

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

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

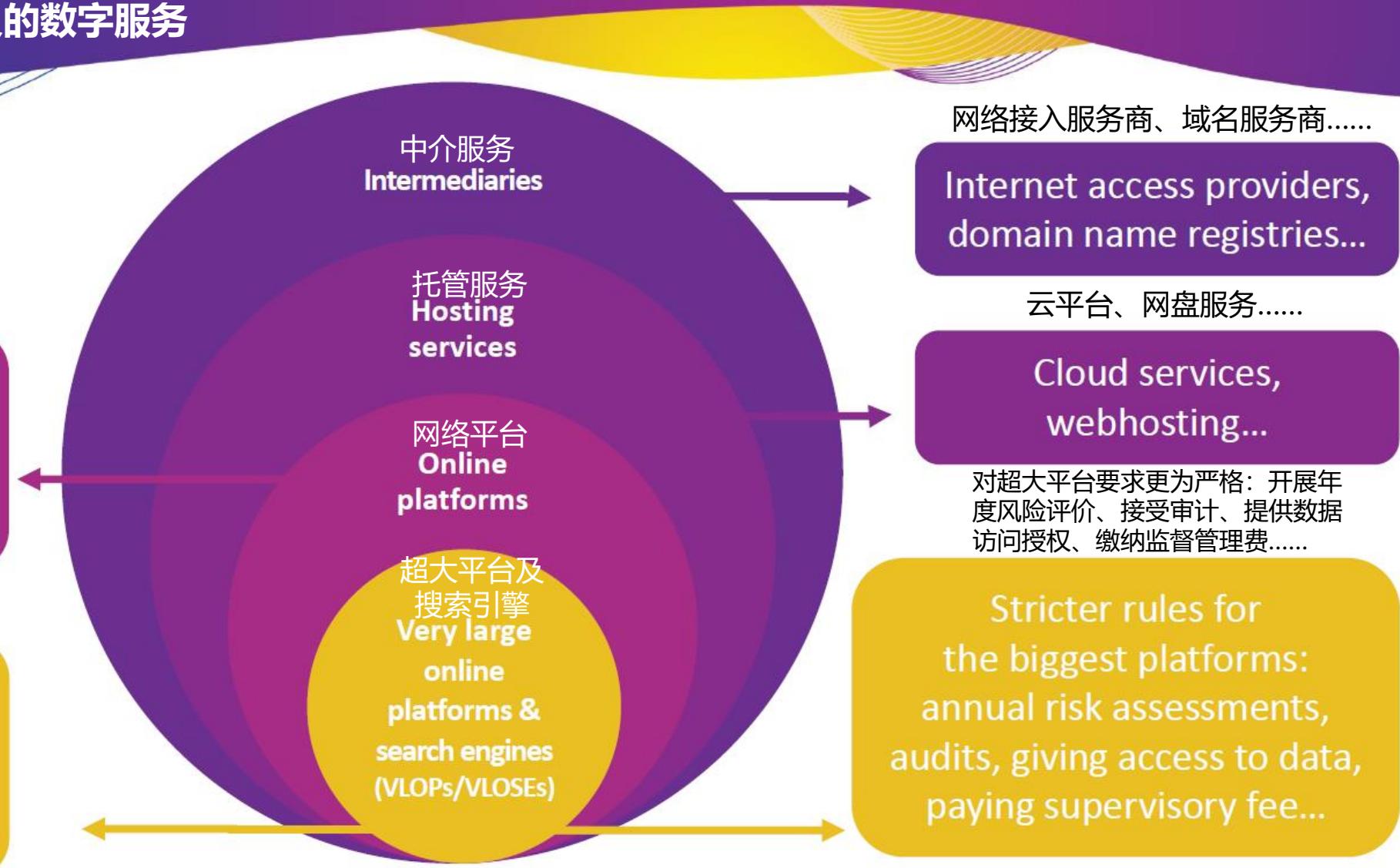
关键背景信息：DSA涉及的数字服务

网络商店、应用商店、共享经济平台、社交网络.....

Online marketplaces,
app stores, collaborative
economy platforms,
social networks...

欧盟用户规模超过4500万的网络平台和搜索引擎

Online platforms
& search engines
with over 45 million users
in the EU



- 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

	超大平台 VERY LARGE PLATFORMS	网络平台 ONLINE PLATFORMS	托管服务 HOSTING SERVICES	中介服务 ALL INTERMEDIARIES
Transparency reporting	●	●	●	●
T&Cs	●	●	●	●
Cooperation with national authorities	●	●	●	●
Points of contact & legal representatives	●	●	●	●
N&A	●	●	●	
Reporting criminal offences	●	●	●	
Complaint & redress mechanisms, OOC dispute settlement	●	●		
Trusted flaggers	●	●		
Prohibition of Dark Patterns	●	●		
Measures against abusive notices	●	●		
Special obligations for marketplaces (e.g. KYBC, random checks)	●	●		
Bans on targeted ads to children and based on special categories of personal data	●	●		
Accessibility	●	●		
Transparency of recommender systems	●	●		
Advertising transparency	●	●		
Risk management	●			
Independent audits	●			
User can opt out of profiling	●			
Data sharing with authorities & researchers	●			
Codes of conduct	●			
Crisis response cooperation	●			

**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

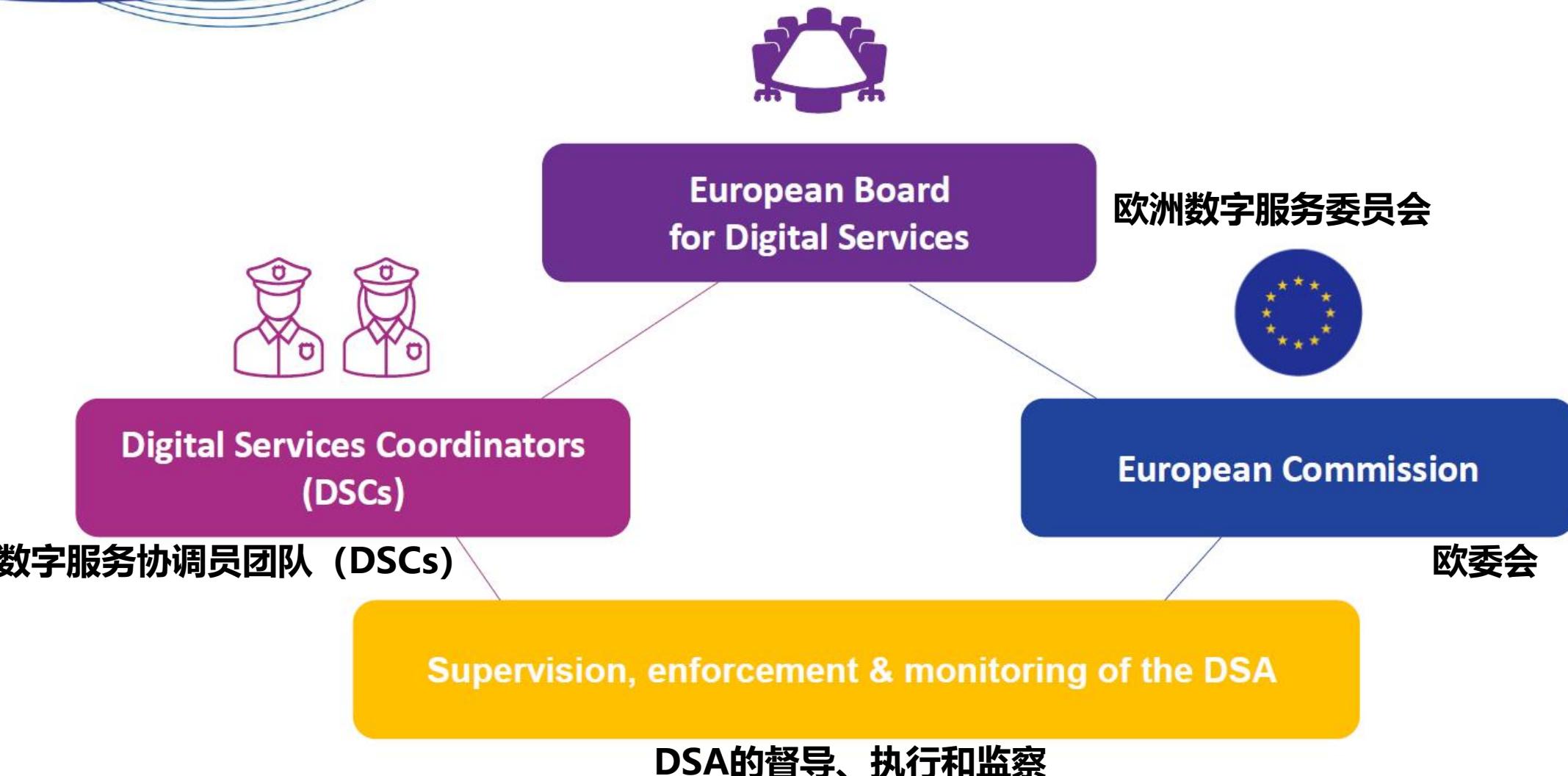
**General rules on
transparency**
透明度通用规则

**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



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）

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)

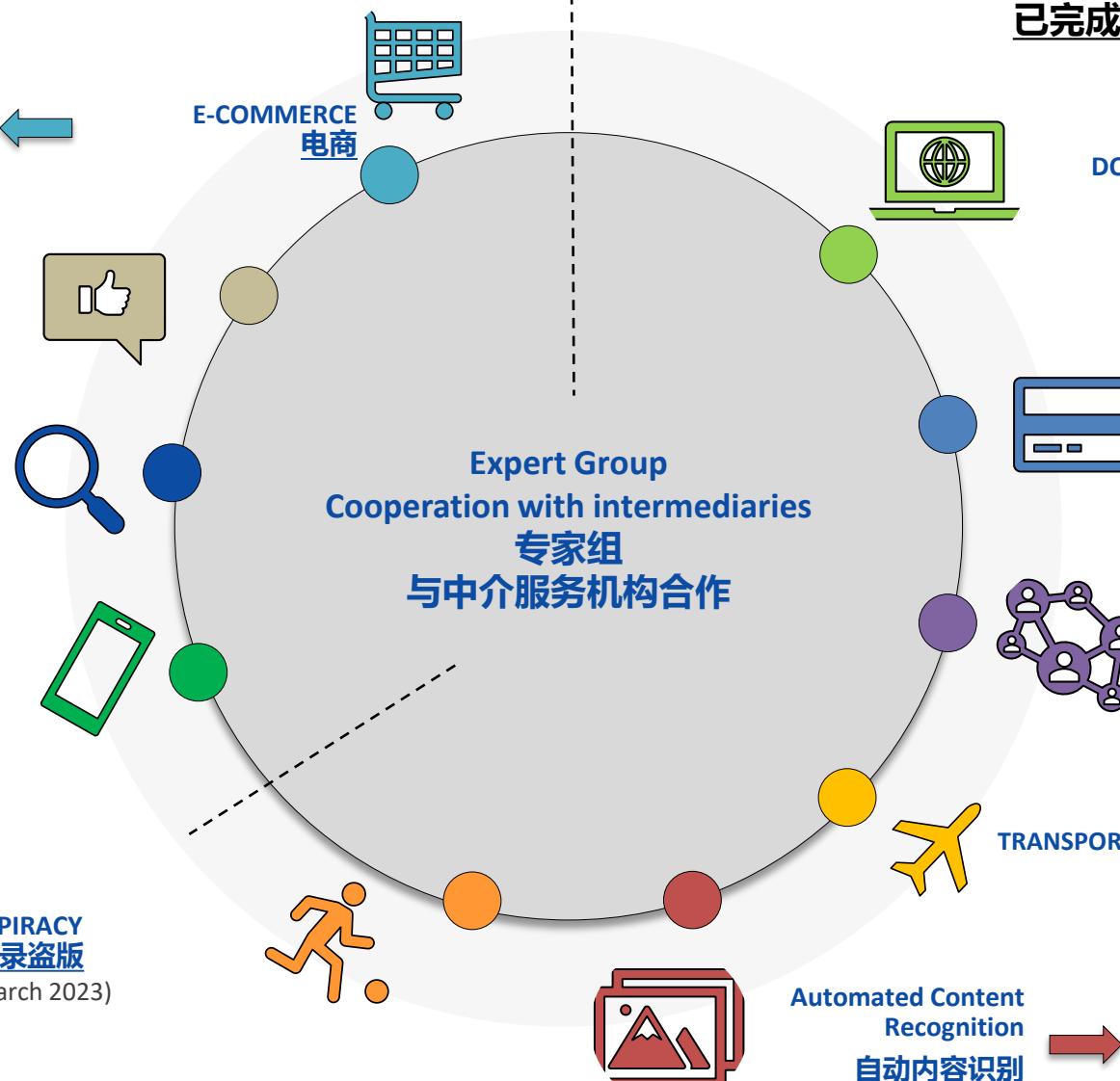
SOCIAL MEDIA / 社交媒体
(June 2021)

TRANSPORT & LOGISTICS / 运输物流
(Sept 2022)

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)

Automated Content
Recognition
自动内容识别



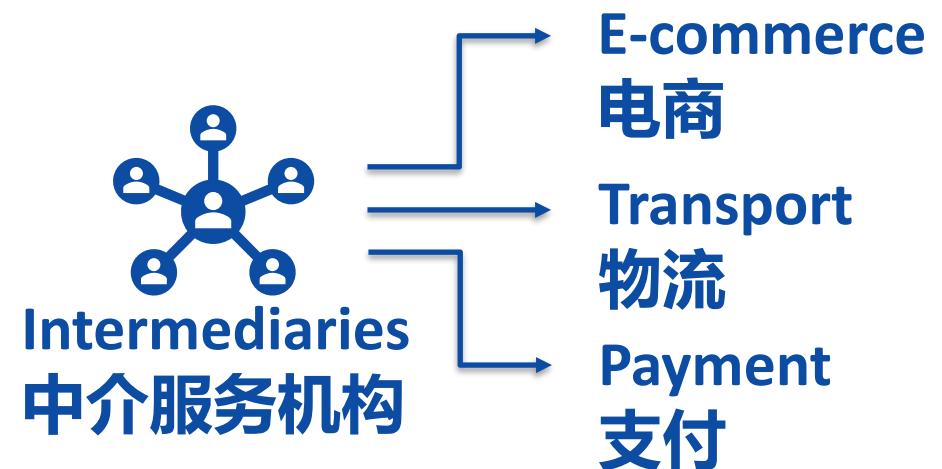
EUIPO IP Enforcement Portal (IPEP)

欧盟知识产权局

知识产权执法门户 (IPEP)

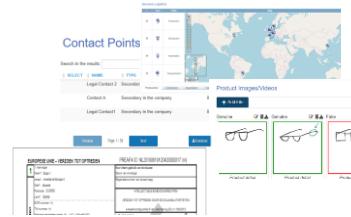
Starting point—The key players in IP Enforcement / 起始点——知识产权执法关键角色

Rights holders / 权利人

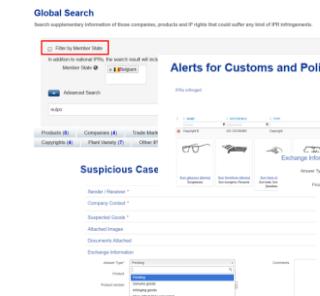


The IP Enforcement Portal (IPEP) / 知识产权执法门户 (IPEP)

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



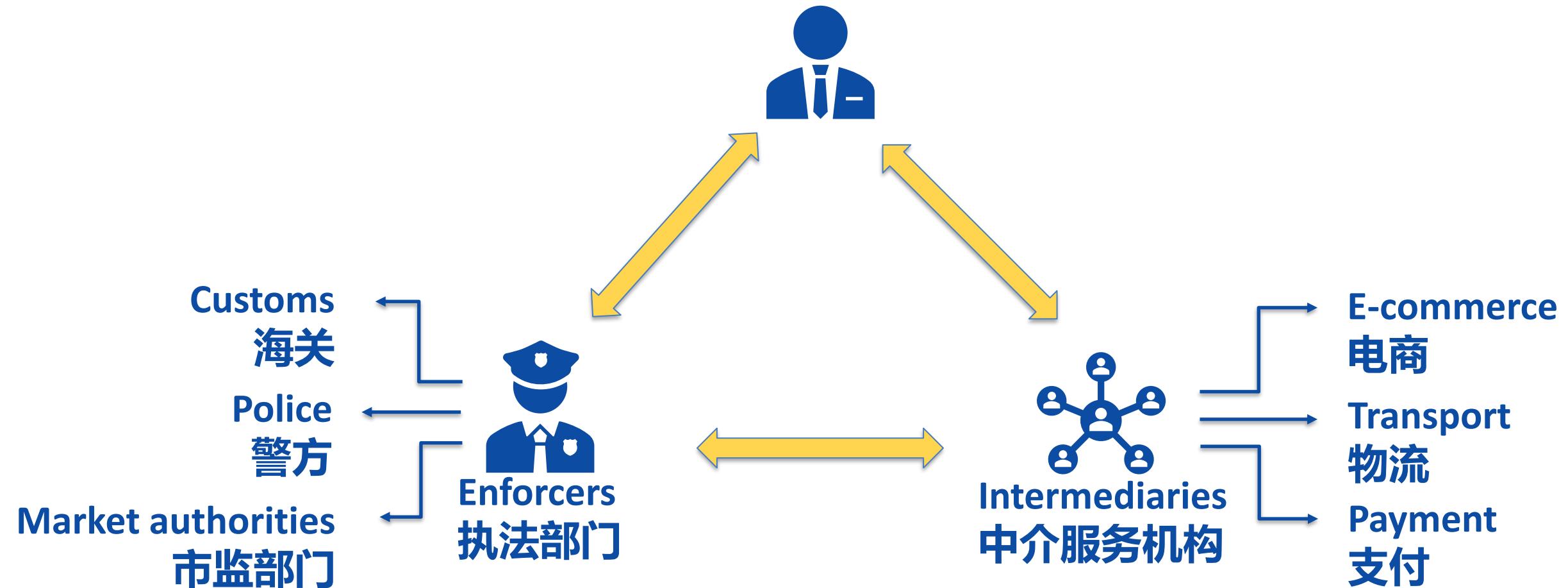
Right holders enter product, IPR and contact information
 权利人录入产品、知识产权和联系信息



Enforcers access information with one single search
 执法部门执行一次检索即可获取信息
 Rights holder are authenticated and IPR information validated
 权利人事前认证、知识产权信息事前核验

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



Concluding remarks

总结

Thanks for your attention
感谢聆听

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