

# Good Practices for Public Authorities, Right Holders and Intermediaries: Recent Developments in Europe

## 政府、权利人和中介服务机构最佳实践：欧洲最新进展

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2024 EU-China Conference on IPR Protection Online & Innovation

2024中欧互联网知识产权保护与创新大会

Panel D: Good Practices of IPR Enforcement Online and Offline in China and Europe

论坛四：中欧知识产权线上线下执法最佳实践

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## Outline / 大纲

- Introduction / 简介
- Recent regulatory developments: / 监管动态:
  - Digital Services Act (2022) / 数字服务法案 (2022)
  - Commission Recommendation to combat counterfeiting (2024) / 欧委会关于打击假冒的建议 (2024)
- Recent non-regulatory “good practices” for online intermediaries: / 针对线上中间人组织的非强制性 “最佳实践” :
  - Discussion papers and other studies EUIPO / 讨论文件及其他欧盟知识产权局研究
  - Intellectual Property Enforcement Portal (IPEP) / 知识产权执法门户 (IPEP)
- Concluding remarks / 总结

# **EU Digital Services Act (2022)**

## **欧盟数字服务法案 (2022)**

# Key background information

## 关键背景信息



- DSA = a **complete toolbox for tackling illegal content**, e.g. IP-infringing and/or non-compliant goods, while protecting fundamental rights  
数字服务法案（DSA） = **功能完备的工具箱，打击非法内容**（IP侵权和/或不合规商品），保障基本权利
- **Strong enforcement framework**, including a full set of investigative & sanctioning measures that the Commission & national authorities can take  
**有力的维权框架**，包含欧委会和成员国有关部门可以动用的完备调查、制裁手段
- **Due diligence obligations** of different online players **adapted / tailored** to their:
  - ✓ type,
  - ✓ size,
  - ✓ role,
  - ✓ nature &
  - ✓ impact in the online ecosystem

**根据网络主体的具体**

✓类型 ✓规模 ✓角色

✓性质 ✓对在线生态的影响

**规定尽调义务**

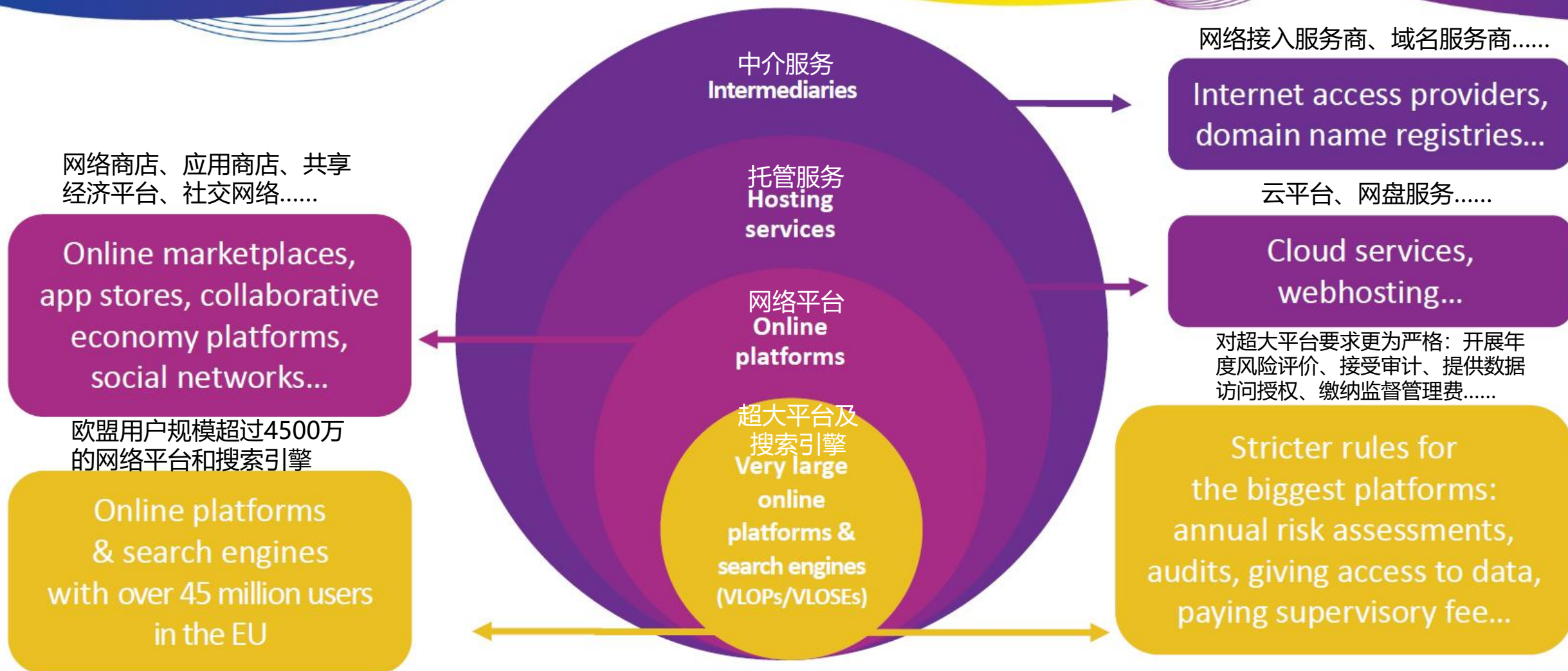
**Graduated / asymmetric  
but cumulative obligations  
according to the type & size  
of providers**

根据主体类型与规模，规定累进式、非对称的总量义务



# Key background information: Digital services covered by the DSA

关键背景信息：DSA涉及的数字服务



	超大平台	网络平台	托管服务	中介服务
	VERY LARGE PLATFORMS	ONLINE PLATFORMS	HOSTING SERVICES	ALL INTERMEDIARIES
• 透明度报告	•	•	•	•
• 条款和条件	•	•	•	•
• 与成员国有关部门合作	•	•	•	•
• 联络人、法务代表	•	•	•	•
• 通知-行动机制	•	•	•	
• 刑事犯罪报告	•	•	•	
• 投诉-纠正机制、非诉和解机制	•	•		
• 可信标记者	•	•		
• 禁止“暗黑模式”	•	•		
• 防止滥用措施	•	•		
• 网络市场特殊义务（如KYBC、抽查）	•	•		
• 禁止定向儿童或基于特定人群特征投放广告	•	•		
• 无障碍辅助功能	•	•		
• 推荐系统透明度	•	•		
• 广告投放透明度	•	•		
• 风险管理	•			
• 独立审计	•			
• 用户可选择关闭个性化算法	•			
• 与有关部门及研究者共享数据	•			
• 行为准则	•			
• 危机应对合作	•			

**Legal  
representative**  
法务代表

**N&A procedures**  
通知-行动程序

**Redress  
mechanisms for  
notice providers**  
为通知方提供纠正机制

**Notification of  
suspicions of  
criminal activities**  
通知可疑刑事犯罪行为

**Trusted flagger  
status**  
可信标记人身份

**Repeat infringer  
policy**  
重复侵权应对政策

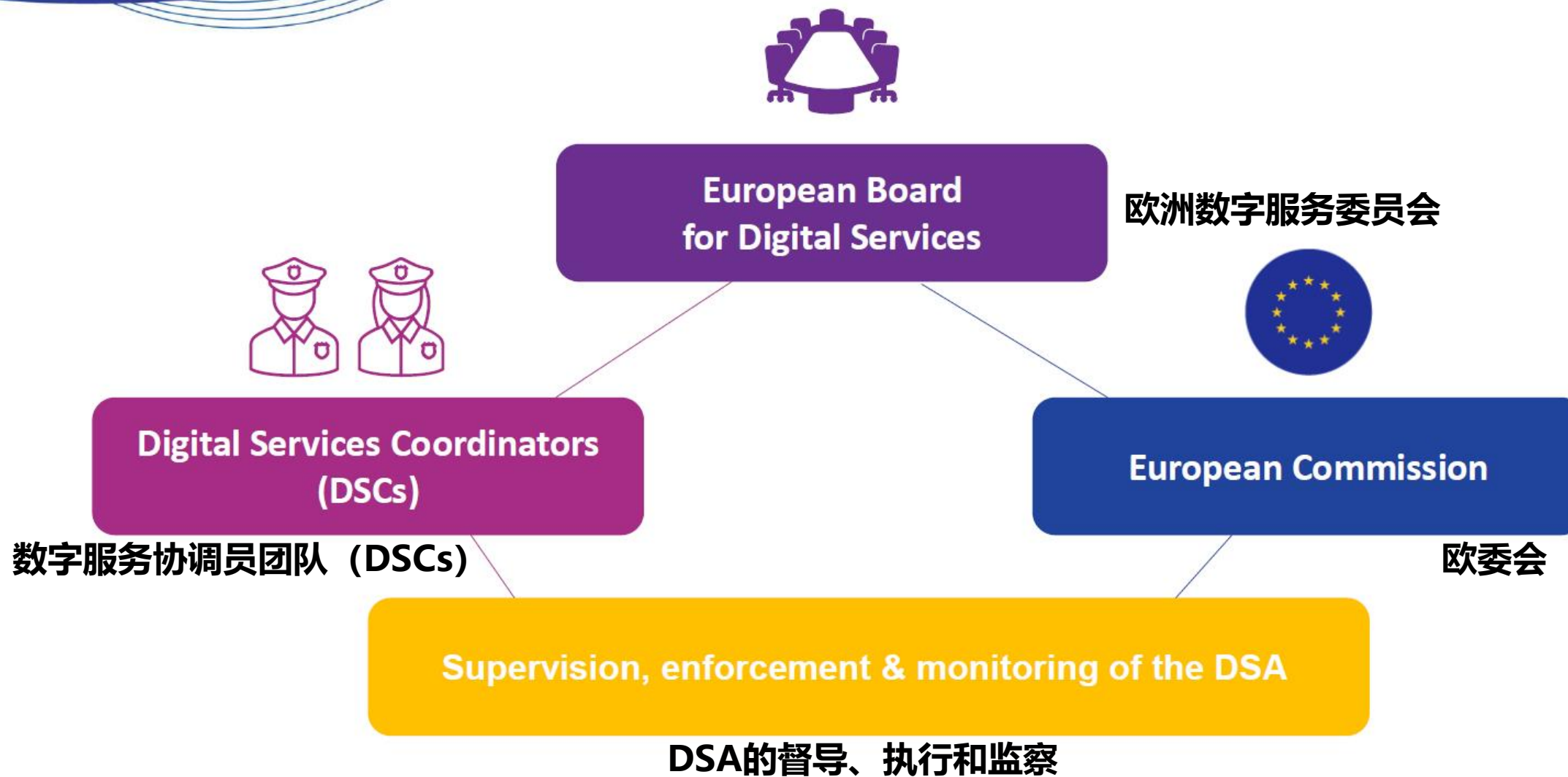
**General rules on  
transparency**  
透明度通用规则

**KYBC  
obligations**  
了解业务客户义务

**Search engines**  
搜索引擎

# Key background information: Governance of supervising digital services

关键背景信息：数字服务督导治理架构





# Commission's role & enforcement powers

## 欧委会的职责及权力

### European Commission 欧委会



#### Investigative powers 调查权

#### Sanctioning powers 制裁权

- Advises on cross border disputes
- Intervenes following DSCs' requests  
对跨境纠纷提出意见；应数字服务协调员请求进行干预

- Direct enforcement of VLOPs & VLOSEs
- Sends request for information (RFI)
- Orders access to the VLOPs' data and algorithms
- Conducts interviews & inspections
- Can impose fines of up to 6% of global revenue

#### Commission's actors

##### 欧委会下属机构

- DG CONNECT, Directorate F 'Platforms Policy & Enforcement'
- Joint Research Center (JRC)
- European Center for Algorithmic Transparency (ECAT)

对超大网络平台及搜索引擎（VLOPs & VLOSEs）直接执法  
可以发出信息披露问询函（RFI）、要求获取VLOPs数据及算法、组织问讯及检查  
可以对VLOPs & VLOSEs处以不超过其全球收入6%的罚款

- 通信网络、内容和技术总司 – 平台政策及执法司
- 欧委会联合研究中心（JRC）
- 欧洲算法透明度中心（ECAT）

# Commission's main supervision & enforcement activities under the DSA: state of play

## Opening of DSA compliance investigations 启动DSA合规调查

2023年10月以来发出30+份信息披露问询函（RFI）  
RFI与非法内容（侵权、不合规商品）、消费者保护相关

- 30+ requests for information (RFIs) sent since October 2023
- RFIs related to illegal content (e.g. IP-infringing and/or non-compliant goods), consumer protection, etc.



## Current assessment exercise to determine VLOPs' & VLOSEs' compliance with DSA obligations 对VLOPs & VLOSEs的DSA合规现状进行评价

- Risk assessment reports
- Transparency reports
- Replies to requests for information
- Information received from third parties
- etc. 风险评价报告；透明度报告；RFI回函、第三方信息.....



## Opening of formal proceedings 启动正式调查程序

- 2023年12月：X平台调查程序
- against [X](#) in December 2023
  - against [TikTok](#) in February 2024
- 2024年2月：TikTok调查程序



## Launch of publicly accessible databases to enhance transparency online 上线公开数据库，提高网络透明度

- DSA透明度数据库
- [DSA Transparency Database](#)
  - [Digital Services Terms and Conditions Database](#)
- 数字服务条款和条件数据库



# **European Commission Recommendation to combat counterfeiting (19 March 2024) 欧委会关于打击假冒的建议 (2024年3月19日)**

## Introduction to the Commission Recommendation / 关于欧委会建议

- What is actually a “Commission Recommendation”? / 什么是“欧委会建议”？
  - Formal but non-binding instrument ex Art 292 TFEU / 以《欧盟运行条约》第292条为依据，正式但不具法律约束力
  - However, it binds the Commission and national courts are obliged to take the recommendations into account when interpreting EU legislation / 然而，该文件对欧委会具有约束力；成员国法院对欧盟法律进行司法解释时必须将欧委会建议纳入考虑
  - In practice, often the first step towards (further) EU legislation / 在实践中，通常是走向欧盟立法的第一步
- Recommendations addressed to whom? / 建议对象是谁？
  - Member States / 成员国
  - Economic operators: manufacturers, right holders, intermediaries... / 经济主体：制造商、权利人、中介服务机构.....
  - EUIPO / 欧盟知识产权局
- What is in the scope? / 建议书的范围是什么？
  - “IP infringing activities” e.g. manufacture, promotion, sale, distribution of counterfeit and pirated goods or content / “侵犯知识产权的活动”，如制造、宣传、销售、分销假冒和盗版商品或内容
  - Acts infringing trade marks, patents, GIs, designs, copyright / 侵犯商标、专利、地理标志、外观设计、版权的行为
  - Online and offline environment / 线上和线下

# Recommendation focuses on 5 key areas: 欧委会建议重点关注五大方面:



Foster cooperation / 促进合作



Advancing IP enforcement / 加强知识产权执法



Adapting to AI and virtual worlds / 适应人工智能和虚拟技术发展



Providing SMEs with tools / 为中小企业提供工具



Fostering IP awareness / 提升知识产权意识



# Fostering cooperation, coordination, and information sharing 促进合作、协调和信息共享



Streamline IP enforcement and designate a single contact point for IP related matters / 简化知识产权执法，指定知识产权事务统一联络点



Encourage national judiciaries to consult the collection of key enforcement judgments set up by the EUIPO / 鼓励各国司法机构参阅由欧盟知识产权局汇编的重要执法案例



Urge social media, transport, payment & domain name providers to follow best practices to prevent the misuse of their services (e.g. through terms & conditions) / 敦促社交媒体、物流、支付和域名服务商遵循最佳实践，通过设定使用条款和条件等方式，预防服务滥用



Promote the role of market surveillance authorities in identifying IP-infringing goods / 强化市场监管机构在认定侵权商品方面的作用



# Advancing IP enforcement procedures 加强知识产权执法程序



Provide alternative dispute resolutions for all types of IP-related disputes, including domain name disputes / 提供各类知识产权相关争议的替代性解决方案（包括域名争议）



Re-asses and raise (where appropriate) the maximum sanctions on serious criminal IP offence and set up specialised IP units in police forces and prosecutors office / 重估并酌情提高重大知识产权刑事犯罪法定最高刑，在警方、检方设立专业化知识产权部门。



Tackle IP infringements with dynamic injunctions (ex Art 9, 11 IPRED), optimising information sharing (ex Art 8 IPRED), and ensuring granting of appropriate damages (ex Art 13 IPRED) including punitive damages / 通过动态禁制令制止侵权行为（依据《知识产权执行指令》（IPRED）第9条、第11条），优化信息共享（IPRED第8条），保障惩罚性赔偿在内的合理赔偿（IPRED第13条）。



Faster, cheaper, and more ecological storage and destruction of IP infringing goods (cf e.g. Art 10 IPRED) / 对侵权商品采取更为快速、经济、环保的保管和销毁手段（IPRED第10条等）



European  
Commission

# **Studies EUIPO on “best practices” online intermediaries**

## **欧盟知识产权局关于网络中介服务机构 “最佳实践” 的研究**

## ON-GOING WORKSTREAMS 进行中的工作

Strategic Project  
战略项目

Expert Group Paper  
专家组文件

**ONLINE ADS / 网络广告**  
Draft Scoping document  
起草范围概述文件

**ONLINE SEARCH / 网络搜索**  
Near-final Draft / 接近最终草案

**APPS & APP STORES / 应用及应用商店**  
Near-final Draft / 接近最终草案

KPIs & Dedicated  
Network  
KPIs与专门网络

**LIVE EVENT PIRACY  
现场活动偷录盗版**  
(March 2023)

**E-COMMERCE  
电商**

Expert Group  
Cooperation with intermediaries  
专家组  
与中介服务机构合作

## COMPLETED WORKSTREAMS 已完成的工作

**DOMAIN NAMES / 域名**  
(March 2021)

**PAYMENTS / 支付**  
(Nov 2021)

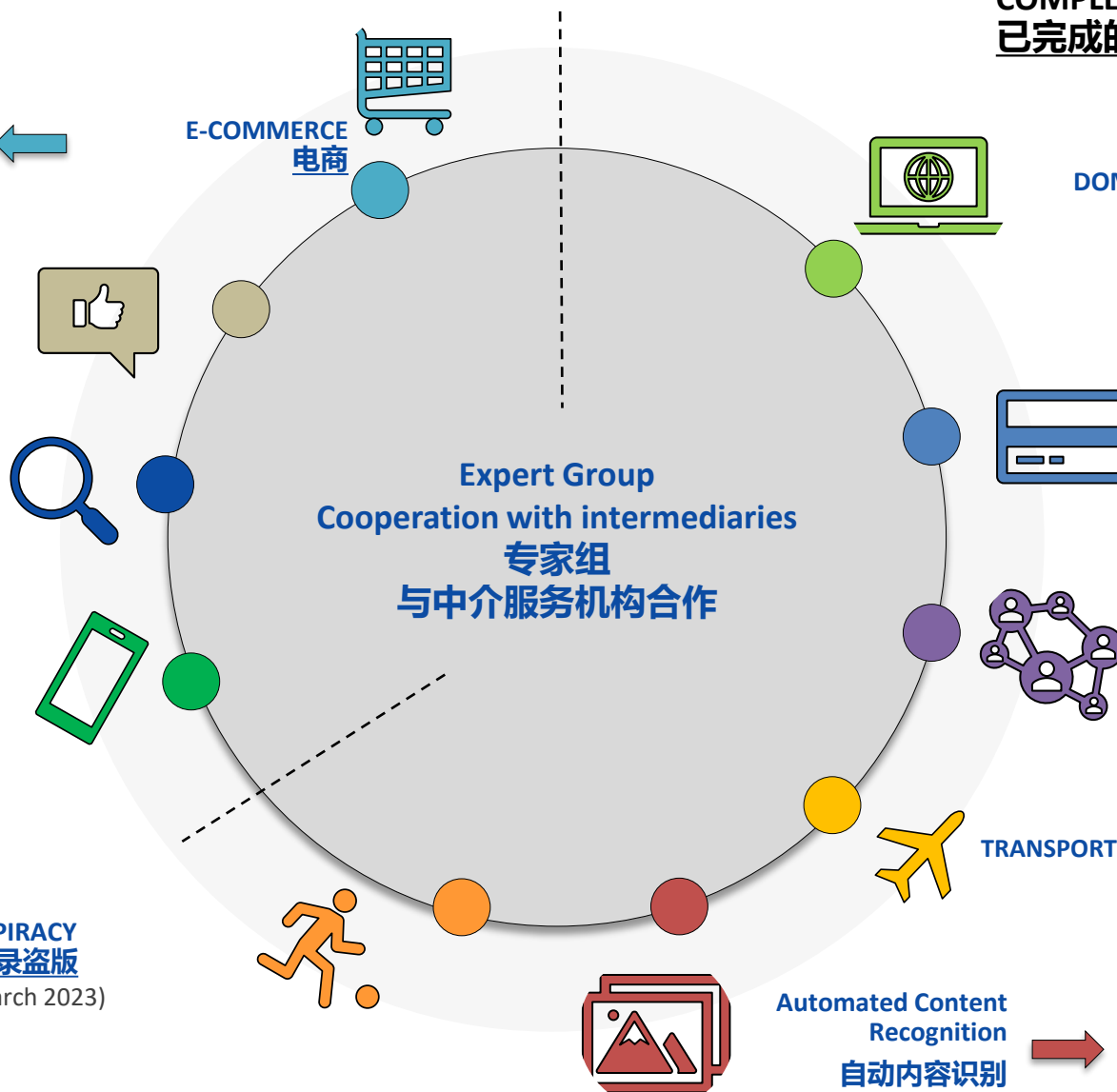
**SOCIAL MEDIA / 社交媒体**  
(June 2021)

**TRANSPORT & LOGISTICS / 运输物流**  
(Sept 2022)

Automated Content  
Recognition  
自动内容识别

Phase 1 Report (Nov  
2020)  
第一阶段报告  
(2020年11月)

Phase 2 Report (Sept  
2022)  
第二阶段报告  
(2022年9月)



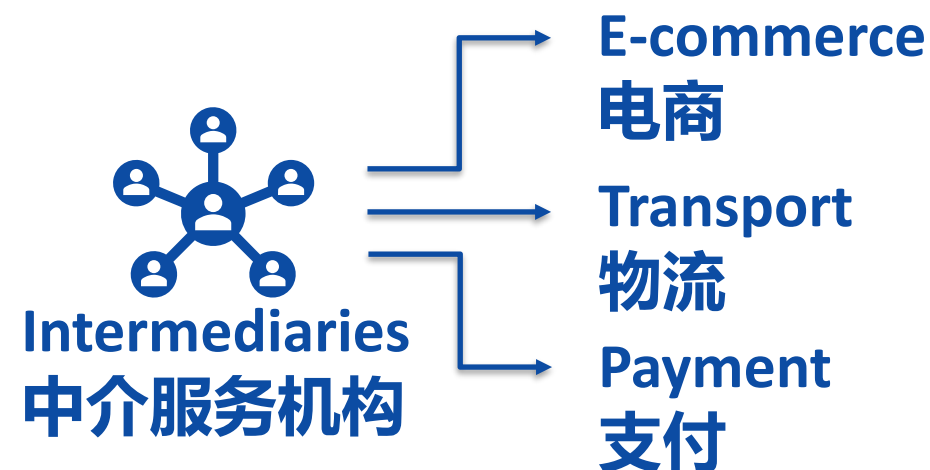
# **EUIPO IP Enforcement Portal (IPEP)**

## **欧盟知识产权局 知识产权执法门户 (IPEP)**



## Starting point—The key players in IP Enforcement / 起始点——知识产权执法关键角色

Rights holders / 权利人



## The IP Enforcement Portal (IPEP) / 知识产权执法门户 (IPEP)

IPEP is a free of charge, secure platform enabling real-time exchange of information between right holders and enforcement authorities

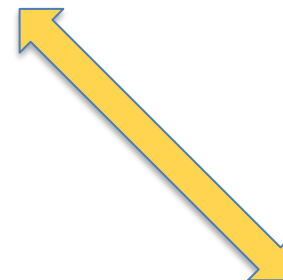
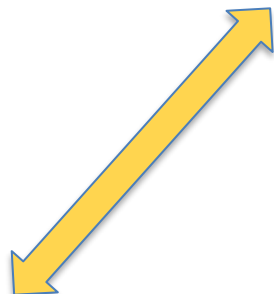
免费、安全、权利人和执法部门之间的实时信息交换平台



Evolution of IPEP: Strategic Project on “Enhancing IP protection on e-commerce marketplaces”

IPEP的迭代: “加强电商知识产权保护”战略计划

Rights holders / 权利人



Customs  
海关

Police  
警方



Enforcers  
执法部门

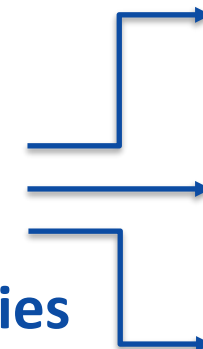


Intermediaries  
中介服务机构

E-commerce  
电商

Transport  
物流

Payment  
支付



Market authorities  
市监部门

# Concluding remarks

## 总结

**Thanks for your attention**  
**感谢聆听**

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