

China Competition Policy & IP

MONTHLY UPDATE

MAY 2022

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Meetings/Seminars/Projects

IP Economy Hosts Seminar on Technological Development and Legal Liability Determination of Online Platforms Held

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On April 2, 2022, IP Economy, a media platform concentrated on intellectual property and the innovation economy, hosted “The Technological Development and Legal Liability Determination of Online Platforms.” The seminar brought academics, judicial experts, and industry representatives together to discuss relevant legal and practical issues from different perspectives.

The seminar focused on three main subjects: (1) the impact of new technologies on the legal liability of internet service platforms, (2) the determination of the legal boundaries of relevant technological measures, and (3) the effective means for the prohibition and prevention of infringements.

Speakers included Yang Dejie, President of the Intellectual Property Court of Haidian District People’s Court, Beijing; Song Jian, former Senior Judge of Jiangsu Provincial High People’s Court and a national expert in trial practice; Yao Huanqing of Renmin University of China Law School; Ji Gefei of the Civil and Commercial Economics Law School of China University of Political Science and Law (CUPL); and Chen Jinchuan, a national expert in trial practice. They gave keynote speeches on topics such as algorithmic recommendation and platform responsibility, the development of the video industry, the current situation of copyright disputes, the risks of platform infringement, and business models.

The seminar also featured a panel discussion on the legal characterization of technology development and platform liability. Panelists included Professor Kong Xiangjun of Shanghai Jiao Tong University; Professor Lin Xiuchen of Xiamen University Institute of Intellectual Property; Professor Wang Qian of East China University of Political Science and Law (ECUPL); Professor Cong Lixian of the School of Intellectual Property of ECUPL; Professor Li Yang of the Civil and Commercial Economics Law School of CUPL; Professor Zhang Weijun of the Tongji University Law School; and Xiong Qi of the School of Law of Huazhong University of Science and Technology.

State Council Information Office Holds Press Conference on Intellectual Property Rights Development in 2021

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On April 24, 2022, the State Council Information Office held a press conference on the development of China's intellectual property rights in 2021.

At the conference, National Intellectual Property Administration Director Shen Changyu shared that, in 2021, the office had set up a task force to develop principled ideas related to intellectual property data protection, such as fully respecting the creative labor and capital investment involved in data protection, and recognizing and protecting reasonable benefits.

In a related interview with journalists, Xie Zhenke – President of the Third Court of the Beijing Intellectual Property Court (BIPC) and Director of the Competition and Monopoly Committee – gave an overview of the cases heard by the court and provided insights on specialized intellectual property and anti-unfair competition laws in internet-related cases.

From its establishment in 2014 to the end of 2021, BIPC accepted a total of 1,436 anti-monopoly and anti-unfair competition cases and concluded 1,244. Of these, 529 first-instance cases were accepted and 470 were concluded, while 907 second-instance cases were accepted and 774 were concluded. BIPC has seen a surge of competition and monopoly disputes, with expansion in the fields and industries involved and an increasingly comprehensive range of case types. The number of monopoly cases received by the BIPC rose from 184 in 2020 to 306 in 2021, an increase of nearly 66%; in 2022, it is expected that the number of monopoly cases will exceed 500.

Recent cases involved not only traditional industries – such as manufacturing, services, information security, and livelihood protection – but also new fields, industries, and business models, such as technology innovation and the digital economy. Anti-monopoly cases involving top platform companies and anti-unfair competition cases involving new business models in the internet sector have also increased.

In the face of the rapidly developing digital economy and the subsequent increase in judicial disputes in new areas and new business models, Ms. Xie offered recommendations for adjudication work moving forward. She noted that the people's courts must be bold and adept at making creative judicial decisions and make decisions that meet the needs of China's national conditions and development.

In the digital economy, China has gradually turned from a follower of intellectual property rights (IPR) rules to a leader, and many IPR judicial practices involving the digital economy – such as data protection – have put China at the forefront. On the one hand, Ms. Xie said that the courts should practice the principle of “national treatment,” following international treaties and domestic

legislation and equally protecting the legitimate interests of Chinese and foreign intellectual property rights holders. On the other hand, the courts should closely integrate with national conditions, form China's discourse system, and actively promote the establishment of adjudication rules that meet the country's realistic needs.

Regulatory News

Beijing Higher People's Court Releases Guidelines for the Application of Punitive Damages in Intellectual Property Civil Cases

[Read the Chinese version here](#)

On April 25, 2022, the Beijing Higher People's Court held a press conference to release the "Guidelines on the Application of Punitive Damages in the Trial of Intellectual Property Infringement Civil Cases." The guidelines are designed to further standardize the application of punitive damages in civil cases of intellectual property rights infringement and increase the judicial protection of intellectual property rights in accordance with the law.

The guidelines consist of 51 articles, which specify the substantive and procedural issues involved in the application elements and calculation methods.

One highlight of the guidelines is the specification of the responsibilities of online service providers for the infringement of intellectual property rights in livestreaming, e-commerce, and surrogate shopping. If network service providers know that livestreamers or purchasing agents are exploiting network services – to intentionally and seriously infringe intellectual property rights without justifiable reasons – but fail to take reasonable and effective measures to stop the infringement, the network service provider shall be jointly liable for punitive damages.

For punitive damages, the guidelines propose the total amount of compensation should be the base amount added to the product of the base amount times its multiple. The guidelines also enumerate the factors used to calculate the actual loss, infringement profits, and other considerations of the compensation base amount, and detail common considerations for the multiplies of punitive damages and personalized considerations for the infringement of different types of intellectual property rights.

Now that the guidelines have been released, the Beijing Higher People's Court will ensure an accurate understanding of them and further unify the city's adjudication standards in intellectual property through lectures and training.

SPC Issues Provisions on the Jurisdiction Over First Instance Civil and Administrative Cases Involving Intellectual Property

[Read the Chinese version here](#)

On April 20, 2022, the Supreme People's Court (SPC) issued "Several Provisions on the Jurisdiction over First Instance Civil and Administrative Cases Involving Intellectual Property," which went into effect on May 1, 2022.

The provisions clarify that the intellectual property courts, the intermediate people's courts in the location of the provincial governments, and the intermediate people's courts determined by the SPC have the jurisdiction over the first instance civil and administrative cases in the following areas: invention patents, utility model patents, new varieties of plants, integrated circuit layout designs, technology secrets, computer software ownership, infringement disputes, and monopoly disputes.

Meanwhile, the first instance of civil and administrative cases involving infringement disputes of design patents and well-known trademarks shall be governed by the intellectual property courts and the intermediate people's courts. The first instance of civil and administrative cases of intellectual property outside of design patents and well-known trademarks shall be under the jurisdiction of the local people's courts, as determined by the SPC.

Huizhou Motor Vehicle Inspection Association's Administrative Penalty Dispute Selected as a Top Ten Guangdong Intellectual Property Case in 2021

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On April 25, 2022, the Guangdong High People's Court released the a list of the top ten intellectual property cases of Guangdong courts in 2021, and the administrative penalty dispute case of *Huizhou Motor Vehicle Inspection Association v. Guangdong Administration for Market Regulation* (Guangdong AMR) was included on the list.

In September 2017, to resist price reductions by individual car inspection units, the Huizhou Motor Vehicle Inspection Association passed a "membership convention" requesting all members not to reduce prices for testing. The following year, the association repeatedly discussed developing a unified price adjustment program and organizing its implementation. Following June 4, 2018, 31 association members implemented a new unified fee.

The collective unified price increase caught the attention of Guangdong AMR. After conducting an anti-monopoly investigation, the regulator determined that the association's behavior violated China's Anti-Monopoly Law and decided to impose a fine of RMB 400,000 on the association.

The association appealed to the Guangzhou Intellectual Property Court, fighting the administrative penalty decision. The association claimed that the motor vehicle safety inspection in Huizhou was a government-priced project – and that its coordinated pricing behavior was to meet government requirements – and therefore did not violate the law.

The court, however, held that the association's claim was factually incorrect. The motor vehicle inspection service market is local and regional. The association used its regional influence to restrict members to reduce prices and developed a monopoly agreement to delineate a uniform fee and implementation time, which excluded and restricted competition. After a comprehensive review of the acts in question, the court rejected the association's entire petition. Neither party appealed after the first trial.

CPC and State Council Release Opinions on Accelerating the Construction of a National Unified Market

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On April 10, 2022, the Central Committee of the Communist Party of China (CPC) and the State Council jointly issued the “Opinions on Accelerating the Construction of a Unified National Market,” which explicitly states that the government should further regulate undue market competition and market intervention.

Regarding anti-monopoly regulation, the opinions stipulate that the Central Committee will make the following enhancements:

1. Improve the legal rules for the identification of monopolistic acts and improve the anti-monopoly review system for the concentration of operators by classification and grading;
2. Address issues such as data monopolies by platform enterprises, preventing the exclusion and restriction of competition by utilizing data, algorithms, and technical means;
3. Strengthen the review of concentration of operators in areas such as finance, media, and technology, as well as those involving labor-intensive industries, start-ups, and new business models;
4. Steadily promote the reform of natural monopoly industries and strengthen the regulation of network-based natural monopolies, such as power grids and oil and gas pipeline networks; and
5. Strengthen the protection of original innovation and intellectual property rights of innovative small- and medium-sized enterprises.

The opinions also state that the Central Committee will investigate and punish unfair competition acts in accordance with the law. This will include:

1. Strengthening the supervision and enforcement of whole-chain competition in key industries and areas that are strongly reflected by market players and consumers and ensuring fair competition through impartial regulation;
2. Strengthening the regulation of unfair competition in new business sectors such as the platform economy and the sharing economy, rectifying the black and gray online markets, and regulating new types of online unfair competition;
3. Improving the cross-departmental and cross-administrative law enforcement information sharing and collaboration mechanism and enhancing the unity, authority, and coordination of law enforcement;
4. Building a mechanism for cross-administrative transfer, law enforcement assistance, and joint law enforcement of anti-unfair competition cases and facilitating smooth consultation channels and interchange of discretionary standards for new, difficult, and typical cases.

SAMR Launches 2022 Special Anti-unfair Competition Enforcement Action

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On May 7, 2022, the State Administration for Market Regulation (SAMR) issued a notice to deploy a special anti-unfair competition enforcement action in 2022 to focus on key issues, regulate competition, and promote the construction of a large national unified market.

The special enforcement action highlights five priority areas:

1. **Key domains:** Competition order in areas such as people’s livelihoods and new consumption methods, important commodity and factor markets, and the new economy.
2. **Key industries:** Disorder in industries such as early childhood education, intermediaries, third-party assessments, medical beauty and hair transplantation, and others.
3. **Key groups of people:** The protection of the legitimate rights and interests of the elderly, youth, and women.
4. **Key areas:** Areas where illegal acts are common, such as rural areas, urban-rural junctions, and surrounding medical institutions, schools, and cultural and entertainment venues.
5. **Key commodities:** Healthcare products, agricultural products, epidemic prevention supplies, and other important commodities.

SAMR will crackdown on false publicity, counterfeiting and forgery, commercial bribery, and “either-or” and other unfair competition conducts, and make efforts to create a secure consumer environment and maintain fair and competitive market order.

Industry Updates

NetEase Wins Infringement Case against Anchors Who Livestreamed Its Game without Permission

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In April 2022, the Guangzhou Internet Court concluded an infringement case involving game livestreaming. The plaintiff, Guangzhou NetEase Computer System Co., Ltd. (NetEase), sued a game anchor – who livestreamed the game *Fantasy Westward Journey* without permission – for infringement and won the case.

NetEase is the copyright owner of the game *Fantasy Westward Journey*. According to NetEase's claim, the defendant Wang – using the Douyin platform – livestreamed and recorded the screen of *Fantasy Westward Journey*, and continuously promoted competing games while doing so, which infringed NetEase's rights. Another defendant, Li Mou, provided Mr. Wang with access to Douyin for livestreaming and also provided multiple game accounts; he likewise assisted Mr. Wang in switching accounts to avoid punishment by NetEase, which constitutes aiding infringement. Therefore, NetEase sued the two defendants for a total of RMB 2 million to compensate for economic losses and reasonable expenses.

The court ruled that Mr. Wang infringed upon NetEase's right of information network dissemination and other rights, and Mr. Li's behavior constituted aiding infringement. Considering factors such as the duration of the defendant's infringement, the court held that punitive damages should be applied in the case in accordance with the law, and ruled that the defendants should pay NetEase a total of RMB 541,648.6 in economic losses and reasonable expenses.

SPC Issues Final Judgment on the Monopoly Dispute between Six KTV Operators and CAVCA

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On March 28, 2022, the Supreme People's Court (SPC) issued a final judgment on the monopoly dispute between six KTV operators in Guangdong and the China Audio-Video Copyright Association (CAVCA). The SPC dismissed the appeals of the six KTV operators and upheld the ruling that CAVCA's behavior did not constitute a monopolistic act of abuse of market dominance.

The plaintiffs – which, in the first instance, were eight KTV operators – argued that CAVCA had abused its dominant market position by requiring them to sign a contract with its appointed agent, Guangzhou Tianhe Culture Development Co., Ltd., who imposed unreasonable contract terms. The

plaintiffs requested the court to order the defendant to enter a copyright license contract on reasonable and equal terms and to provide licensed library works usage services.

On June 4, 2020, the Beijing Intellectual Property Court dismissed the plaintiff's lawsuit in the first instance. The court defined the relevant product market in the case as the market for licensed use services for film-like works or audio-visual products in KTV operations, and the relevant geographic market was defined as mainland China. CAVCA held a dominant position in the relevant market, but the evidence was not sufficient to prove that the CAVCA had committed monopolistic acts – such as restricting transactions and imposing unreasonable trading conditions – that abused its dominant position.

Six of the eight KTV operators appealed the Beijing Intellectual Property Court's decision. However, in the second instance, the SPC upheld the first instance ruling and dismissed the appeal of the six KTV operators. The court held that the defendant had never explicitly refused to sign the contract and that its act of collecting copyright royalties was in line with the standard requirements of the National Copyright Administration's Announcement No. 1 in 2006.

The plaintiffs' request for the defendant to license their copyright property rights was inconsistent with industry practice and detrimental to the effective protection of the interests of copyright owners and copyright-related rights holders. The defendant, meanwhile, was reasonable in requiring the KTV operators to pay back the royalties for the previous two years as a condition of the contract, and there was no evidence to prove that the defendant had imposed unreasonable conditions such as requiring the KTV operators to pay back the management and contract fees before signing the contract. Therefore, there was insufficient evidence to prove that the defendants had committed acts of refusal to deal or imposing unreasonable conditions.

First Pre-Trial Injunction Case Involving Short Video Platform Infringement Selected as One of 50 Typical 2021 IPR Cases

[Read the Chinese version here](#)

On April 21, 2022, the Supreme People's Court (SPC) released 50 typical intellectual property cases of 2021, which serve as references for people's courts in their adjudication work. This list includes an application for pre-trial cessation of copyright infringement heard by the Chongqing No. 1 Intermediate People's Court. The judgment in the case is the first in China requiring video platforms to take specific measures in order to prevent constant uploads of infringing videos.

Plaintiffs in the case included Tencent Technology Beijing Co. Ltd. (Tencent Beijing), Chongqing Tencent Information Technology Co., Ltd. (Chongqing Tencent), and Shenzhen Tencent Computer System Co., Ltd. (Tencent Computer); all three had been granted the non-exclusive information

network transmission rights for the first, second, third and fourth seasons of the anime work *Douluo Continent*.

Many *Douluo Continent* videos were uploaded by various Douyin users to Douyin, a short video platform operated by the defendant, Beijing Microlive Vision Technology Co., Ltd., and received considerable viewership. Douyin said it intercepted more than 264 million infringing videos in 2020. The plaintiffs filed an application with the court for ordering pre-action to the respondent to cease acts infringing the copyright, requesting the defendant take immediate and effective measures to delete infringing videos from the Douyin platform and filter and block users from uploading and disseminating infringing videos.

According to the judgment, network service providers are obliged to take necessary measures such as removing, blocking, and disconnecting links for infringing content published by users on their platforms. Where existing technology enables affordable filtering and blocking options, the platform – in addition to removing existing infringing videos – should undertake the obligation to filter and block infringing content if new infringing videos are still being uploaded. Thus, the court upheld the application requests of the plaintiffs.

This case is the first pre-trial injunction in China that requires short video platforms to take measures such as filtering and blocking to prevent infringing videos from being continuously uploaded. It is a timely response to the judicial demand for regulating infringements on platforms. The adjudication rule established in this case is of exemplary significance for similar cases, and the relevant judicial concept it establishes is of high theoretical and practical significance, achieving good legal and social effects.

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