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European Commission Fines Ethanol Producer Lantmännen EUR 47.7 Million over Ethanol Benchmarks Cartel

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

国务院印发《全面对接国际高标准经贸规则推进中国（上海）自由贸易试验区高水平制度型开放总体方案》

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China (Shanghai) Pilot Free Trade Zone in Comprehensively Aligning with International High-standard Economic and Trade Rules"

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The CAC issues the Guidelines for the Implementation of Standard Contracts for Cross-border Personal Information Flows in the Guangdong-Hong Kong-Macao Greater Bay Area (Mainland and Hong Kong)

国家网信办发布《网络安全事件报告管理办法（征求意见稿）》并公开征求意见

The CAC Issues the Administrative Measures for Reporting Cybersecurity Incidents (Draft for Comments) and Solicited Public Comments

北京经信局印发《北京市公共数据专区授权运营管理办法（试行）》

The Beijing Bureau of Economy and Information Technology issues the "Measures for the Management of the Authorized Operation of Public Data Zones in Beijing (for Trial Implementation)"

深圳市卫生健康委员会印发《深圳市卫生健康数据管理办法》

Shenzhen Municipal Health Commission issues the "Measures for the Management of Health Data in Shenzhen "

《深圳经济特区消费者权益保护条例》将于2024年1月1日施行

The Regulations on the Protection of Consumer Rights and Interests in the Shenzhen Special Economic Zone will come into force on 1 January 2024

中央网信办举报中心依法受理处置一批仿冒学术期刊诈骗网站

The Reporting Center of the CAC Accepts and Deals with a Number of Fraudulent Websites Counterfeiting Academic Journals in Accordance with the Law

欧洲议会和欧盟理事会就《人工智能法案》达成政治协议

EU: Parliament and Council reach political agreement on AI Act

美国卫生与公众服务部宣布与Lafourche医疗集团就HIPAA的违规行为达成48万美元的和解协议

HHS Announces \$480,000 Settlement with Lafourche Medical Group over HIPAA Violations



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知识产权 Intellectual Property

山东省2023年共办理打击侵权假冒案件6450件

Shandong Province handled a total of 6,450 cases combating infringement and counterfeiting in 2023

最高法案例：涉GPL开源协议争议的软件权利人即使未开源，亦有权针对侵权行为维权

Supreme Court Case: Software rights holders involved in disputes over GPL open-source licenses have the right to enforce rights even if the software is not open source

最高法案例：计算机软件侵权中“部分复制”行为的认定

Supreme Court Case: Determination of "partial replication" in computer software infringement

北京法院案例：“云签”具有“线上电子签章”含义，用作指示商标功能时不构成商标性使用侵权

Beijing Court Case: “Yun Sign/Cloud Sign (云签)” has the meaning of "online electronic signature" and does not constitute trademark infringement when used to indicate the function of a trademark

湖南法院案例：《狂飙》解说短视频不构成合理使用，平台任由传播构成帮助侵权

Hunan Court Case: The short video of “The Knockout (狂飙)” commentary does not constitute fair use, and the platform's letting it spread constitutes aiding infringement

瑞幸咖啡状告“泰国瑞幸”败诉

Luckin Coffee loses trademark infringement lawsuit against “Thai Luckin”

21.8亿美元赔偿被推翻，VLSI诉英特尔专利侵权案将被重审

\$2.18 billion compensation overturned, VLSI's patent infringement lawsuit against Intel will be retried

韩国知识产权局加强外观设计保护

South Korean Intellectual Property Office strengthens protection for industrial design

立方竞争法周报 Weekly Competition Law News

福州市房地产估价协会因垄断协议遭罚款30万元

2023年12月8日，福建省市场监督管理局（“福建省市监局”）发布福州市房地产估价协会垄断协议案行政处罚决定书。据查，2019年11月份，福州市房地产估价协会组织相关评估企业签订了含有排除、限制竞争内容的《承诺函》，并为进一步明确约束评估企业的市场报价行为，于2020年8月制定了《房地产评估项目招投标中评估费报价指引》，对评估企业在招投标中的应标行为进行了统一，并以业内通报、暂停服务、经济处罚等手段约束了评估企业的价格竞争。福建省市监局认定，上述行为构成组织本行业的经营者从事垄断协议行为，决定责令其停止违法行为并处以罚款30万元。（[查看更多](#)）

Fuzhou Real Estate Appraisal Association Fined CNY 300,000 Due to Monopoly Agreement

On December 8, 2023, the Fujian Provincial Administration for Market Regulation (“Fujian AMR”) issues an administrative penalty on the Fuzhou Real Estate Appraisal Association’s monopoly agreement case. According to investigations, in November 2019, the Fuzhou Real Estate Appraisal Association organized relevant appraisal companies to sign a *Letter of Commitment* that contained the content of excluding and restricting competition. In order to further clarify the constraints on the market quotation behaviour of appraisal companies, it formulated the *Guidelines for the Quotation of Appraisal Fees in Bidding for Real Estate Appraisal Projects* in August 2020, which unified the bidding behaviour of evaluation companies in bidding, and constrained the price competition of evaluation companies through industry notifications, service suspensions, financial penalties and other means. The Fujian AMR determines that the above acts constituted organising undertakings in the industry to engage in monopoly agreements and decides to order them to stop the illegal acts and impose a fine of CNY 300,000. ([More](#))

两部门：建立健全反垄断“三书一函”制度，保护市场公平竞争

2023年12月6日，国家市场监督管理总局（“市场监管总局”）发布《国务院反垄断反不正当竞争委员会办公室 市场监管总局关于建立反垄断“三书一函”制度的通知》（“《通知》”）。为增强反垄断监管的有效性和规范性，及时预防和制止垄断行为，保护市场公平竞争，推动加快建设全国统一大市场，国务院反垄断反不正当竞争委员会办公室、市场监管总局发布建立健全反垄断“三书一函”即《提醒敦促函》《约谈通知书》《立案调查通知书》《行政处罚决定书（经营主体）/行政建议书（行政机关）》制度有关事项的通知。《通知》明确提出了“三书一函”的适用情形，并要求各地反垄断执法部门积极贯彻落实。（[查看更多](#)）

Two Departments: Establish and Improve Anti-Monopoly “Three Notifications and One Letter” System to Protect Fair Market Competition

On December 6, 2023, the State Administration for Market Regulation (“SAMR”) issues the *Notice of the State Council’s Anti-Monopoly and Anti-Unfair Competition Commission Office (the “Office”) and*

the State Administration for Market Regulation on the Establishment of the Anti-Monopoly “Three Notifications and One Letter” System (the “Notice”). In order to enhance the effectiveness and standardization of anti-monopoly supervision, promptly prevent and cease monopolistic behaviours, protect fair market competition, and promote the construction of a unified national market, the Office and the SAMR issue the “Three Notifications and One Letter”, which are *Letter of Reminder*, *Notification of Interviews*, *Notification of Establishment of an Investigation*, and *Decision on Administrative Penalty (Business Entity)/Administrative proposal (administrative authorities)*. The Notice clearly states the applicable circumstances of the “Three Notifications and One Letter” and requires local anti-monopoly law enforcement departments to actively implement it. ([More](#))

浙江省市监局纠正一起滥用行政权力排除、限制竞争行为

2023年12月5日，浙江省市场监督管理局（“浙江省市监局”）公布了一起建德市人民政府滥用行政权力排除、限制竞争行为案件。浙江省市监局认为，当事人制发文件强制要求进驻建德市范围内开展天然气经营的企业注册地必须在该市的行为，排除、限制了具有相应资质的外地企业参与相关市场竞争，构成滥用行政权力排除、限制竞争行为。调查期间，当事人积极整改，及时废止原文件并在政府网站公布，向浙江省市场监管局提交整改报告，全面开展自查自纠，落实公平竞争审查制度。（[查看更多](#)）

Zhejiang AMR Publishes Administrative Anti-monopoly Case

On December 5, 2023, the Zhejiang Provincial Administration for Market Regulation (“Zhejiang AMR”) announces a case of the Jiande City People’s Government’s abuse of administrative power to eliminate, restrict and restrict competition. Anti-competitive behaviour cases. The Zhejiang AMR holds that the parties concerned issued documents with mandatory requirements of natural gas businesses entering Jiande City that their registrations must be in the city, which excluded and limited the corresponding qualification of foreign enterprises to participate in the relevant market competition, and constituted the abuse of administrative power to exclude, restrict competition. During the investigation, the parties concerned actively made rectifications, promptly abolished the original documents and published them on the government website, submitted a rectification report to the Zhejiang AMR, comprehensively carried out self-examination and self-correction, and fully implemented the fair competition review system. ([More](#))

上海市市监局纠正一起滥用行政权力排除、限制竞争行为

2023年12月5日，上海市市场监督管理局（“上海市市监局”）公布了一起上海市金山区亭林镇人民政府滥用行政权力排除、限制竞争行为案件。上海市市监局认为，当事人通过制定文件，设立小型建设工程项目承包单位库，要求入库企业注册在本镇，影响了其他具备合格资质的承包施工单位平等参与该区域小型建设工程施工建设市场的公平竞争，构成滥用行政权力排除、限制竞争行为。调查期间，当事人积极整改，主动对相关文件进行修订，清理含有排除、限制竞争效果的内容。同时，建立健全公平竞争审查机制，防止出台排除、限制竞争的政策措施。

（[查看更多](#)）

Shanghai AMR Publishes Administrative Anti-monopoly Case

On December 5, 2023, the Shanghai Municipal Administration for Market Regulation (“Shanghai AMR”) announces a case of the People’s Government of Tinglin Town, Jinshan District, Shanghai, abusing administrative power to exclude and restrict competition. The Shanghai AMR holds that the party concerned, by formulating documents to set up a pool of contracting units for small-scale construction projects and requiring the enterprises in the pool to be registered in the town, affected other contracting and construction units with qualified qualifications to participate equally in the fair competition in the market of small-scale construction projects in the region, which constituted an abuse of administrative power to exclude and restrict competition. During the investigation, the parties involved actively made rectifications, proactively revised relevant documents, and cleaned up content that had the effect of excluding or restricting competition. At the same time, they established and improved a fair competition review mechanism to prevent the introduction of policies and measures that eliminate or restrict competition. ([More](#))

欧盟委员会通过农业可持续发展协议反垄断指南

2023年12月7日，欧盟委员会通过了有关如何设计农业领域可持续发展协议的指南（“指南”），该指南使用了由最近改革的共同农业政策（Common Agricultural Policy）引入欧盟竞争规则中的新排除规则。建立农产品市场共同组织的1308/2013号法规（CMO Regulation）第210a条规定，如果农业部门的某些限制性协议是实现超出欧盟或国家强制性规则的可持续性标准所不可或缺的，则这些协议不在《欧盟运作条约》第101条的禁止之列。指南旨在阐明活跃于农业食品领域的经营者如何根据第210a条设计联合可持续发展举措，其内容包括：定义排除的协议的范围；定义符合条件的可持续发展目标；解释如何在实践中评估某项特定的竞争限制对于实现可持续性标准的必要性；界定竞争监管机构事后干预的范围。指南将在欧盟官方公报上发布后生效。（[查看更多](#)）

European Commission Adopts Antitrust Guidelines for Sustainability Agreements in Agriculture

On December 7, 2023, the European Commission issues a notice, announcing that it adopts Guidelines on how to design sustainability agreements in the field of agriculture (“Guidelines”) using a novel exclusion from EU competition rules introduced by the recently reformed Common Agricultural Policy. Article 210a of Regulation 1308/2013 establishing a common organisation of the markets in agricultural products (CMO Regulation) excludes certain restrictive agreements in the agricultural sector from the Article 101 TFEU prohibition, when those agreements are indispensable to achieve sustainability standards going beyond the mandatory EU or national rules. The guidance aims to clarify how undertakings active in the agri-food sector can design joint sustainability initiatives in accordance with Article 210a. It includes defining the scope of the exclusion; defining eligible sustainability objectives; Setting requirements for sustainability standards; explaining how to assess in practice whether a given restriction of competition is indispensable to achieve sustainability standards; and defining the scope for ex-post intervention by competition authorities. The Guidelines will enter into force following the publication in the Official Journal of the European Union. ([More](#))

欧盟委员会因乙醇基准价格卡特尔对乙醇生产商Lantmännen罚款4770万欧元

2023年12月7日，欧盟委员会对Lantmännen ek för及其子公司Lantmännen Biorefineries AB（“Lantmännen”）参与的有关欧洲乙醇批发价格形成机制的卡特尔行为，处以约4770万欧元（3.68亿人民币）罚款。鹿特丹港和阿姆斯特丹-鹿特丹-安特卫普驳船现货市场是欧洲经济区（EEA）最重要的乙醇交易地点。标普全球普氏（S&P Global Platts）是一家为不同商品市场提供价格评估的公司，使用一种名为“MOC”（Market On Close）的价格评估程序来确定乙醇基准价格。Lantmännen是北欧地区最大的乙醇生产商，其大部分乙醇销售合同都以普氏乙醇基准月平均价格为参考。因此，普氏乙醇基准价格直接影响着Lantmännen的乙醇销售收入。欧盟委员会的调查显示，Lantmännen与另外两家公司在MOC评估窗口之前、期间和之后定期协调其交易行为；一致限制鹿特丹地区可能进入MOC评估窗口的乙醇实物供应量；交换商业敏感信息，以实施协调行为，以上行为均旨在人为提高、维持和/或防止降低普氏乙醇基准价格。（[查看更多](#)）

European Commission Fines Ethanol Producer Lantmännen EUR 47.7 Million over Ethanol Benchmarks Cartel

On December 7, 2023, the European Commission imposes a fine of approximately EUR 47.7 million (CNY 368 million) on Lantmännenekför and its subsidiary Lantmännen Biorefineries AB (“Lantmännen”) for participating in a cartel concerning the wholesale price formation mechanism for ethanol in Europe. The Port of Rotterdam and the Amsterdam-Rotterdam-Antwerp barge spot market were the most important ethanol trading locations in the European Economic Area (EEA). S&P Global Platts, a company that provides price assessments for different commodity markets, uses a price assessment process called “MOC” (Market On Close) to determine the ethanol benchmark price. Lantmännen is the largest ethanol producer in the Nordic region, and referenced most of its ethanol sales contracts to the monthly average of S&P Global Platts’ ethanol benchmarks. Therefore, the Platts ethanol benchmark price directly affects Lantmännen’s ethanol sales revenue. The Commission’s investigation revealed that Lantmännen, together with two other companies coordinated its trading conduct on a regular basis before, during and after the MOC Window; agreed to limit the supply of physical ethanol in the Rotterdam area that could end up in the MOC Window; and exchanged commercially sensitive information in order to implement the coordinated behaviour. The above actions are all aimed at increasing, maintaining and/or preventing from decreasing the level of Platts’ ethanol benchmarks. ([More](#))

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

国务院印发《全面对接国际高标准经贸规则推进中国（上海）自由贸易试验区高水平制度型开放总体方案》

2023年12月7日，国务院印发《全面对接国际高标准经贸规则推进中国（上海）自由贸易试验区高水平制度型开放总体方案》（以下称《总体方案》），《总体方案》聚焦7个方面，提出了80条措施。《总体方案》明确要率先实施高标准数字贸易规则。支持上海自贸试验区率先制定重

要数据目录，探索建立合法安全便利的数据跨境流动机制，加快数字技术赋能，推动电子票据应用，推动数据开放共享，构筑数字贸易发展新优势。《总体方案》要求，上海市人民政府要强化主体责任，建立完善制度创新机制，扎实推进各项措施落实。国务院有关部门要给予积极支持，对确需制定具体意见、办法、细则、方案的，应在《总体方案》印发之日起一年内完成。商务部要组织开展成效评估，支持上海总结成熟经验并及时复制推广。（[查看更多](#)）

The State Council issues the "Overall Plan for Promoting High-level Institutional Opening-up in the China (Shanghai) Pilot Free Trade Zone in Comprehensively Aligning with International High-standard Economic and Trade Rules"

On 7 December 2013, the State Council issued the "Overall Plan for Promoting High-level Institutional Opening-up in the China (Shanghai) Pilot Free Trade Zone in Comprehensively Aligning with International High-standard Economic and Trade Rules" (hereinafter referred to as the "Overall Plan"), which focuses on 7 aspects and proposes 80 measures. The Overall Plan clearly states that it is necessary to take the lead in implementing high-standard digital trade rules. Efforts must be made to support the Shanghai Pilot Free Trade Zone to take the lead in formulating important data catalogs, explore the establishment of a legal, secure and convenient cross-border data flow mechanism, accelerate the empowerment of digital technology, promote the application of electronic bills, promote the open sharing of data, and build new advantages for the development of digital trade. The Overall Plan requires that the Shanghai Municipal People's Government should strengthen the main responsibility, establish and improve the institutional innovation mechanism, and solidly promote the implementation of various measures. The relevant departments of the State Council should give active support, and if necessary to formulate specific opinions, measures, detailed rules, and plans, such formulation should be completed within one year from the date of issuance of the Overall Plan. The Ministry of Commerce should organize and carry out effectiveness evaluation, and support Shanghai to summarize mature experience and replicate and promote it in a timely manner.([More](#))

国家网信办发布《粤港澳大湾区（内地、香港）个人信息跨境流动标准合同实施指引》

2023年12月13日，国家互联网信息办公室与香港创新科技及工业局共同发布《粤港澳大湾区（内地、香港）个人信息跨境流动标准合同实施指引》（以下称《指引》），以落实《中华人民共和国国家互联网信息办公室与香港特别行政区政府创新科技及工业局 关于促进粤港澳大湾区数据跨境流动的合作备忘录》关于“共同制定粤港澳大湾区个人信息跨境标准合同并组织实施，加强个人信息跨境标准合同备案管理”的合作措施。

《指引》所附《标准合同》为该合作备忘录下有关促进粤港澳大湾区个人信息跨境流动的便利措施。粤港澳大湾区个人信息处理者及接收方可以按照本实施指引要求，通过订立标准合同的方式进行粤港澳大湾区内内地和香港之间的个人信息跨境流动。被相关部门、地区告知或者公开发布为重要数据的个人信息除外。《指引》还明确：个人信息处理者及接收方应注册于（适用于组织）/位于（适用于个人）粤港澳大湾区内地部分，即广东省广州市、深圳市、珠海市、佛山市、惠州市、东莞市、中山市、江门市、肇庆市，或者香港特别行政区。个人信息处理者

及接收方应在标准合同生效之日起10个工作日内按照属地向广东省互联网信息办公室或者香港特别行政区政府政府资讯科技总监办公室进行标准合同备案。（[查看更多](#)）

The CAC issues the Guidelines for the Implementation of Standard Contracts for Cross-border Personal Information Flows in the Guangdong-Hong Kong-Macao Greater Bay Area (Mainland and Hong Kong)

On 13 December 2023, the Cyberspace Administration of China (the “CAC”) and the Innovation, Technology and Industry Bureau of the Hong Kong Special Administrative Region jointly issued the *Guidelines for the Implementation of Standard Contracts for Cross-border Flows of Personal Information in the Guangdong-Hong Kong-Macao Greater Bay Area (Mainland and Hong Kong)* (hereinafter referred to as the “*Guidelines*”), in an effort to implement the *Memorandum of Cooperation between the Cyberspace Administration of the People's Republic of China and the Innovation, Technology and Industry Bureau of the Government of the Hong Kong Special Administrative Region on Facilitating Cross-border Data Flows in the Guangdong-Hong Kong-Macao Greater Bay Area* (hereinafter referred to as the “*MoU*”) with respect to jointly formulating and organizing the implementation of cross-border standard contracts for personal information in the Guangdong-Hong Kong-Macao Greater Bay Area, and strengthen the filing and management of cross-border standard contracts for personal information.

The form of Standard Contract attached to the Guidelines is a facilitation measure under the MoU to facilitate the cross-border flow of personal information in the Guangdong-Hong Kong-Macao Greater Bay Area. Personal information processors and recipients in the Guangdong-Hong Kong-Macao Greater Bay Area may, in accordance with the requirements of the Guidelines, conduct cross-border transfers of personal information between the Mainland and Hong Kong in the Guangdong-Hong Kong-Macao Greater Bay Area by entering into standard contracts, Except for personal information that has been notified by relevant departments or regions or publicly released as important data. The Guidelines also specify that personal information processors and recipients should be registered (for organisations) or located (for individuals) in the mainland part of the Guangdong-Hong Kong-Macao Greater Bay Area, i.e., Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen, Zhaoqing in Guangdong Province, or the Hong Kong Special Administrative Region. Personal information processors and recipients shall, within 10 working days from the effective date of the standard contract, file the standard contract with the Cyberspace Administration of Guangdong Province or the Office of the Government Chief Information Officer of the Government of the Hong Kong Special Administrative Region depending on location. ([More](#))

国家网信办发布《网络安全事件报告管理办法（征求意见稿）》并公开征求意见

2023年12月8日，国家网信办发布《网络安全事件报告管理办法（征求意见稿）》（以下简称《管理办法》），旨在规范网络安全事件的报告，减少网络安全事件造成的损失和危害，维护国家安全。《管理办法》明确了网络安全事件报告的程序要求和内容要求，并通过附件《网络安全事件分级指南》明确了网络安全事件分级的具体标准，对于企业落实网络安全事件报告要求、防范网络安全风险具有重要指导意义。（[查看更多](#)）

The CAC Issues the Administrative Measures for Reporting Cybersecurity Incidents (Draft for Comments) and Solicited Public Comments

On 8 December 2023, the Cyberspace Administration of China (CAC) issued the *Administrative Measures for Reporting Cybersecurity Incidents (Draft for Comments)* (hereinafter referred to as the "Administrative Measures"), which aims to standardize the reporting of cybersecurity incidents, reduce losses and harms caused by cybersecurity incidents, and safeguard national security. The Administrative Measures clarify the procedural and content requirements for cybersecurity incident reporting, and clarify the specific standards for the classification of cybersecurity incidents through the annex "Guidelines for the Classification of Cybersecurity Incidents", which is of great guiding significance for enterprises to implement the requirements for reporting cybersecurity incidents and prevent cybersecurity risks. [\(More\)](#)

北京经信局印发《北京市公共数据专区授权运营管理办法（试行）》

2023年12月11日，北京市经济和信息化局制定了《北京市公共数据专区授权运营管理办法（试行）》（以下称《办法》），旨在提升北京市公共数据专区授权运营工作开展的规范性。《办法》明确：公共数据是指北京市各级国家机关、经依法授权具有管理公共事务职能的组织在履行职责和提供公共服务过程中处理的各类数据。公共数据专区是指针对重大领域、重点区域或特定场景，为推动公共数据的多源融合及社会化开发利用、释放数据要素价值而建设的各类专题数据区域的统称，一般分为领域类、区域类及综合基础类。公共数据遵照“原始数据不出域，数据可用不可见”的总体要求，在维护国家数据安全、保护个人信息的前提下开展授权运营。 [（查看更多）](#)

The Beijing Bureau of Economy and Information Technology issues the "Measures for the Management of the Authorized Operation of Public Data Zones in Beijing (for Trial Implementation)"

On 11 December 2023, the Beijing Municipal Bureau of Economy and Information Technology formulated the *Measures for the Management of the Authorized Operation of Municipal Public Data Zones in Beijing (for Trial Implementation)* (hereinafter referred to as the "Measures"), aiming to improve the standardization of the authorized operation of Public Data Zones in Beijing. The Measures make it clear that public data refers to all types of data processed by government authorities at all levels in Beijing as well as organizations authorized to manage public affairs in accordance with the law in the course of performing their duties and providing public services. Public data zones refer to the collective term for all kinds of thematic data areas established for major fields, key regions, or specific scenarios to promote the multi-source integration and socialized development and utilization of public data, and to release the value of data elements, and are generally divided into domain, regional, and comprehensive basic categories. Authorized operation of public data should be conducted under the premise of maintaining national data security and protecting personal information in accordance with the overall requirement of "the original data does not leave the domain, and the data is available but invisible". [\(More\)](#)

深圳市卫生健康委员会印发《深圳市卫生健康数据管理办法》

2023年11月28日，深圳市卫生健康委员会印发《深圳市卫生健康数据管理办法》（以下称《办法》），以规范卫生健康数据活动，保障数据安全，维护个人和组织的合法权益，促进卫生健康数据有序流动和开放共享。《办法》共七章四十九条，包括总则，数据处理的一般规定，数

据收集、传输和存储，数据使用、加工和删除，数据共享和开放，安全和监管，以及附则。《办法》适用于深圳市辖区范围内卫生健康行政部门、医疗卫生机构及其工作人员开展的卫生健康数据处理活动及其监督管理。《办法》自2024年1月1日起施行，有效期五年。（[查看更多](#)）

Shenzhen Municipal Health Commission issues the "Measures for the Management of Health Data in Shenzhen "

On 28 November, 2023, the Shenzhen Municipal Health Commission issued the *Measures for the Management of Health Data in Shenzhen* (hereinafter referred to as the "Measures") to regulate health data activities, ensure data security, safeguard the legitimate rights and interests of individuals and organizations, and promote the orderly flow and open sharing of health data. The Measures consist of seven chapters and 49 articles, including General Provisions, General Provisions on Data Processing, Data Collection, Transmission and Storage, Data Use, Processing and Deletion, Data Sharing and Openness, Security and Regulation, and Supplementary Provisions. The Measures apply to the health data processing activities carried out by the health administrative departments, medical and health institutions and their staff within the jurisdiction of Shenzhen Municipality and their supervision and management. The Measures will come into force on 1 January 2024 and will be valid for five years. ([More](#))

《深圳经济特区消费者权益保护条例》将于2024年1月1日施行

2023年12月1日，《深圳经济特区消费者权益保护条例》（以下称《条例》）正式发布，并将于2024年1月1日起正式实施。《条例》要求，经营者处理消费者个人信息的，应当遵守《中华人民共和国个人信息保护法》等有关个人信息保护法律、法规的规定。经营者不得利用数据分析等技术手段对交易条件相同的消费者实施差别待遇，法律、法规另有规定的除外。（[查看更多](#)）

The Regulations on the Protection of Consumer Rights and Interests in the Shenzhen Special Economic Zone will come into force on 1 January 2024

On 1 December 2023, the *Regulations on the Protection of Consumer Rights and Interests in the Shenzhen Special Economic Zone* (hereinafter referred to as the "Regulations") were officially promulgated and will come into effect on 1 January 2024. The Regulations require that business operators handling consumers' personal information shall comply with the *Personal Information Protection Law of the People's Republic of China* and other relevant laws and regulations on the protection of personal information. Business operators must not use data analysis and other technical means to carry out differential treatment of consumers with the same transaction conditions, except as otherwise provided by laws and regulations. ([More](#))

中央网信办举报中心依法受理处置一批仿冒学术期刊诈骗网站

近日，中央网信办举报中心根据网民举报线索，会同相关部门依法受理处置一批仿冒学术期刊诈骗网站。这些仿冒网站页面与国内一些高等院校、科研院所等主管主办的学术期刊网站页面内容相似性很高，并冒用其名义对外发布约稿通知，诱骗作者投稿，借机收取所谓“审

稿费”“版面费”敛财牟利，严重侵害网民合法权益，扰乱正常学术论文出版秩序。经梳理发现，这些仿冒网站有以下特点：1.仿冒域名地址。利用与官方网站高度相似的域名地址，混淆视听。2.“克隆”页面内容。一些仿冒网站基本照搬照抄官方网站页面内容，但细究却发现，有的仿冒网站内容老旧，更新不及时。3.缴费方式不正规。正规期刊收款信息多为对公账户，仿冒网站却使用个人银行账号收款。（[查看更多](#)）

The Reporting Center of the CAC Accepts and Deals with a Number of Fraudulent Websites Counterfeiting Academic Journals in Accordance with the Law

Recently, the Reporting Center of the Cyberspace Administration of China (CAC) has accepted and dealt with a number of fraudulent websites counterfeit academic journals in accordance with the law in conjunction with relevant departments based on the clues reported by netizens. These counterfeit website pages have a high similarity with the content of the pages of the websites of academic journals sponsored by some domestic institutions of higher learning and scientific research institutes, and fraudulently use their names to publish manuscript invitation notices to the public, trick authors into submitting papers, and take the opportunity to collect so-called "review fees" and "page fees" to make money and make profits, seriously infringing on the legitimate rights and interests of netizens, and disrupting the normal order of academic paper publishing. After investigation, it was found that these counterfeit websites have the following characteristics: 1. Fake domain name addresses confusing people by using domain addresses that are highly similar to the corresponding official websites. 2. "Clone" page content. Some counterfeit websites basically copy the content of the official website pages, but a closer look reveals that some counterfeit websites have outdated content and are not updated in a timely manner. 3. The payment method is irregular. Most of the payment collection information of regular periodicals refers to a corporate account, but the fake website uses a personal bank account to collect money. ([More](#))

欧洲议会和欧盟理事会就《人工智能法案》达成政治协议

2023年12月9日，欧洲议会宣布与欧盟理事会已就《人工智能（AI）法案》达成政治协议。议会和欧盟理事会在几个关键领域达成了协议，包括：需要被禁止的应用；执法豁免的情形；运营高风险系统的义务；一般人工智能系统的防范措施；制裁措施；以及生效日期。关于被列为高风险的人工智能系统，议会确认，除其他要求外，还商定了强制性的基本权利影响评估。公民还将有权对人工智能系统提出投诉，并有权就基于高风险人工智能系统做出的影响其权利的决定获得解释。此外，理事会还确定了对通用人工智能系统的要求，如透明度要求，同时也对影响较大的通用人工智能系统提出了更严格的要求，包括有义务进行模型评估、评估和降低系统风险、进行对抗性测试、向欧盟委员会报告严重事故等。委员会确认，该政治协议目前须经议会和欧盟理事会正式批准。该协议将在《官方公报》上公布20天后生效，并将在生效两年后适用（某些具体规定除外）。但是，禁止性规定将在6个月后适用，而通用人工智能规则将在12个月后适用。（[查看更多](#)）

EU: Parliament and Council reach political agreement on AI Act

The European Parliament announced on 9 December 2023, that it and the Council of the European Union had reached a political agreement on the Artificial Intelligence (AI) Act. The Parliament and

the Council reached an agreement in several key areas including: banned applications; law enforcement exemptions; obligations for high-risk systems; guardrails for general AI systems; sanctions; and date of entry into force. Regarding AI systems classified as high-risk, the Parliament confirmed that a mandatory fundamental rights impact assessment was agreed upon among other requirements. Citizens will also have a right to launch complaints about AI systems and receive explanations about decisions based on high-risk AI systems that impact their rights. Furthermore, the Council settled on requirements for general-purpose AI systems such as transparency requirements while also adopting more stringent requirements for high-impact general-purpose AI systems including obligations to conduct model evaluations, assess and mitigate systemic risks, conduct adversarial testing, and report to the European Commission on serious incidents, among other things. The Commission confirmed that the political agreement is now subject to formal approval by the Parliament and the Council. It will enter into force 20 days after publication in the Official Journal and will become applicable two years after it enters into force, except for some specific provisions. However, prohibitions will apply after six months while the rules on General Purpose AI will apply after 12 months.[\(More\)](#)

美国卫生与公众服务部宣布与Lafourche医疗集团就HIPAA的违规行为达成48万美元的和解协议

2023年12月7日，美国卫生与公众服务部（HHS）宣布与Lafourche医疗集团（LMG）已签订一份《和解协议》，其同意向HHS民权办公室（OCR）支付48万美元，并采取一项纠正行动计划，以解决可能违反《1996年健康保险便携性和责任法案》（HIPAA）规则的问题。

2021年5月28日，HHS收到了LMG的违规通知报告，其中指出，2021年3月30日，LMG获悉一名未经授权的个人通过网络钓鱼攻击进入了其所有者的一个电子邮件账户。LMG确定该电子邮件帐户包含患者受保护的健康信息(PHI)。由于LMG无法确定受影响的具体患者的身份，因此LMG将此事件通知了所有患者。经过调查，HHS认定LMG在2021年泄露事件发生之前，未能按照HIPAA规定的要求进行风险分析，以识别电子PHI的潜在威胁或漏洞。HHS还发现，LMG没有制定定期审查信息系统活动的政策或程序，以保护PHI免受网络攻击，这违反了HIPAA的规则。鉴于上述情况，LMG同意上述和解协议，并同意实施一项纠正行动计划，该计划将由OCR监督实施两年。LMG还同意：

制定并实施安全措施，以减少电子PHI的安全风险和漏洞；制定、维护和修订必要的书面政策和程序，以遵守HIPAA规则；以及对所有接触患者PHI的员工进行有关HIPAA政策和程序的培训。

[\(查看更多\)](#)

HHS Announces \$480,000 Settlement with Lafourche Medical Group over HIPAA Violations

On 7 December 2023, the U.S. Department of Health & Human Services (HHS) announced, that Lafourche Medical Group, LLC (LMG), had entered into a Resolution Agreement in which it agreed to pay \$480,000 to the HHS Office for Civil Rights (OCR) and to adopt a corrective action plan to settle potential violations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Rules. On 28 May 2021, HHS received a breach notification report from LMG which stated that on 30 March 2021, LMG learned that an unauthorized individual obtained access to one of its owners' email accounts

through a phishing attack. LMG determined that the email account contained patients' protected health information (PHI). As LMG was unable to identify the specific patients affected, LMG notified all of its patients of the incident. Following an investigation, the HHS determined that before the 2021 breach, LMG failed to conduct a risk analysis to identify potential threats or vulnerabilities to electronic PHI as required by the HIPAA Rules. The HHS also found that LMG had no policies or procedures in place to regularly review information system activity to safeguard PHI against cyberattacks contrary to the HIPAA Rules. In light of the above, LMG agreed to the aforementioned settlement and to implement a corrective action plan that will be monitored by the OCR for two years. LMG also agreed to: establish and implement security measures to reduce security risks and vulnerabilities to electronic PHI; develop, maintain, and revise written policies and procedures as necessary to comply with the HIPAA Rules; and train all staff members who have access to patient's PHI on HIPAA policies and procedures.[\(More\)](#)

知识产权 Intellectual Property

山东省2023年共办理打击侵权假冒案件6450件

12月4日，山东省政府新闻办举行新闻发布会，邀请山东省市场监督管理局有关负责同志等介绍2023年山东省打击侵权假冒工作有关情况。会上记者获悉，山东省聚焦群众反映强烈、社会舆论关注、侵权假冒多发的重点领域和区域重拳出击，今年以来，共办理打击侵权假冒案件6450件；立案侦办各类侵权假冒犯罪案件2102件，抓获犯罪嫌疑人8941名；批准逮捕侵权、假冒犯罪案件344件521人，起诉601件1250人；新收各类侵权假冒刑事案件890件，审结789件，多起案件入选最高人民法院典型案例。

来源：国家知识产权局

Shandong Province handled a total of 6,450 cases combating infringement and counterfeiting in 2023

On December 4th, the Shandong Provincial Government Information Office held a press conference, where officials from the Shandong Provincial Market Supervision Administration provided information on the province's efforts to combat infringement and counterfeiting in 2023. The focus has been on key areas and regions with strong public reactions, media attention, and frequent occurrences of infringement and counterfeiting. This year, a total of 6,450 cases have been handled, including 2,102 criminal cases investigated, 8,941 suspects arrested, and 344 cases with 521 individuals approved for arrest. Various measures have been taken to address infringement and counterfeiting in a timely manner.

Source: CIPA

最高法案例：涉GPL开源协议争议的软件权利人即使未开源，亦有权针对侵权行为维权

2018年7月，网经科技（苏州）有限公司（下称网经公司）以侵犯软件著作权为由，将浙江亿邦通信科技有限公司（下称亿邦公司）、苏州启奥网络科技有限公司（下称启奥公司）、刘某、吴某、谢某等起诉至江苏省苏州市中级人民法院（下称苏州中院），并索赔300万元。苏州中院一审判决亿邦公司等赔偿网经公司50万元，亿邦公司等不服，提起上诉。最高人民法院于近日作出终审判决，驳回上诉，维持原判。

法院认为，在OpenWRT系统软件权利人并非该案当事人情形下，基于合同相对性原则，该案不宜对涉案软件是否全部或部分受GPLv2协议约束、网经公司是否违反GPLv2协议以及网经公司是否因此需承担任何违约或侵权责任等问题进行审理。退而言之，即便假定网经公司因违反GPLv2协议导致涉案软件存在权利瑕疵，该假定瑕疵亦不影响网经公司在该案中针对被诉行为寻求侵权救济。

最高法院在判决中特别指出，在软件尚未被开源、该软件著作权人认为其软件不受GPLv2协议约束、被诉侵权人则依据GPLv2协议提出不侵权抗辩的侵权纠纷中，软件开发者自身是否违反GPLv2协议和是否享有软件著作权，是相对独立的两个法律问题，二者不宜混为一谈，以免不合理地剥夺或限制软件开发者基于其独创性贡献依法享有的著作权。但是，此案最终认定被诉行为构成侵权并支持网经公司部分诉请，并不表明网经公司将来在潜在的违约和/或侵权之诉中可免于承担其依法应当承担的违约和/或侵权责任。

来源：中国知识产权报

Supreme Court Case: Software rights holders involved in disputes over GPL open-source licenses have the right to enforce rights even if the software is not open source

In July 2018, ITIBIA Technology (Suzhou) Co., Ltd. (referred to as ITIBIA) filed a lawsuit against Zhejiang Ebang Communication Co., Ltd. (referred to as Ebang), Suzhou Qiaoao Network Technology Co., Ltd. (referred to as Qiaoao), LIU, WU, XIE, etc., to the Suzhou Intermediate People's Court of Jiangsu Province (referred to as Suzhou Intermediate Court) on the grounds of infringing software copyright, claiming 3 million RMB. Suzhou Intermediate Court ruled in the first instance that Ebang and others compensate ITIBIA with 500,000 RMB. Ebang and others were dissatisfied and appealed. The Supreme Court recently made a final judgment, rejecting the appeal and maintaining the original judgment. The court believes that under the principle of contractual relativity, the case should not be tried for issues such as whether the software involved in the case is fully or partially bound by the GPLv2 license, whether ITIBIA has violated the GPLv2 license, and whether ITIBIA should bear any breach of contract or infringement liability. In other words, even if it is assumed that ITIBIA has a defect in the software due to a violation of the GPLv2 license, this assumed defect does not affect ITIBIA's right to seek infringement remedies against the alleged behavior in this case. The Supreme Court specifically pointed out in the judgment that in the dispute over infringement of the GPLv2 open-source agreement, the issues of whether the software developer violates the GPLv2 agreement and whether they have the copyright to the software are two relatively independent legal issues. The two should not be confused to avoid unreasonably depriving or limiting the software developer's legitimate rights to copyright based on their original contributions. However, the final judgment in this case does not mean that ITIBIA will

be exempt from the breach of contract and/or infringement liability it should bear in potential breach of contract and/or infringement lawsuits in the future.

Source: China Intellectual Property News/China Intellectual Property Information Network

最高法案例：计算机软件侵权中“部分复制”行为的认定

近日，最高人民法院知识产权法庭审结一起侵害计算机软件著作权纠纷上诉案件，对计算机软件著作权侵权案件中所谓的“部分复制”行为及其责任承担作出了认定。该案判决就计算机软件著作权侵权纠纷中“部分复制”问题明确，复制行为的数量和比例并不当然影响侵权行为的性质，但影响侵权责任承担确定。该案对于澄清计算机软件著作权侵权行为认定的法律适用具有一定参考价值。

最高人民法院二审认为，除法律法规规定的合理使用外，未经软件著作权人许可，复制或者部分复制著作权人的软件的，应当根据情况承担侵权民事责任。法律法规以及司法解释均未对构成侵权行为的“部分复制”作出进一步解释和限定。原则上，任何能够体现著作权人独创性表达、相对独立的软件内容均受软件著作权保护。通常情况下，一个单独代码文件在整个软件中实现相对独立的功能，属于独创性的表达。复制权利软件的数量或者比例并不当然影响侵权行为性质的认定，但因其直接影响损害后果、反映侵权人的主观过错程度，故不同数量或者比例的侵权复制行为将影响侵权责任的确定。

来源：最高人民法院知识产权法庭

Supreme Court Case: Determination of "partial replication" in computer software infringement

Recently, the Supreme People's Court Intellectual Property Court concluded an appeal case involving an infringement of computer software copyright. The judgment clarified the issue of "partial replication" in computer software infringement cases and the responsibility for such acts. The court clarified that the quantity and proportion of copying actions do not necessarily affect the nature of the infringement, but they do affect the determination of liability for infringement. The judgment has certain reference value for clarifying the legal application of determining infringement in computer software copyright cases. The Supreme People's Court, in the second instance judgment, stated that, except for reasonable use as stipulated by laws and regulations, anyone who reproduces or partially reproduces the copyrighted software of the copyright owner without permission shall bear civil liability for infringement based on the circumstances. The laws and regulations, as well as judicial interpretations, do not further explain and limit the "partial replication" that constitutes an infringing act. In principle, any relatively independent content of the software that reflects the copyright owner's creative expression is protected by software copyright. Usually, a separate code file in the entire software implements relatively independent functions, which constitutes a creative expression. The quantity or proportion of the replicated copyrighted software does not necessarily affect the determination of the nature of the infringement but affects the determination of liability for infringement due to its direct impact on the consequences of the infringement and the reflection of the subjective fault degree of the infringer. Therefore, different quantities or proportions of infringing replication actions will affect the determination of liability for infringement.

Source: Supreme People's Court Intellectual Property Court

北京法院案例：“云签”具有“线上电子签章”含义，用作指示商标功能时不构成商标性使用侵权

近日，北京知识产权法院二审审结了上诉人（原审原告）江苏云签有限公司与被上诉人（原审被告）北京京东尚科信息技术有限公司、网银在线（北京）科技有限公司、京东科技信息技术有限公司侵害商标权纠纷一案。

本案中，云签公司认为三被上诉人擅自在京东智臻链官网、APP、官方微信公众号中使用“普惠云签”、“云签电子合同”、“智臻链云签”等标识侵害其享有的第35类、第42类、第9类“云签”注册商标专用权。

法院经审理认为：三被上诉人对“云签”的使用不构成商标性使用。首先，根据三被上诉人提供的证据显示，在本案被控侵权行为发生时，“云签”已被从事线上电子签章业务的相关企业经常使用，用于指代“线上签字”“线上签约”之含义，由此导致“云签”一定程度上具有指示商品服务内容功能，在相关商品服务领域的显著性较低。

其次，三被上诉人在官网、APP及公众微信号中对“云签”均未单独使用，而是与“京东智臻链”“智臻链”等结合使用。相关公众通过相应页面的说明文字能够了解三被上诉人使用的“云签”所指的为“线上电子签章”业务，属于对服务内容的描述，并不具有指示商品或服务来源的作用，而实际起到指示商品或服务来源的作用是“京东”“智臻链”。

因此，三被上诉人对“云签”的使用未构成商标性使用，云签公司的商标侵权主张不能成立。

最终，二审法院维持了一审判决，驳回了云签公司的上诉。

来源：知产宝

Beijing Court Case: “Yun Sign/Cloud Sign (云签)” has the meaning of "online electronic signature" and does not constitute trademark infringement when used to indicate the function of a trademark

Recently, the Beijing Intellectual Property Court concluded the appeal case between appellant (plaintiff) Jiangsu Yunsign Co., Ltd. and appellees (defendant) Beijing Jingdong Shangke Information Technology Co., Ltd., Chinabank Payments (Beijing) Technology Co., Ltd., and JD Technology Information Technology Co., Ltd. on the dispute over trademark infringement. In this case, Yunsign claimed that the three appellants used signs such as "Puhui Yunsign," "Yun/Cloud Sign Electronic Contract," and "Zhizhen Chain Yun/Cloud Sign," infringing its registered trademark rights in Class 35, Class 42, and Class 9 for "Yun Sign/Cloud Sign." The court, after trial, held that the use of "Yun Sign/Cloud Sign" by the three appellants did not constitute trademark infringement. First, according to the evidence provided by the three appellants, at the time of the alleged infringement, "Cloud Sign" had

been frequently used by enterprises engaged in online electronic signature business to refer to "online signature" and "online signing." This led to the understanding that " Yun Sign/Cloud Sign" had a certain degree of functionality in indicating the content of goods and services in the relevant fields, and its distinctiveness in these areas was relatively low. Secondly, the three appellants did not use " Yun Sign/Cloud Sign" independently on their official website, app, and official WeChat account, but combined it with "JD Zhizhen Chain," "Zhizhen Chain," and other elements. People could understand through the explanatory text on the relevant pages that " Yun Sign/Cloud Sign" used by the three appellants referred to "online electronic signature" services. This description belongs to the description of the service content, does not have the function of indicating the source of goods or services, and does not actually indicate the source of goods or services, which is "JD" and "Zhizhen Chain." Therefore, the court ruled that the use of "Cloud Sign" by the three appellants did not constitute trademark infringement, and the trademark infringement claim of Yunsign could not stand. The second-instance court upheld the original judgment.

Source: IP House

湖南法院案例：《狂飙》解说短视频不构成合理使用，平台任由传播构成帮助侵权

近日，湖南省长沙市开福区人民法院一审审结了原告北京爱奇艺科技有限公司、湖南爱奇艺文化科技有限公司与被告上海宽娱数码科技有限公司、上海幻电信息科技有限公司著作权侵权及不正当竞争纠纷一案。

法院经审理认为：首先，被告宽娱公司、幻电公司侵犯了两原告就权利作品享有的信息网络传播权。直接侵犯信息网络传播权的行为是指网络用户、网络服务提供者未经许可，通过上传到网络服务器、设置共享文件或者利用文件分享软件等方式，将作品置于信息网络中，使公众能够在个人选定的时间和地点以下载、浏览或者其他方式获得作品的行为。获得作品不单指向公众提供完整作品的行为，只要提供了作品具有独创性表达的部分，均可构成向公众提供作品。本案中，被诉视频包含了大量《狂飙》画面、原声等具有独创性表达的部分，已落入信息网络传播权的控制范围。

其次，关于被告称被诉视频是影视解说类视频，并非权利作品原片或简单CUT片段，含有UP主编辑创作成分，构成合理使用的答辩意见。对此法院认为，影视解说类视频是一种通过对电影、电视剧等视听作品的画面进行选择、取舍、重组或整合，再搭配解说者的文案、配音、字幕或者配乐等元素，以向观众传达解说者对视听作品的理解、介绍、评论或讽刺的二次创作视频。部分影视解说类视频适当使用原电影、电视剧等视听作品素材，在原有作品的文学、艺术价值之外，产生了全新的价值、功能或性质，具备构成合理使用的可能性。但影视解说类视频引用原作品的范围需适当、不得影响作品的正常使用，也不得不合理地损害著作权人的合法权益。本案中，被诉视频共36个，均大量使用经剪辑的权利作品画面、原声，解说、字幕及配音等添加的元素也为剧情、人物或环境的同义转换，并未超脱于权利作品而产生全新的文学、艺术美感，同时也对权利作品形成实质性替代，不构成合理使用。

最后，宽娱公司构成帮助侵权。第一，原告已多次发出侵权通知，但被告宽娱公司未采取必要措施。第二，预通知之下，被告宽娱公司应负有更高的注意义务。第三，“通知+必要措施”制度已是避免权利人与网络服务提供者间利益失衡的调节机制，两被告理应在收到通知后及时采取必要措施。同时，投诉通知数量大不是平台方免责的法定理由。

最终，一审法院判决宽娱公司赔偿二原告经济损失及合理开支共计80万元。

来源：知产宝

Hunan Court Case: The short video of “The Knockout (狂飙)” commentary does not constitute fair use, and the platform's letting it spread constitutes aiding infringement

Recently, the Kaifu District People's Court of Changsha, Hunan Province concluded the first instance of a copyright infringement and unfair competition dispute between the plaintiff Beijing iQiyi Technology Co., LTD., Hunan iQiyi Culture and Technology Co., LTD., and the defendant Shanghai Kuanyu Digital Technology Co., LTD., Shanghai Huandian Information Technology Co., LTD.

The court held that: First, the defendant Kuanyu Company and Huandian Company infringed on the information network dissemination rights of the two plaintiffs. Direct infringement of information network dissemination rights refers to the unauthorized act of users or network service providers uploading works to network servers, setting up shared files, or using file-sharing software, making the works available to the public for download, browsing, or other means at personally chosen times and locations. In this case, the contested video includes a substantial portion of "The Knockout" scenes, original sound, and other parts with creative expressions falling within the scope of information network dissemination rights.

Secondly, concerning the defense that the contested video is commentary in the form of a film and television review, not the original work or simple CUT segments, containing elements of UP main creator's editing, and constituting fair use. The court opined that film and television review videos involve the selection, omission, reorganization, or integration of images from audio-visual works such as movies and TV shows, accompanied by the commentator's script, dubbing, subtitles, or music, conveying the commentator's interpretation, introduction, commentary, or satire of the audio-visual work in a secondary creative video. Some film and television review videos appropriately use material from the original audio-visual works, generating new value, functions, or nature beyond the literary and artistic value of the original work. However, the scope of using the original work in film and television review videos must be appropriate, not affecting the normal use of the work, and not unreasonably damaging the legitimate rights and interests of the copyright holder. In this case, the contested videos, all 36 of them, extensively use edited scenes and original audio from copyrighted works, and the added elements like commentary, subtitles, and dubbing merely result in synonymous transformations of the plot, characters, or environment. They do not transcend the original work to create an entirely new literary or artistic aesthetic and also substantially substitute for the original works, failing to constitute fair use.

Lastly, Kuanyu Company constitutes aiding infringement. Firstly, the plaintiff has issued multiple infringement notices, but Kuan Yu company did not take necessary measures. Secondly, given the pre-notice, the defendant should have a higher duty of care. Thirdly, the "notice + necessary measures"

system is already a regulatory mechanism to avoid the imbalance of interests between the right holder and the network service provider, and the two defendants should take necessary measures in a timely manner after receiving the notice. Moreover, a large number of complaint notices is not a statutory reason for the platform to be exempt from liability.

In conclusion, the first-instance court ruled that Kuanyu company compensate the two plaintiffs for economic losses and reasonable expenses, totaling 800,000 yuan.

Source: IP House

瑞幸咖啡状告“泰国瑞幸”败诉

12月1日，泰国知识产权和国际贸易中央法庭公告宣布判决了有关审理中国瑞幸咖啡公司控告泰国皇家50R集团（50R group）侵犯商标版权案件的最后审判——判决中国瑞幸咖啡公司败诉，立刻执行。

据悉，泰国皇家50R集团是一家从事零售、新能源、旅游业、房地产、餐饮业等多元化经营管理的泰国本土企业，有着泰国皇室和军方政府的背景。其下属子公司——泰国瑞幸咖啡有限公司拥有的瑞幸品牌商标在泰国商业厅合法注册，现已在泰发展经营了十几家瑞幸咖啡店。

早在2022年1月，就有网友表示称在泰国发现瑞幸咖啡门店，这些门店从装修、Logo设计、咖啡杯到手提袋都复制了瑞幸的设计，只不过将其Logo中的小鹿图像左右翻转了。有知情人士透露，尽管很多人都知道泰国瑞幸是所谓的“山寨门店”，但因其抢先在泰国申请了商标，符合泰国当地的法律，因此可以正常开店，这或许也是此次瑞幸咖啡败诉的主要原因。

公开消息表示，瑞幸咖啡自2018年5月8日正式营业以来，门店数量已超过一万家，是中国首家门店数量破万的连锁咖啡品牌，目前已经是最大的连锁咖啡品牌。今年宣布进军海外市场，已在新加坡开设首批海外分店。这次败诉或将造成瑞幸咖啡国外市场的业务发展受到重要关键的影响。

来源：羊城晚报

Luckin Coffee loses trademark infringement lawsuit against “Thai Luckin”

On December 1st, the Thai Intellectual Property and International Trade Central Court announced the judgment of the final trial in the case where China's Luckin Coffee sued the Thai Royal 50R Group for trademark infringement—ruling that Luckin Coffee lost the case, and immediate enforcement.

It is reported that the Thai Royal 50R Group is a Thai local enterprise engaged in diversified operations such as retail, new energy, tourism, real estate, and catering, with backgrounds related to the Thai royal family and the military government. Its subsidiary, Thai Luckin Coffee Co., Ltd., holds the registered trademark of the Luckin brand in the Thai Department of Business Development and has legally operated dozens of Luckin Coffee shops in Thailand.

As early as January 2022, netizens reported discovering Luckin Coffee stores in Thailand. These stores copied the design from decoration, logo, coffee cups to handbags, with only a flipped version of the deer image in their logo. Despite many people knowing that Thai Luckin is a so-called "copycat store," due to its early trademark registration in Thailand, complying with local laws, it was able to operate normally. This might be a significant reason for Luckin Coffee's lawsuit failure.

Public information indicates that since its official opening on May 8, 2018, Luckin Coffee has expanded its store count to over 10,000, making it the first Chinese chain coffee brand to exceed 10,000 stores and currently the largest chain coffee brand in China. Luckin Coffee announced its entry into overseas markets this year and has opened its first batch of overseas branches in Singapore. This lawsuit's failure may have a crucial impact on Luckin Coffee's overseas business development.

Source: Yangcheng Evening News

21.8亿美元赔偿被推翻，VLSI诉英特尔专利侵权案将被重审

集微网消息，美国上诉法院驳回了专利所有人VLSI Technology针对英特尔公司赢得的价值21.8亿美元专利侵权裁决，推翻了美国专利法历史上最大的损害赔偿裁决之一。2021年，VLSI 起诉英特尔公司侵犯其NO.7,523,373和NO.7,725,759两项美国专利，德克萨斯州韦科的一个陪审团经过审判认定英特尔公司侵犯了这两项专利，并分别判定英特尔公司赔偿损失共计21.8亿美元。12月4日，美国联邦巡回上诉法院撤销对759号专利侵权的判决，维持对373号专利侵权的判决，但将此案德克萨斯州进行新的审判，以确定新的损害赔偿金额。

来源：知产财经

\$2.18 billion compensation overturned, VLSI's patent infringement lawsuit against Intel will be retried

LaoYaoBa.com reports that the U.S. Court of Appeals has rejected the \$2.18 billion patent infringement verdict against Intel by patent owner VLSI Technology, overturning one of the largest damage compensation rulings in the history of U.S. patent law. In 2021, VLSI filed a lawsuit against Intel for infringing its U.S. Patents No. 7,523,373 and No. 7,725,759. A jury in Waco, Texas, after trial, found Intel guilty of infringing these two patents and awarded total compensation of \$2.18 billion to VLSI. On December 4th, the U.S. Federal Circuit Court of Appeals overturned the judgment on the infringement of patent 759, upheld the judgment on the infringement of patent 373, but remanded the case to a new trial in Texas to determine a new amount of damages.

Source: Intellectual Property and Financial News

韩国知识产权局加强外观设计保护

2023年11月29日，韩国知识产权局（KIPO）宣布12月21日起将实施新修订的《外观设计保护法》，通过放宽对申请人外观设计优先权的申请条件等方式保护外观设计。修订后的法案主要的变化：

(1) 相关外观设计的申请期限从1年延长至3年，有助于促进企业树立商标品牌形象，保护具有市场竞争力的外观设计。

(2) 扩大专利不丧失新颖性例外情况的适用范围，删除了规定不丧失新颖性相关文件提交时间和期限的程序性条款，允许权利人灵活应用不丧失新颖性条款。

(3) 放宽申请优先权的条件，完善的相关规定包括制定申请优先权的补充程序，如果由于正当理由[1]不能在规定期限（自申请日起6个月）内申请优先权，则给予额外的2个月期限。

[1] 因疾病住院等无法开展业务导致错过期限、因计算机错误导致错过期限等情况。

来源：韩国知识产权局

South Korean Intellectual Property Office strengthens protection for industrial design

On November 29, 2023, the Korean Intellectual Property Office (KIPO) announced that starting from December 21, it would implement the newly revised "Design Protection Act" to protect design rights by easing the application conditions for applicants' design priority rights. The key changes in the revised law include:

1. The application period for relevant design rights is extended from 1 year to 3 years, facilitating the establishment of trademark brands and images by companies and protecting competitively marketable designs.
2. The scope of exceptions for not losing patent novelty is expanded. Procedural provisions specifying the submission time and deadline for documents related to not losing novelty are removed, allowing rights holders to flexibly apply the exceptions.
3. Relaxation of conditions for applying priority rights, with additional measures such as the establishment of supplementary procedures for applying priority rights. If, due to justifiable reasons (e.g., hospitalization due to illness) [1], the applicant cannot apply for priority within the prescribed period (6 months from the application date), an additional 2-month period is granted.

[1] Cases such as missing deadlines due to inability to conduct business caused by illness or hospitalization, missing deadlines due to computer errors, etc.

Source: Korean Intellectual Property Office

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