



CHINA

Lessons from the EU experience with Memoranda of Understanding to tackle the online sale of counterfeit goods

17 November 2020

关于打击互联网销售仿冒商品备忘录的欧盟经验分享与讨论 2020.17.11

The views expressed are those of the Study Team and cannot be taken to reflect the views of the European Union.

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背景 | 重点发现 | 差距分析 | 建议

Background 背景

- The development of online markets poses unique challenges to enforcement authorities
- 网络市场的发展给执法机关带来了不同寻常的挑战
- Co-operation between EU rights-holders and Chinese e-commerce platforms continues and has intensified
- 权利持有人与电商平台继续加大合作力度
- E-commerce law remains a significant step by the Chinese Government
- 《电商法》仍是中国政府迈出的重要一步

Methodology

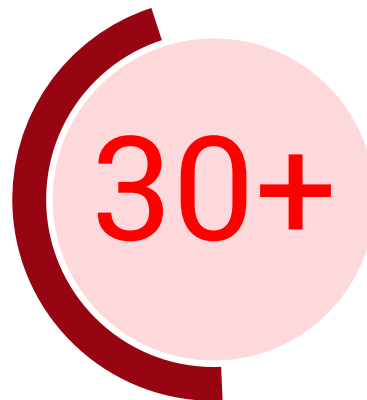
方法



Documents
文献



Cases reviewed
案例回顾



Interviews & survey
results
采访 / 调查结果

Key findings 重点发现



The E-Commerce Law is in use

电商法已得到使用

33 cases in 2019
2019年33起案件

21 cases relate to E-Commerce platforms
21起与电商平台相关

5 cases involve the sale of counterfeit goods
5起涉及假货销售

0 involve non-Chinese rights-holders
0名外国权利人



To date, the scope of the E-Commerce Law applied is fairly narrow 然而，截至目前，电商法的适用范围较窄



Suzhou Nanotech (precision tech)

Legal basis: art.45

Judgement: Alibaba not responsible

Award: infringing seller to pay 100,000 RMB (12,900 EUR)

苏州纳米科技（高新技术）

法律依据：《电商法》第45条

判决：阿里巴巴无责

裁定：侵权卖家支付100,000人民币
(12,900欧元)



Lei Wang (Under Armour)

Legal basis: art. 42

Judgement: Alibaba not responsible

Award: malicious notification. Counterfeit seller to pay 2.1 million RMB (270,600 EUR)

Lei Wang (安德玛)

法律依据：《电商法》第42条

判决：阿里巴巴无责

裁定：恶意通报。造假卖家支付2100,000人民币
(270,000欧元)



Xuewen Zhang (wooden fish tank)

Legal basis: art. 38

Judgement: Alibaba not responsible

Award: Infringing seller to pay 30,000 RMB (3,865 EUR)

Xuewen Zhang (木质鱼缸)

法律依据：《电商法》第38条

判决：阿里巴巴无责

裁定：侵权卖家支付30,000人民币 (3,865欧元)

To date, the scope of the E-Commerce Law applied is fairly narrow 然而，截至目前，电商法的适用范围较窄



Xue Yang (marni bag)

Legal basis: art.8

Judgement: NB Alibaba not a defendant in this case

Award: Infringing seller to pay 34,00 RMB (4,839 EUR)

Xue Wang (玛尼包)

法律依据：《电商法》第8条

判决：注 - 阿里巴巴在本案不是被告

裁定：侵权卖家支付34,000人民币 (4,839欧元)



Wei Cai (Gucci bag)

Legal basis: art. 38

Judgement: Platform = direct defendant, not responsible

Award: None

Wei Cai (古驰包)

法律依据：《电商法》第38条

判决：平台 = 直接被告，无责

裁定：无



In some cases, E-Commerce platforms are intensifying actions 在有些方面，电商平台正加强行动

1. Use of advanced technology

(Alibaba and AI,
JingDong and
Blockchain)

使用先进技术，如阿
里巴巴使用人工智能、
京东使用区块链

2. IP Protection Portals

(Pinduoduo, DH Gate,
WeChat)

知识产权保护门户
(拼多多、敦煌网、
微信)

3. More regular consultations with government and rights holders

(Alibaba, JingDong)

定期与政府和权利人
沟通 (阿里巴巴、京
东)

4. Stricter rules than legally mandated

(JingDong,
Pinduoduo)

采用严于法律要求的
规则 (京东、拼多多)

5. New partnerships and business models

(JingDong and Farfetch,
Alibaba and NetAPorter)

建立具体合作伙伴或商
业模型 (比如，京东与
Farfetch、阿里巴巴与
NetAPorter)



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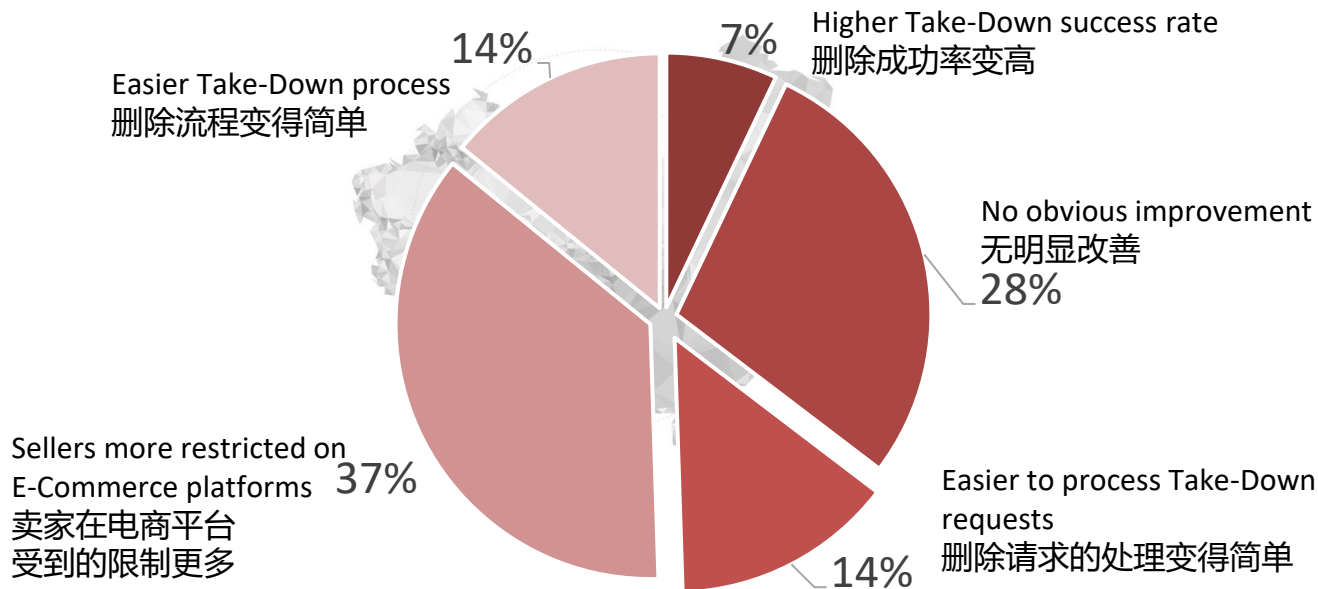
However, there are inconsistencies 但是，细节存在重大差异



	Alibaba Group 阿里巴巴集团	JD.COM	Tencent	WeChat
3 strikes policy “三振出局” 政策	✓	✓ ✓		
Automated notice and takedown 自动通知与删除	✓	✓		✓
Own cooperation platform 有专门的合作平台	✓	✓		✓
Financial penalties for sellers beyond E-Commerce Law requirements 超出电商法要求的经济处罚			✓	
Maximum processing time for Take-down notices 发出删除通知，规定最长处理期限	✓			



Perceived changes since E-Commerce Law adopted 《电商法》引入后感知到的变化



Rights-holders welcome the E-Commerce Law and are changing their behavior 权利人欢迎新法，且在采取行动

‘As a member of AACA, we are grateful for the level of support we have received from Alibaba, especially in our actions against illegal copycat products in China and globally’

Robin Smith – Lego group

“作为阿里打假联盟的一员，我们感谢阿里巴巴的支持，尤其是在我们针对中国和全球非法山寨产品开展打击行动时提供的大力支持。”

Robin Smith, 乐高集团



But some see challenges and potential gaps 但是，也有人指出，当前仍存在挑战和潜在差距

E-commerce Law (2019) Suggestions and Recommendations

Article 41 - suggestions

- Rights owners to strengthen relevant rules
- E-commerce platforms law and their impact on
- Communication between government institutions
- Industry associations to large companies that ex
- E-commerce platforms to share their experience rights owners.

2019年电商法的建议与推荐

第41条 - 建议

- 权利人应加强了解电商平台如何建立相关规则、保护知识产权；
- 电商平台应清晰说明采取何种法律合规措施，以及这些措施对权利人的影响。
- 利益相关者，如电商平台、政府机构和行业协会，应加强和权利人的沟通；
- 行业协会要发挥更积极作用，为遭遇同样问题的中小企业发声；
- 电商平台之间应加强合作沟通，共享相关经验和店铺黑名单，统一对权利人提出的要求。

Article 42 - suggestions

- E-commerce platforms infringement for good faith the possibility of bad owners during online honest online stores;
- E-commerce platforms such as selling counterfeit

第42条 - 建议

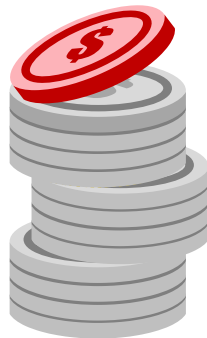
- 对于善意权利人提出的平台上存在侵权行为的初步证据，电商平台应严格审核，以应对恶意商标抢注人在网上促销日勒索权利人，或针对诚信商家提出恶意投诉的可能性。
- 电商平台应针对知识产权侵权的新趋势，如通过维修服务出售假货等，提出新的措施。

Source: China
信源：英中网



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2018



Product seizures worth
3.6 bn RMB (464 mn
EUR), 524 location
closures

扣押货物价值36亿人民币
(4.64亿欧元) 524处
地点执行1277次逮捕和
关停行动

2019



Product seizures worth
1.24 bn RMB (160 mn
EUR), 492 location
closures

扣押货物价值12.4亿人民币
(1.60亿欧元) 492处
地点执行687次逮捕和关
停行动





Twelve potential gaps to address - MOU approach may be applicable to seven 需要消除的十二项潜在差距 - 谅解备忘录可以消除七个潜在的差距

- 
1. Enhance ability to keep up with changing market dynamics 提高紧跟周围动态环境的能力
 2. Increase data and information transparency for proactive identification of infringements 增强主动识别侵权者所需的数据 / 信息透明度
 3. Reduce the cost of online IP protection 需降低网络知识产权保护的成本
 4. Increase capacity and incentives of government and legal professionals 增强政府和法律人士的能力与动力
 5. Address 'whack-a-mole' issues 解决“打地鼠”问题
 6. Address lack of clarity in laws and regulations 解决法律法规清晰度不够的问题



Twelve potential gaps to address - MOU approach may be applicable to seven 需要消除的十二项潜在差距 - 谅解备忘录可以消除七个潜在的差距

- 
7. Align incentives for E-Commerce platforms 统一电商平台的激励措施
 8. Enhance power of legal actions 加强假货来源地的法律行动
 9. Improve severity and reliability of enforcement measures 改善执法严格性与可靠性
 10. Improve public awareness 提高公众意识
 11. Increase data availability and tools to support pro-active Take-Downs 提高为主动删除提供支持的数据、工具的可用性
 12. Address challenges in engaging the legal responsibility of E-Commerce platforms 解决让电商平台承担法律责任时面临的挑战



Recommendations 建议



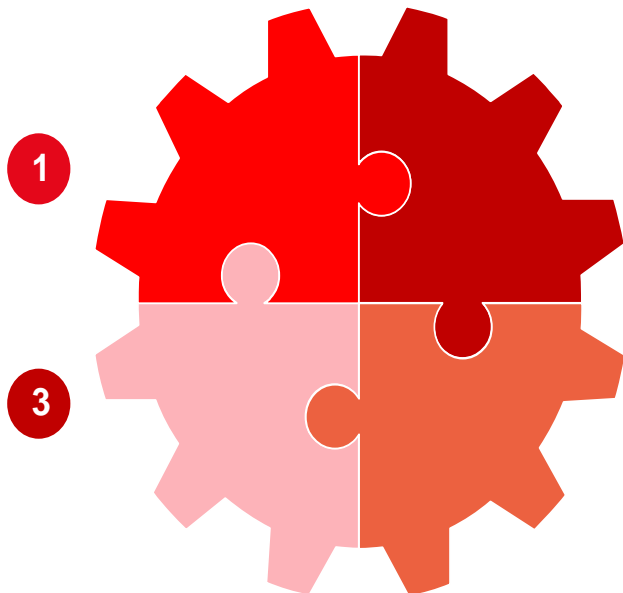
Proposed areas for a Memorandum of Understanding to focus 谅解备忘录可以关注以下几点

Improving communication between government, platforms, rights holders and industry associations to improve understanding of the law

加强政府、平台、权利人和行业协会之间的沟通，增强法律认知

Data consistency and transparency for E-Commerce platforms, particularly larger ones – and especially for notification rules

改善电商平台（尤其是大型平台）的数据一致性和透明性，特别是与通报规则相关的数据



Engaging smaller platforms and social media platforms – for example, through promoting best practice and introducing new penalties

提高小型电商平台和社交媒体平台的参与度（通过推广最佳做法、引入新的处罚措施等）

Regular joint review of the effectiveness of the E-Commerce Law by rights holders and platforms, which could influence future reforms to the E-Commerce Law
权利人和平台定期对《电商法》有效性进行共同评审，或可影响未来《电商法》的修订



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Thank you!

谢谢!

