



Criminal Enforcement

刑事执法

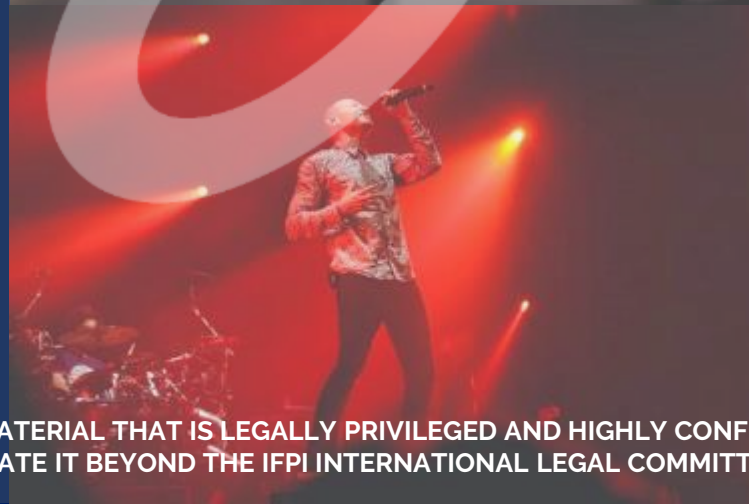
MPS, London

公安部于伦敦

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The Role of Law Enforcement in the Effective Protection of Copyright Online and Offline

执法在线上及线下有效保护版权的作用

- Legislative requirements – international obligations, e.g.:
 - TRIPS – Art.61: 立法要求——国际义务，例如：《与贸易有关的知识产权协定》第六十一条中规定：
 - criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. 各成员应规定刑事程序和处罚应至少适用于商业规模的蓄意假冒商标或盗版案件。
 - Deterrent remedies 起到威慑作用的救济
- Budapest Convention on Cybercrime (64 ratifications) Article 10 – Offences related to infringements of copyright and related rights: 《布达佩斯网络犯罪公约》（64个国家批准）第十条 侵犯著作权及相关权利的行为：
 - Criminal liability at least where WPPT/CT infringing acts are committed wilfully, on a commercial scale and by means of a computer system 刑事处罚至少适用于故意的、具商业规模、并通过电脑系统从事WPPT/CT中的侵权行为。

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执法在线上及线下有效保护版权的作用

Thresholds for criminal procedures and penalties in domestic law – comparison of European and Chinese approaches 立法中刑事程序和刑事处罚的门槛——欧洲与中国的比较

EU situation overview: 欧洲相关立法概览

- In most EU Member States there are no formal threshold requirements such as a minimum of files infringed, losses/profits etc. 在大多数欧盟成员国，立法没有正式的刑事门槛要求，如侵权作品数量、权利人损失、侵权人取得的利润等。
- Legal basis for criminal liability for infringements of the making available right and circumvention of TPMs available in most EU Member States (WPPT requirement!) 大多数欧盟成员国是有侵犯向公众提供权以及规避TPMs的刑事责任的法律依据的（WPPT中的要求）
- EU confirmation of liability of Online Content Sharing Service Providers (Art.17 of the 2019 Copyright in the Single Digital Market Directive (“DSM Directive”) 欧盟规定了在线内容分享服务提供者的责任（2019年欧盟《单一数字市场版权指令》第十七条）
- No EU-level harmonisation in terms of criminal liability to date 迄今为止在欧盟层面未对刑事责任进行统一规定

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China: 2011 Opinion of the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security on Several Issues of the Application of Law in Handling Criminal Cases Concerning the Infringement of Intellectual Property Rights 中国最高人民法院、最高人民检察院、公安部2011年发布的《关于办理侵犯知识产权刑事案件适用法律若干问题的意见》（以下简称“《意见》”）

Article 13 The conviction and punishment standard for the acts of disseminating infringing works via information Network 第十三条 关于通过信息网络传播侵权作品行为的定罪处罚标准问题

- Discussion of its application in practice in music infringement cases 就本条在音乐侵权案件中的应用之讨论
- Discussion of plans for and opportunities for a review of the 2011 Opinion 就《意见》进行审议的可能性及计划之讨论

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执法在线上及线下有效保护版权的作用

Article 13 The conviction and punishment standard for the acts of disseminating infringing works via information Network 第十三条 关于通过信息网络传播侵权作品行为的定罪处罚标准问题

Dissemination for the purpose of making profit of other's literary works, music, films, television programs, painting works, photographic works, video works, audio visual products, computer software or other works to the public without copyright owners' permission in the presence of any of the following conditions, shall be deemed as "other serious circumstances" under Article 217 of the Criminal Law: 以营利为目的, 未经著作权人许可, 通过信息网络向公众传播他人文字作品、音乐、电影、电视、美术、摄影、录像作品、录音录像制品、计算机软件及其他作品, 具有下列情形之一的, 属于刑法第二百一十七条规定的"其他严重情节":

1. The amount of illegal operation is more than RMB 50,000 yuan; 非法经营数额在五万元以上的;
2. The number of disseminated works is more than 500 copies; 传播他人作品的数量合计在五百件(部)以上的;
3. The number of actual clicks on the disseminated works is more than 50,000; 传播他人作品的实际被点击数达到五万次以上的;
4. The number of registered members is more than 1,000 in the case of dissemination by the membership method; 以会员制方式传播他人作品, 注册会员达到一千人以上的;
5. Over half of the standards specified in at least two of the above four items are reached, though none of the above four standards is reached; 数额或者数量虽未达到第(一)项至第(四)项规定标准, 但分别达到其中两项以上标准一半以上的;
6. Other serious circumstances. 其他严重情节的情形。

IFPI Criminal Investigation Processes

IFPI刑事调查程序



INVESTIGATION

IFPI Investigative Framework

IFPI调查框架



Money
资金



Advertising 广告
Payment Facilities 支付工具
Subscribers 订阅用户
Other money flows 其他资金流动



Infrastructure
基础设施



Servers Information 服务器信息
Domain Name Information 域名信息
SSL Certificates SSL证书
Technical Reports 技术支持



Content
内容



Content Available 提供的内容
Pre-release 发行前
Volume 总量
Frequency 频率



Exposure
接触



Social Media 社交媒体
Search visibility 搜索可见性
Marketing 市场营销
Applications 应用

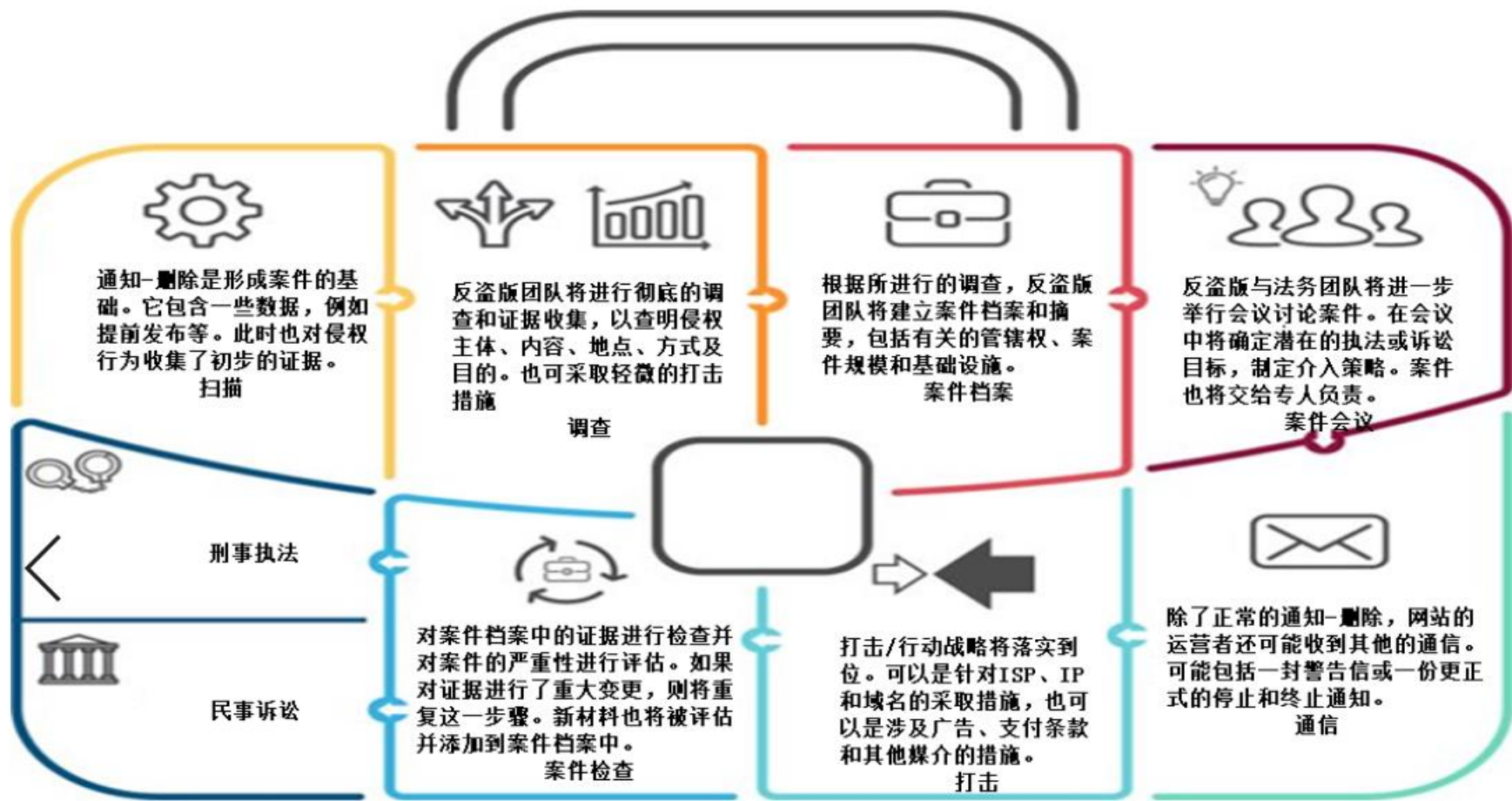
IFPI Content Protection Process

IFPI的内容保护程序



IFPI Content Protection Process

IFPI的内容保护程序



IFPI Liaison with Law Enforcement - best practices

IFPI与执法部门的合作——最佳实践

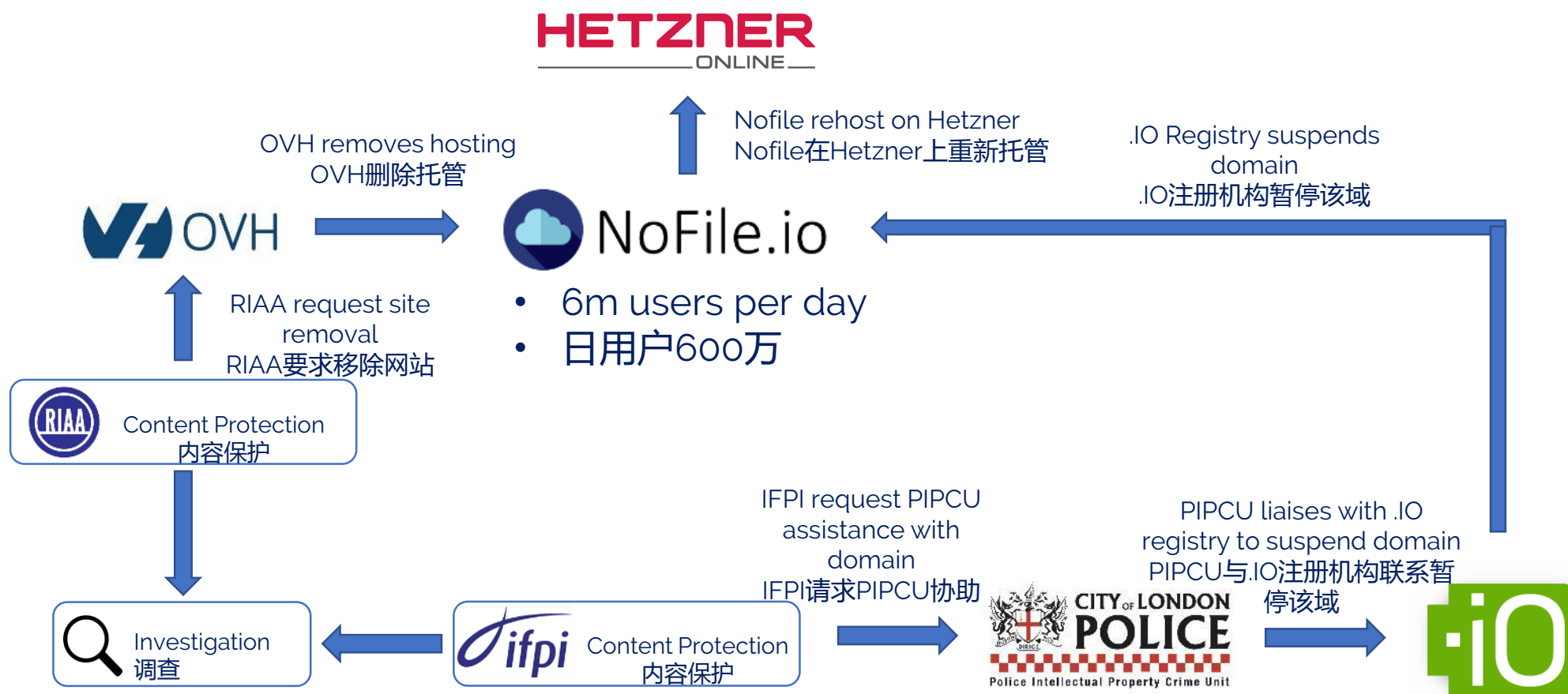
- **Ensuring Good Communication between LEA and right holders 确保执法部门与权利人之间的良好沟通**
 - A Single-Point-Of-Contact (SPOC) assists with the sharing of intelligence and evidence. 单点联系（SPOC）有助于情报和证据的分享
- **Tiered Objectives 分层目标**
 - Site closure is important. Results can be achieved through LEA disruption, not always custodial solutions. 关闭网站很重要。目标可以通过执法部门的打击实现，而不必总是依靠拘管的方式。
- **Clear Submission Process 明确的提交程序**
 - Having a clear and direct submission process for right holders. 为权利人制定直接且明确的提交程序。
- **Training with right holders' participation 举行权利人参与其中的培训**
 - Holding events, both internal and external, to update LEA on new threats and investigative techniques. 举行内部及外部参与的培训，以确保执法部门及时了解新的侵权风险和调查技术。

European Criminal Music Copyright Infringement Case Examples

欧洲刑事音乐版权侵 权案例



Case Example 案例 – NoFile.io



- Case involving high risk pre-release music 该案涉及高风险的即将发行的音乐
Transnational – DE, FR, UK & US 跨国 – 德国、法国、英国和美国
- IFPI coordinated case IFPI负责协调的案件

Case Example案例- Xclusivejams

- Case involving pre-release music 该案涉及即将发行的音乐
- Transnational – UK & Romania 跨国-英国和罗马尼亚
- IFPI assisted throughout case IFPI全程协助整个案件



Case Example案例– Operation IOS

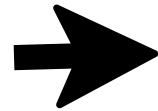


- Submission of infringing domains both piracy and counterfeiting 提交涉嫌盗版和假冒的域名信息。
- IFPI submits to local LEA. IFPI提交给当地的LEA。
- Regional LEA then submits to Europol for dissemination 区域LEA交由Europol进行分派。
- Local LEA then actions as appropriate.当地LEA采取适当措施。
- 30,000 domains removed in IOS X 在IOS X中删除了30,000个域。

Best Practices in the Engagement of Intermediaries by right holders and/or Law Enforcement Authorities

权利人和/或执法部门让中间机构参与进来的最佳做法

Internet Access Providers
互联网接入提供商
Advertisers (e.g. via IWLs)
广告商 (例如, 通过IWL)
Domain Name Registrars
域名注册机构
Payment Providers
支付提供商
Hosting providers
托管服务商
Privacy Protection Services
隐私保护服务



Stop and Prevent copyright
Infringements
停止并防止侵犯版权

“Know your Customer”
“了解您的客户”

Repeat Infringer Policy
重复侵权人策略

Transparency and Information
透明度和信息

Exchange of views on copyright right holders' criminal law enforcement challenges in China

目前中国权利人在刑事执法方面面临的挑战

- Number of criminal copyright law enforcement cases 版权刑事案件数量
- Conditions for triggering the transfer of cases from administrative to criminal law enforcement authorities – practical challenges for right holders and for PSB/MPS - discussion 案件从行政机关移交给刑事执法机关的条件-权利人和PSB / MPS面临的实际挑战——讨论
- Options for increasing communication between right holders and law enforcement authorities 权利人与执法部门之间加强沟通
- Apps
- Online sales of counterfeit CDs/DVDs 盗版假冒CD/DVD的在线销售

Thank you!

谢谢!

