国的杜塞尔多夫地区法院（Oberlandesgericht Düsseldorf）起诉了同样使用mRNA技术研制新冠疫苗的辉瑞制药（Pfizer, Inc.）和其研发合作伙伴Bio-N-Tech公司。

莫德纳公司认为，辉瑞制药和BioNTech的COVID-19疫苗Comirnaty<sup>®</sup>侵犯了Moderna在2010年至2016年间提交的专利，这些专利涵盖了Moderna的基础mRNA技术。这项突破性技术对于Moderna自己的mRNA COVID-19疫苗Spikevax<sup>®</sup>的开发至关重要。辉瑞制药和BioNTech在未经Moderna许可的情况下复制了这项技术，以制作Comirnaty<sup>®</sup>。

来源: [modernatx.com](https://www.modernatx.com)

### MODERNA Sues PFIZER and BIONTECH for Infringing Patents Central to MODERNA'S Innovative Mrna Technology Platform

August 26th, a biotechnology company pioneering messenger RNA (mRNA) therapeutics and vaccines is filing patent infringement lawsuits against Pfizer and BioNTech in the United States District Court for the District of Massachusetts and the Regional Court of Düsseldorf in Germany.

Moderna believes that Pfizer and BioNTech's COVID-19 vaccine Comirnaty<sup>®</sup> infringes patents Moderna filed between 2010 and 2016 covering Moderna's foundational mRNA technology. This groundbreaking technology was critical to the development of Moderna's own mRNA COVID-19 vaccine, Spikevax<sup>®</sup>. Pfizer and BioNTech copied this technology, without Moderna's permission, to make Comirnaty<sup>®</sup>.

Source: [modernatx.com](https://www.modernatx.com)

### “潇洒公爵” 上诉被驳，迪士尼《玩具总动员4》不侵权

8月22日，美国的联邦第九巡回区上诉法院维持了内华达联邦地区法院的裁决，驳回了美国公司K&K Promotions, Inc.的商标侵权诉讼。

K&K公司拥有已故的美国特技表演者Evel Knievel的所有知识产权。2020年11月，K&K公司在内华达联邦地区法院起诉了迪士尼公司，因为该公司创造了电影《玩具总动员4》里的一个次

要角色潇洒公爵(Duke Caboom)并制作和销售了这个电影角色的玩具周边产品，侵犯了与该表演者相关的知识产权和公开发表权。

该地区法院使用了“罗杰斯检验 (Rogers test)”来判断《兰哈姆法案》是否适用于此案，该检验的初衷是在“防止消费混淆”和“表达自由”这两种公共利益之间寻找一个平衡点。当“表达自由”的公众利益大于“防止消费者混淆”的公众利益时，根据商标法提起的诉讼请求将被驳回。本案中，该法院认为潇洒公爵这一角色具有充分的“艺术价值”，且其头发、胡须、衣服上的图案和颜色均不相同，迪士尼公司在电影中未提及过Knievel的名字，也没有暗示过该电影与Knievel相关，没有“明显地”误导消费者，未构成侵权。

来源：[The Ninth Circuit Court of Appeals](#)

### **The Appeal of "Duke Caboom" Was Rejected**

On 22, Aug, the Ninth Circuit Court of Appeals of U.S. affirmed the ruling of the District of Nevada dismissing a trademark infringement case filed by K&K Promotions, which owns the IP rights to famed American daredevil Evel Knievel.

In November, 2020, K&K Company sued Disney Company in the Federal District Court of Nevada, because the company created Duke Caboom, a minor character in the movie Toy Story 4, and produced and sold the toy peripheral products of this movie character, infringing the intellectual property rights and public publishing rights related to this performer.

By using the "Rogers test" to judge whether the Lanham Act is applicable to the case, the appellate court said that K&K failed to show Duke Caboom is "explicitly misleading" as to its source. While the Caboom character may be "generally reminiscent" of Knievel, it is "not a literal depiction" and merely copies general characteristics of stuntmen. And the economic value of the associated toy Caboom action figures is derived not from any semblance to Knievel but from Disney's Toy Story franchise and its popularity with children. Therefore, Disney Company does not constitute infringement.

Source: [The Ninth Circuit Court of Appeals](#)

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