



CHINA

New Development of Online Counterfeiting and Piracy in China: Legislation, Cases and Practice Study

中国打击互联网假冒盗版的新发展：立法、判例与实践研究

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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RESEARCH BACKGROUND 研究背景

- During the COVID-19 pandemic, offline retail sales dropped dramatically, the booming of live streaming and social media further add to the e-commerce landscape.
- 在新冠疫情期间，线下零售额急剧下降，直播卖货及社交媒体的蓬勃发展进一步拓宽了电子商务的前景。
- The E-Commerce Law is relatively new and there still exists lack of clarity on implementing rules.
- 《电子商务法》相对较新，在具体实施规则等方面仍然存在模糊不清之处。



RESEARCH OBJECTIVES 研究目标

- Identify and assess the changes in the legal framework of China after E-Commerce Law and its effects on dealing with online counterfeiting and piracy.
- 研究评估《电子商务法》的出台对中国法律体系及打击互联网假冒和盗版的影响。
- The E-Commerce Law is relatively new and there still exists lack of clarity on implementing rules.
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Methodology 研究方法

- Comparative Research

- Empirical Research

(1) Quantitative Data Descriptive Analysis;

(2) Qualitative Data Analysis

(3) Case Studies



- 比较研究

- 实证研究

(1) 定量数据描述性分析;

(2) 定性数据分析

(3) 案例研究



Key findings 重点发现

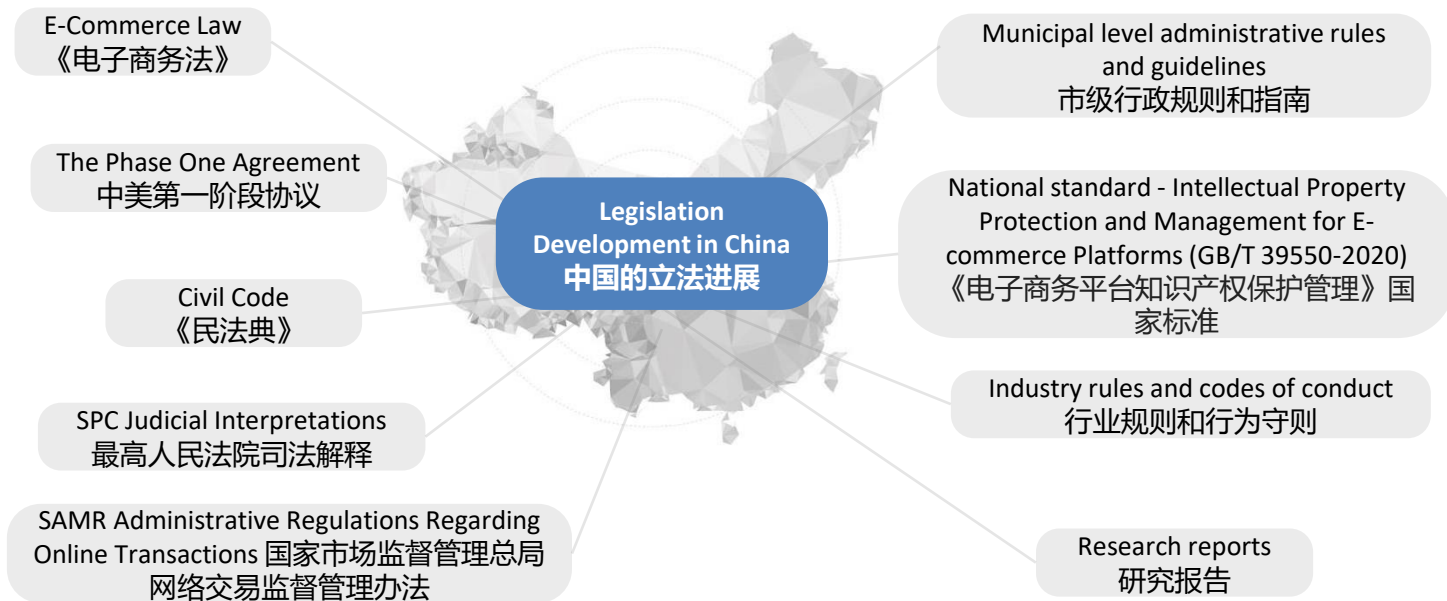
1. Legislative Development
立法发展

2. Platforms' New Initiatives & Challenges
电商平台新举措与挑战

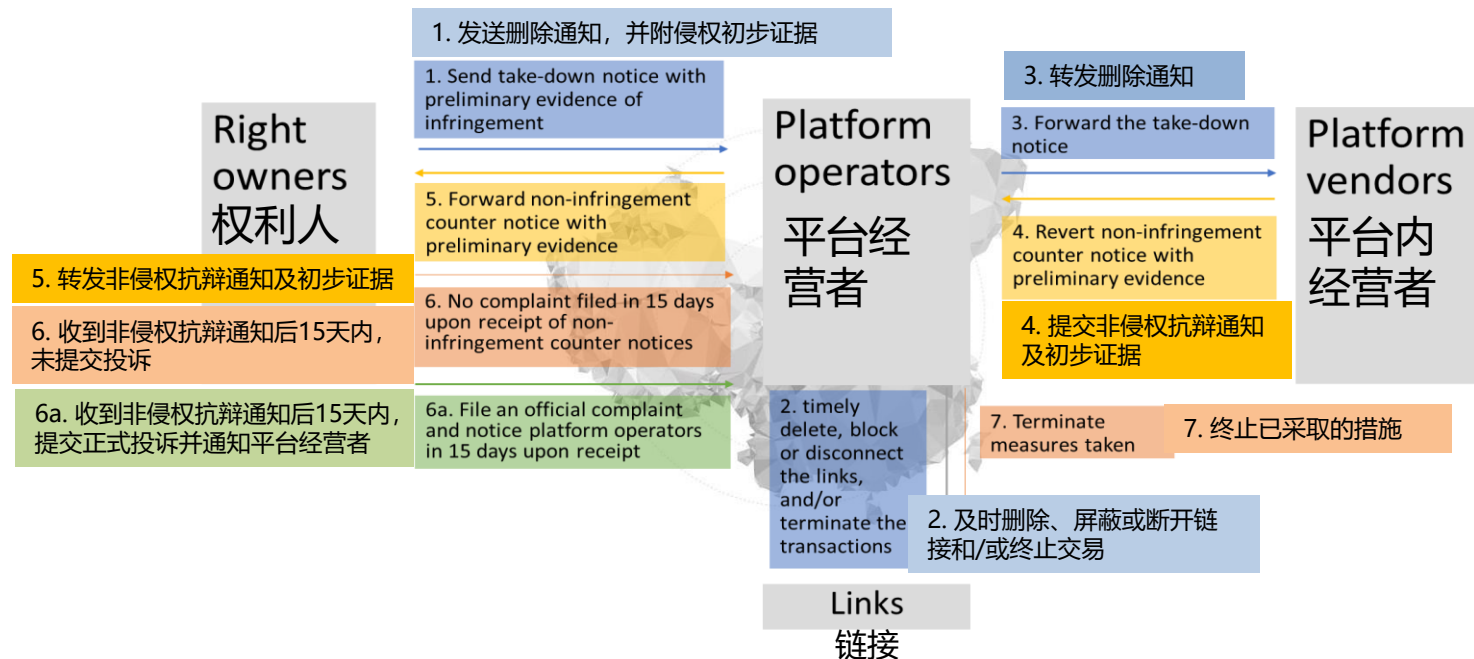
3. Court Decisions
司法裁判

4. Feedback from Rights Owners
权利人反馈

Legislative Development 立法进展



Legislative Development 立法进展

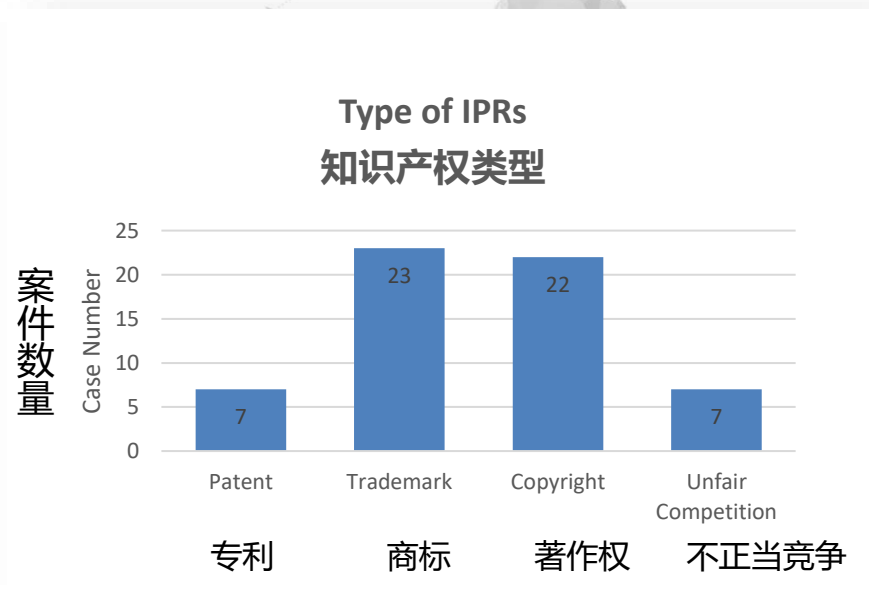


Summary of Notice and Take Down Mechanism under E-Commerce Law 电子商务法下“通知-删除”规则

COURT DECISIONS 司法裁判

Up to December 31, 2020, there are 122 judgments issued since January 2020 that cited the E-Commerce Law and related to IPR and unfair competition.

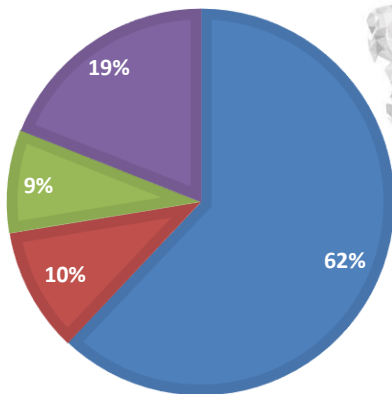
2020年1月-2020年12月31日，共有122项知识产权侵权及不正当竞争案件引用了《电子商务法》。



COURT DECISIONS 司法裁判

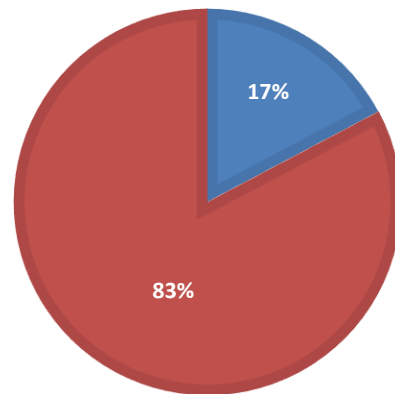
所涉平台 Involved Platforms

■ Alibaba/Taobao/T-mall (36 cases) ■ Hipac (6 cases) ■ JD (5 cases) ■ Others (11 cases)
 阿里巴巴/淘宝/天猫 (36例) 海拍客 (6例) 京东 (5例) 其他 (11例)

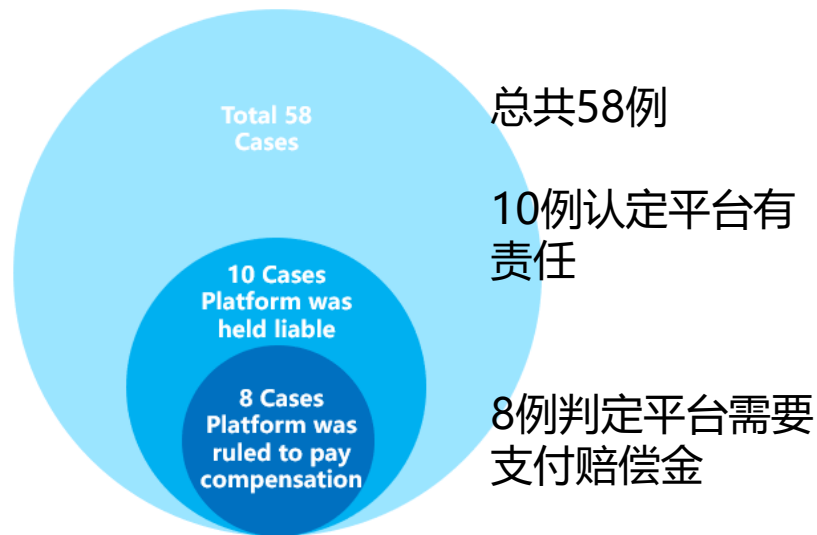
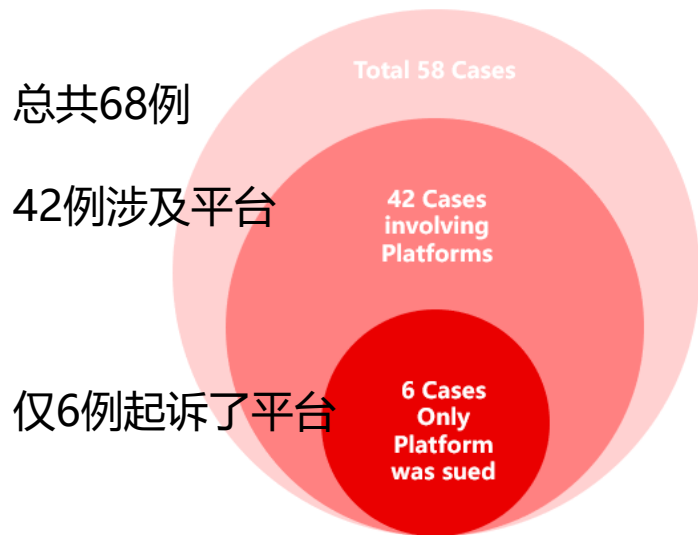


平台责任 Platform Liability

■ Platform liable (10 cases) ■ Platform not liable (48 cases)
 平台有责任 (10例) 平台无责任 (48例)



COURT DECISIONS 司法裁判



COURT DECISIONS 司法裁判

Key Findings 主要发现

**01. Number of IPR cases involving e-commerce platforms are increasing year by year.
涉及电商平台的知识产权案件数量正在逐年增加。**

**02. Only very limited e-commerce platforms were held jointly liable for IPR infringement.
只有非常有限的电商平台被要求承担知识产权侵权的连带责任。**

**03. Insufficient notice is one of main reasons for failure in complaint with platforms.
通知不充分是与平台投诉失败的主要原因之一。**

COURT DECISIONS 司法裁判

Key Findings 主要发现

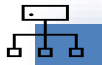
04. It is generally not required for the platform to take proactive measures in IPR protection.
平台一般不被要求在知识产权保护方面采取主动措施。

05. What constitutes a malicious notice has been clarified in judicial interpretations.
司法解释明确了恶意投诉的含义。

06. Preservation measures (Injunctions) are available to fight against malicious notices.
可以采取行为保全（禁止令）来对抗恶意通知。

07. Live streaming platforms have been put under the cover of the E-Commerce Law.
直播平台已被置于《电子商务法》的规制之下。

FEEDBACK FROM RIGHTS OWNERS 权利人反馈



Positive Changes 积极变化

- clearer rules and procedures for filing complaints 更明确的投诉规则和程序;
- stricter scrutiny over vendor identities and certifications 对供应商身份和认证进行更严格的审查;
- generally quicker processing 更快的处理速度;
- more proactive and preventive measures enabled by technologies 技术实现的更积极和预防措施;
- more vibrant collaboration frameworks available for right owners to communicate with platforms 权利人与平台沟通的更活跃的合作框架




Challenges & Difficulties 困难与挑战


- Infringers mix genuine products and counterfeits for sale 侵权者真假混卖，难以辨别;
- Infringing activities on social e-commerce and live streaming platforms are even less traceable 社交媒体、直播平台上的侵权活动更难追踪;
- Infringers have developed more subtle ways of infringement 侵权者的侵权方式更加隐蔽;
- The “whack a mole” issue still exists “打地鼠”的问题依旧存在;
- No clear rules or systems to regulate other essential players in the chain of counterfeits and piracy 没有明确的规则或制度来监管假货和盗版链条中的其他重要参与者

FEEDBACK FROM RIGHTS OWNERS 权利人反馈

Recommendations 建议



Platform operators regularly publicize and share progress of the new initiatives
平台定期公示分享其新举措的进展情况



Right owners offer characteristics of genuine products, tips to identify counterfeits as well as key words used to refer to the genuine brands
权利人向平台提供其正品的特征、识别假货的技巧以及用来指代正品品牌的关键词



Key Takeaways 核心结论



KEY TAKEAWAYS 核心结论

Legislative development 立法发展

The SPC Guidelines and Reply, various administrative rules and guidelines fill in the blanks of E-Commerce Law.

最高法的《指导意见》与《答复》、行政法规等填补了电子商务法的一些空白。

measures taken by platforms 平台采取的措施

Major platforms have all adopted proactive and preventive measures, but rights owners expect more regular and detailed sharing of statistics.

头部平台基本都采取了主动、预防的措施，但权利人希望获得更多数据内容。

Platform rules 平台规则

Platform rules are now more specific than before, while some designs and rules are too specific and even rigid.

平台规则比以前更加具体，但有些规则设计过于具体，甚至陷入僵化。

KEY TAKEAWAYS 核心结论

Stakeholder collaboration 利益相关者的合作

Right owners expect more data and feedback on what proactive measures platforms have been developing and how they work in reality.

权利人希望得到更多反馈，了解平台已制定了哪些积极措施，以及这些措施在现实中如何发挥作用。

Platform liabilities 平台责任

E-commerce platforms are hardly held liable for the IPR infringement.

电商平台几乎不会被追究知识产权侵权的责任。

MoUs 谅解备忘录

Most MoUs in China are still in a preliminary stage. They have not set KPIs or regular follow up mechanisms and there is also no facilitator or supervisor.

在中国，大多数谅解备忘录似乎仍处于初步阶段。缺乏关键绩效指标或定期跟踪机制，也没有促进、监督者跟踪实施情况。



Thank you

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