**U.S. Development of Intellectual Property Rights & Enforcement**

**美国知识产权的发展与执行**

Colonial America as a primarily agrarian and non-industrial society had little need for extensive IP law. Consequently, in the 17th and 18th centuries, North America was a haven for IP pirates, particularly with respect to copyrights. As the U.S became more industrialized and developed into a large-scale generator of intellectual property, within a hundred years the country transformed itself from notorious IP pirate haven to one of the jurisdictions most dedicated to the legal and enforcement rights of intellectual property.

殖民时期的美国以农业为主，工业化程度不高，并未催生出完备的知识产权法。因此，在17和18世纪，美国沦为领域知识产权盗版天堂，版权问题尤为突出。随着工业化程度的提高，美国跻身为知识产权创造大国，在此后一百年间，美国从臭名昭著的知识产权盗版天堂转变为最致力于知识产权立法和执行的司法管辖区之一。

1. **Colonial Era/****Pre-Constitution**

**殖民时期/1989年以前**

Intellectual property law in the American colonies was governed by that of the laws of England including:

美国殖民地的知识产权法沿用英国相关法律，包括：

* Statute of Monopolies (1624) — Patents

《垄断法规》(1624年)——专利

* Statute of Anne (1710) — Copyrights

《安妮女王法》(1624年)——版权

IP grants by colonial, and then later by state, governments were generally in the form of private grants to one inventor with most jurisdictions using the 14-year period.

殖民地政府以及后来的州政府的知识产权授权一般都是以私人形式授予一个发明人，大多数司法管辖区的知识产权保护期限为14年。

For Example:

例如：

1641 — General Court in Massachusetts found Samuel Winslow had a process “to make [salt] by a meanes and way weh hitherto hath not been discovered” and at “more easy rates that otherwise can bee had.” It gave Winslow the exclusive right to use that process for 10 years.

1641年——马萨诸塞州总法院发现塞缪尔·温斯洛（音译）掌握一种“开创性的制[盐]”工艺，且“产盐成功率更高”。法院授予温斯洛使用该工艺10年的专有权。

1672 and 1673 — Massachusetts General Court passed two bills giving copyright protection to an author.

1672年和1673年--马萨诸塞州总法院通过了两项给予作者版权保护的法案。

1691 — South Carolina awarded a patent to Peter Guerard for a rice husking machine.

1691年--南卡罗来纳州授予彼得·格拉德（音译）稻米脱壳机的专利。

Besides the limited, ad hoc, jurisdiction-by-jurisdiction protections individuals may have been able to secure for their intellectual property, printers and publishers tried to protect their markets by securing agreements among themselves as best they could, given the geographic and communication barriers among the colonies.

由于殖民地之间交通壅塞、通信不便，除了有限的、临时性、区域性保护外，印刷商和出版商之间还通过签订协议以保护知识产权和市场。

1. **Post-Revolutionary America Under the Articles of Confederation**

**独立战争后：《联邦条例》**

1783 — Continental Congress approved a resolution to “encourage genius, to promote useful discoveries and to the general extension of arts and commerce.”

1783年——大陆会议批准了一项决议，以“鼓励天才，促进有益的发现，以及艺术和商业的普遍扩展”。

Nevertheless, only states had power to enact individual IP laws. By the end of 1784, eight states had adopted general copyright laws. By the end of 1786, all of the 13 states (except Delaware) had passed general copyright laws. Most of the laws provided copyright protection for 14 years and significant penalties for infringement.

然而，只有各州有权制定单独的知识产权法律。到1784年底，有八个州通过了一般版权法。到1786年底，13个州（特拉华州除外）都通过了一般版权法。大多数法律规定版权保护期为14年，并对侵权行为进行严厉处罚。

1. **Constitutional Period**

**宪法时期**

With the adoption of the U.S. Constitution in 1789, the federal government was given the power to enact federal legislation for uniform enforcement in enumerated areas across the states, specifically enumerated intellectual property.

1789年，美国宪法通过，联邦政府被授权制定联邦立法，在各州列举的领域统一执法，特别是列举的知识产权。

* 1789 — *U.S. Constitution*: “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” (U.S. Const. Art. I Sect. §8 ¶8.)

1789年——美国宪法：“为发展科学和实用技术，国会有权保障作者和发明人在有限的时间内对其作品和发明享有独占权。”（《美国宪法》第一条第8款第8项）

* 1790 — *Patent Act* 1790 (14 years): for inventions “sufficiently useful and important.”

1790年——1790年《专利法》（14年期限）：针对“足够有用和重要”的发明。

* 1790 — *Copy Right Act* 1790 (14 years): “… for the encouragements of Learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies”

1790年--《著作权法》1790年（14年期限）：“......为鼓励学术进步，保障作者和权利人地图、插图和书籍的专有权。”

States retained their common law authority to enforce their own intellectual property schemes, if any, while the federal legislation sought some fundamental uniformity of protection across the new United States. The significant disparity in scope of applicability of each of these efforts should be noted: while the *Patent Act* applied to “any person or persons” petitioning for a patent, the *Copyright Act*’s protections were tightly constrained, being aimed squarely at protecting the productions by “a citizen or citizens of these United States, or resident therein,” specifically excluding protection for works by foreign authors:

各州保留其普通法权力，以执行本州的知识产权法律（若该州有知识产权相关法律法规），而联邦立法则在新美国寻求某种基本的统一保护。应当指出，不同知识产权法律法规在适用范围上存在巨大差异：《专利法》适用于申请专利的“任何人”，但《版权法》的保护受到严格限制，仅旨在保护“美国公民或居民”的作品，排除了对外国作者作品的保护：

Nothing in this act shall be construed to extend to prohibit the importation or vending, reprinting or publishing within the United States, of any map, chart, book or books, written, printed, or published by any person not a citizen of the United States, in foreign parts or places without the jurisdiction of the United States.

本法案中的任何内容均不得扩张解释为禁止在美国境内进口、出售、重印或出版任何非美国公民在美国管辖范围以外的外国地区书写、印刷或出版的任何地图、图表、书籍或书籍。

Foreign authors enjoyed the same common law protects as any resident so long as their work was unpublished, but as Barbara A. Ringer noted in “*The Role of the United States in International Copyright - Past, Present, and Future*,” (56 Geo. L.J. 1050, 1051 (1968)), these common law rights were “cold comfort at a time when publication was the only profitable way to disseminate a work.”

只要外国作者的作品未出版，他们就享有和（美国）居民一样的普通法保护，但正如芭芭拉·林格（音译）在《美国在国际版权中的角色——过去、现在和未来》（56 Geo.L.J.1050、1051（1968））中所指出的，这些普通法权利“在出版是传播作品的唯一有利可图的方式时，是一种冷冰冰的安慰”

Lest this biased approach by Congress be perceived as atypical, Peter K. Yu noted in his article “*The Copyright Divide*” (25 Cardozo L. Rev. 331, 2003) that:

为了避免国会的这种偏颇做法被视为非典型，余家明在他的文章《版权分歧》（25 Cardozo L.Rev.3312003）中指出：

Although many commentators criticized the early development of U.S. copyright law for its intention to meet the needs of a less developed country while exploiting the works of developed countries, the 1790 Act was not created solely for this purpose. Rather, the lack of copyright protection to foreign authors was commonplace in the late eighteenth and early nineteenth centuries. At that time, many countries “did not … regard the piracy of foreign authors’ works as unfair or immoral. Some countries, in fact, openly countenanced piracy as contributing to their educational and social needs and as reducing the prices of books for their citizens.”

尽管许多评论员批评美国版权法早期通过削利用发达国家的作品以满足欠发达国家的需要，但1790年法案并不是专门为此目的制定的。相反，在18世纪末和19世纪初，缺乏对外国作者的版权保护是司空见惯的。当时，许多国家“并不……认为盗版外国作者的作品是不公平或不道德的。事实上，一些国家公开支持盗版，认为这有助于满足他们的教育和社会需求，并降低了图书价格。”

The lack of copyright protection to foreign authors in the 1790 Act was particularly damaging to English authors. According to Ye: Between 1800 and 1860, almost half of the bestsellers in the United States were pirated, mostly from English novels, for which, compared to a legitimate English edition, an American pirated edition cost about one-tenth. Ye notes that some English authors were able to secure from American publishers a “courtesy copyright,” an unwritten custom of self-restraint whereby each major publishing house refrained from publishing editions of a foreign work that was the subject of a publishing agreement another publishing house had reached with the author.

1790年法案对外国作者缺乏版权保护，对英国作者的损害尤其严重。叶（音译）认为：在1800年至1860年间，美国几乎一半的畅销书都是盗版的，其中大部分来自英国小说，与正版英文版相比，美国盗版的成本约为十分之一。叶指出，一些英国作家能够从美国出版商那里获得“礼貌版权”，这是一种不成文的自我约束习惯，各大出版社不得出版另一家出版社与作者达成出版协议的外国作品版本。

In 1837, Sen. Henry Clay submitted a report to Congress recommending the enactment of international copyright legislation that sought to extend U.S. copyright protection to British and French authors, not only for their protectionbut to assure U.S. readers the particular work was the legitimate production of the author or a pirated and possibly adulterated version. The report fell on deaf ears in Congress. Likewise, in 1842, Lord Palmerston, the British prime minister, attempted to initiate high-level contacts with the U.S. government in an effort to induce the United States to agree to a copyright treaty, to no avail.

1837年，参议员亨利·克莱向国会提交了一份报告，建议制定国际版权法，寻求将美国版权保护扩大到英国和法国作家，不仅是为了保护他们，而且是为了向美国读者保证，特定作品是作者的合法作品或盗版和可能掺假的版本。国会对这份报告充耳不闻。同样，在1842年，英国首相帕默斯顿勋爵试图与美国政府进行高层接触，试图推动美国同意一项版权条约，但没有成功。

The large-scale piracy of English literature that occurred legally during the nineteenth century in the United States would have been illegal under the laws of the leading developing countries then and now, as noted by S.M. Stewart in “International Copyright and Neighbouring Rights” (2d ed. 1989).

正如史蒂芬·斯图尔特（音译）在《国际版权和邻里权利》（第二版，1989年）中所指出的那样，十九世纪在美国合法发生的大规模盗版英语文学作品，在当时和现在的主要发展中国家的法律下都是非法的。

Later in the nineteenth century America’s own literature began to flourish at home and abroad. Literary stakeholders began to emerge in the United States: authors, such as James Fenimore Cooper, Ralph Waldo Emerson, Nathaniel Hawthorne, Washington Irving, Henry Wadsworth Longfellow, Herman Melville, Edgar Allan Poe, Harriet Beecher Stowe, Henry David Thoreau, and Walt Whitman, had attracted readership in England and other European countries, but because most copyright laws were made conditional upon reciprocity in other countries, American authors continued to be denied their rights under foreign law just as foreign authors were denied rights under U.S. law.

19世纪后期，美国本土的文学开始在国内外蓬勃发展。文学利益相关者相继出现：詹姆斯·费尼莫尔·库柏、拉尔夫·沃尔多·爱默生、纳撒尼尔·霍桑、华盛顿·欧文、亨利·沃兹沃斯·朗费罗、赫尔曼·梅尔维尔、埃德加·爱伦·坡、哈丽特·比彻·斯托、亨利·戴维·梭罗和沃尔特·惠特曼等作家在英国和其他欧洲国家吸引了读者，但是，由于大多数版权法都是以其他国家的互惠为条件制定的，因此美国作家在外国法律下的权利继续被剥夺，正如外国作家在美国法律下被剥夺的权利一样。

1. **Toward Progress in Protecting IP**

 **保护知识产权的进展**

As industrialization progressed in the United States, efforts at protecting intellectual property occurred in fits and starts, with key dates that include:

随着美国工业化的发展，保护知识产权的努力时有发生，里程碑事件包括：

* 1836 — U.S. Patent Office established.

1836年的今天，美国专利局成立。

* 1836 — Patent Act of 1836 (5 Stat. 117, 119, 5) provided that in addition to the fourteen-year term, an extension “for the term of seven years from and after the expiration of the first term” in certain circumstances, when the inventor had yet to receive “a reasonable remuneration for the time, ingenuity, and expense.”

1836——1836年《专利法》（5 Stat.117，119，5）规定，除十四年期限外，在某些情况下，发明人尚未获得“合理的时间、创造力和费用报酬”时，可延长“自第一个期限届满之日起七年”的期限

* 1861 ——Seven-year extension eliminated and the term changed to seventeen years (12 Stat. 246, 248).

1861——取消七年延期，期限改为十七年（12 Stat.246，248）。

* 1849 — Trademark is recognized as a property right: *Amoskeag Manufacturing Company v. Spear.*

1849——商标被认定为财产权：Amoskeag Manufacturing Company诉 Spear案。

* 1884 — Photos protected: *Burrow-Giles Lithographic Co. v. Sarony*,vv 111 U.S. 53 (1884)

1884——照片保护：Burrow-Giles Lithographic Co.诉Sarony案。

* 1891 — *International Copyright Act* (Chace Act): Congress eventually began to actively consider proposals to provide reciprocal copyright protection to foreign authors within the United States. Under this Act, foreign authors finally received copyright protection when the President proclaimed that their home country provided American citizens with “the benefit of copyright on substantially the same basis as its own citizens” or that such a country was a party to an international agreement that provided reciprocal copyright protection to its members and to which “the United States may, at its pleasure, become a party.”

1891——《国际版权法》：国会最终开始积极考虑向美国境内的外国作者提供互惠的版权保护的建议。根据该法案，1）若总统宣布外国作者的所属国向美国公民提供“与本国公民基本相同的版权权益”；2）或该国是向其成员提供对等版权保护的国际协议的缔约国，而“美国酌情成为该国际协议的缔约国，外国作者的知识产权也能得到保护。”

1. **20th Century** — **Transformation in U.S. IP Rights & Enforcement**

**20世纪-美国知识产权的转型与实施**

The twentieth century’s explosion in arts, science and technology accelerated America’s role in protecting intellectual property. Key developments included:

二十世纪艺术、科学和技术的爆炸加速了美国在保护知识产权方面的作用。主要发展包括：

* 1968 — Computer programs protected.

1968年-计算机程序受到保护。

* 1971 — *Sound Recordings Act* of 1971 (Pub. L. No. 92-140, 85 Stat. 392). Sound recordings protected: Previously, some states had provided — either through statute or through common-law adjudication — comparable protection.

1971年——《1971年录音法》。录音制品受到保护：以前，一些州通过法规或普通法裁决提供了类似的保护。

* 1976 — *Copyright Act* of 1976.

1976年-1976年版权法。

The Copyright Act of 1976 forms the basis of copyright law in the United States today. Copyright protection extends to all “original works of authorship” to take into account new kinds of media. Notable with this act:

1976年的《版权法》构成了当今美国版权法的基础。版权保护延伸到所有“原创作品”，以考虑到新的媒体类型。本法案值得注意的是：

* Expansive language avoids having constantly to amend copyright laws to account for the development of new technologies and means of expression, such as still photography, motion pictures, or recordings;

概括性表述避免了不断修改版权法，以涵盖新技术和表现手法的发展，如静态摄影、电影或录音；

* Creates federal copyright protection for every work as soon as it is created — that is, when it is first fixed in a tangible medium of expression;

每一部作品一经创作，即第一次固定在有形的表达媒介中，就能得到联邦版权保护；

* International conformity links duration of copyright based on the life of the creator plus a fixed term, rather than a completely arbitrary uniform term of years;

版权期限为创作者寿命加上固定期限，而不是完全任意的统一期限；

* Incorporated the concept of fair use;

纳入合理使用的理念；

* Post 1978 copyrights are not subject to renewal registration.

1978年后的版权不需要更新注册。

* 1989 — U.S. ratification of the *Berne Convention* (extant for many European countries for a century).

1989年——美国批准了《伯尔尼公约》（许多欧洲国家早在一个世纪前就已批准）。

* 1990 — *Architectural Works Copyright Protection Act* (AWCPA) to protect the intellectual property of architects. (N.B. “Original design element” criteria.)

1990年——保护建筑师知识产权的《建筑作品版权保护法》（AWCPA）。（注意：“原始设计元素”标准。）

* 1998 — *Copyright Term Extension Act*: Extended copyright term to life of the author plus 70 years; for works of corporate authorship to 120 years after creation or 95 years after publication, whichever end is earlier.

1998年——《版权期限延长法案》：将版权期限延长至作者的寿命加70年；对于企业为创作者的作品，创作后120年或出版后95年，以较早者为准。

Today, the United States is a member of the World Trade Organization (“WTO”) and abides by the “*Agreement on Trade-Related Aspects of Intellectual Property Rights*” and is subject to the WTO dispute settlement procedure. In little more than a century, The U.S. transformed itself from a haven of legally sanctioned intellectual property piracy into the world’s leading proponent of intellectual property rights and enforcement.

如今的美国是世界贸易组织（“WTO”）的成员，遵守《与贸易有关的知识产权协议》，并遵守WTO争端解决程序。在不到一个世纪的时间里，美国从一个受到法律制裁的知识产权盗版天堂转变为世界上知识产权和执法的主要倡导者。

1. **U.S. IP Developments At & Beyond Turn of the Century**

**世纪之交及以后美国知识产权的发展**

**NAFTA and the North American Free Trade Zone**

**《北美自由贸易协定》和北美自由贸易区**

Having transformed itself from a pirate haven into the world’s leading enforcer of intellectual property rights, the United States — for the most part — is continuing its efforts through multilateral agreements.

美国已经摘掉盗版天堂的标签，转变为世界领先的知识产权倡导者，在很大程度上，美国仍在通过多边协议继续努力。

Enacted in 1993, NAFTA provided that each party — U.S., Mexico and Canada — “shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.” Its successor agreement, *the United States-Mexico-Canada Agreement* (USMCA) signed on July 1, 2020, significantly updated and modernized protections for intellectual property rights critical to innovation, economic growth and job creation.

1993年颁布的《北美自由贸易协定》规定，美国、墨西哥和加拿大三国“应在其领土内向另一方国民提供充分有效的知识产权保护和执法，同时确保执行知识产权的措施本身不会成为合法贸易的障碍。”，2020年7月1日《美国-墨西哥-加拿大协定》（USMCA）签署生效，取代了《北美自由贸易协定》，知识产权保护措施实现更新换代，而知识产权对创新、经济增长和创造就业至关重要。

The intellectual property chapter of the USMCA includes provisions covering patents, trademarks, copyright, trade secrets and domain names. USMCA includes protection for biologic pharmaceutical products, which were not covered under NAFTA and requires Canada and Mexico to enact laws similar to the *Uniform Trademark Secrets Act* in the United States.

The USMCA also incorporates a copyright term of not less than 70 years after the death of the author, the current term in the United States, which extends Canada’s current 50-year term, but is less than Mexico’s 100-year term.

USMCA的知识产权章节涉及专利、商标、版权、商业秘密和域名。USMCA还涉及生物医药产品的保护，而NAFTA则无此类条款。USMCA要求加拿大和墨西哥颁布类似于美国《统一商标保密法》的法律。此外，USMCA还规定作者逝世后不少于70年的版权期限，即美国现行的版权期限。这一期限延长了加拿大现行的50年期限，但短于墨西哥的100年期限。

Further, USMCA gives customs officials authority to initiate measures against suspected counterfeit trademark goods at border crossings. The latter measure is significant given that Canada is a major conduit for goods coming from China and other Asian countries, where counterfeit goods often originate. U.S. Customs and Border Protection (CBP) is the primary federal agency responsible for securing America’s borders, and that includes the protection of intellectual property rights and guarding against the infringement of U.S. patents, copyrights, and trademarks. CBP intercepts counterfeit and pirated goods that harm the U.S. economy. The agency enforces intellectual property rights at the border with a multilayered strategy that mitigates the risk of fraudulent shipments coming into the country. The strategy’s two key elements include:

此外，USMCA授权海关官员在边境口岸对涉嫌假冒商标的商品采取措施。鉴于加拿大是来自中国和其他亚洲国家的商品的主要中转地，后一项措施意义重大，而这些国家往往是假冒商品的原产地。美国海关与边境保护局（CBP）是负责保护美国边境安全的主要联邦机构，其中包括保护知识产权和防止侵犯美国专利、版权和商标。CBP拦截危害美国经济的假冒和盗版商品。该机构通过多层次策略在边境实施知识产权，以降低欺诈货物进入该国的风险。该策略的两个关键要素为：

* Enforcement: At the border, CBP is authorized to exclude, detain and/or seize imported merchandise that infringes federally registered and recorded trademarks and copyrights and/or is covered by an exclusion order issued by the U.S. International Trade Commission.

执法：在边境，CBP有权排除、扣留和/或扣押侵犯联邦注册和登记的商标和版权和/或受美国国际贸易委员会发布的排除令管辖的进口商品。

* Partnerships: CBP collaborates with other federal agencies and foreign governments to protect America’s innovation and competitiveness. One of these important partnerships is with the National Intellectual Property Rights Coordination Center (IPR Center).

伙伴关系：CBP与其他联邦机构和外国政府合作，保护美国的创新和竞争力。其中一个重要的伙伴关系是与国家知识产权协调中心（IPR中心）的合作。

“One of CBP’s most important collaborative partnerships is with the trade community. Enforcing intellectual property rights is a complex process and partnering with rights owners and industry organizations is critical to CBP’s success.” (“Intellectual Property Rights Enforcement,” U.S. Customs and Border Protection, CBP Publication # 0136–0311)

“美国海关与边境保护局最重要的合作伙伴之一是与商界的合作。执行知识产权是一个复杂的过程，与权利人和行业组织的合作对CBP的成功至关重要。”（“知识产权强制执行”，美国海关和边境保护局出版物#0136–0311）

**U.S. Withdrawal from the Trans-Pacific Partnership**

**美国退出跨太平洋伙伴关系**

Under former President Donald Trump, the U.S. formally withdrew in January 2017 from the TPP, and is not participating in the successor agreement, the Regional Comprehensive Economic Partnership (RCEP) among 15 Asia-Pacific nations and five regional partners that was signed on 15th November 2020. The RCEP includes a chapter on intellectual property that aims to reduce IP-related barriers to trade and investment by promoting economic integration and cooperation in the utilization, protection, and enforcement of intellectual property rights, as well as to promote technological innovation and the transfer and dissemination of technology.

在前总统唐纳德·特朗普的主导下，美国于2017年1月正式退出TPP。2020年11月15日，由15个亚太国家和5个区域伙伴制定的《区域全面经济伙伴关系协定》（RCEP）签署。RCEP包括知识产权的章节，旨在通过促进经济一体化和加强知识产权的利用、保护和实施等方面的合作，减少与知识产权相关的贸易和投资壁垒，并促进技术创新和技术转让与传播。

**2020 Updates to Trademark and Copyright Protections**

**2020年商标和版权保护进展**

The U.S. continues to expanded IP protections, most recently with *Trademark Modernization Act of 2020* and *2020 Copyright Act*.

美国继续扩大知识产权保护，最近的举措为通过《2020年商标现代化法案》和《2020年版权法案》。

*Trademark Modernization Act of 2020*(a.k.a. *2020 Trademark Act*): The *2020 Trademark Act* provides (1) important clarification (and resolution of the current circuit split of authority among U.S. Circuit Courts of Appeal) that “irreparable harm” is presumed for purposes of entering a trademark injunction if a likelihood of confusion is shown, making it easier for trademark owners to obtain injunctions in federal courts; and (2) new options for preventing applications from being approved and also for seeking to cancel existing registrations.

《2020年商标现代化法案》（又称《2020年商标法案》）：《2020年商标法案》规定（1）明确（以及美国巡回上诉法院之间当前巡回分权的解决方案）若出现混淆的可能性，为实行商标禁令，可推定“不可弥补的损害”，使商标所有者更容易在联邦法院获得禁令；以及（2）防止申请被批准以及寻求取消现有注册的新选择。

*2020 Copyright Act*: This act further expands protections to copyright owners first enacted by the *Digital Millennium Copyright Act*, which criminalized illegally downloading copyrighted material; this act also establishes the Copyright Claims Board, a small claims court focused solely on resolving copyright infringement disputes up to a certain amount.

《2020年版权法案》：该法案进一步扩大了对版权所有者的保护，相关内容在《数字千年版权法案》中有所规定，《数字千年版权法案》将非法下载受版权保护的材料定为犯罪；《2020年版权法案》还设立了版权索赔委员会，这是一个小额索赔法院，专门解决一定金额以下的版权侵权纠纷。

**2021 Expansion of Fair Use: *Google v. Oracle***

**2021合理使用的扩张：谷歌诉甲骨文案**

In 2021, the U.S. Supreme Court finally ended the decade-long case of *Google v. Oracle*, wherein the Supreme Court significantly expanded the fair use defense in cases involving copyrighted computer code. In that case, Google copied 11,500 lines of “declaring code” from the Sun Java API to use in its new Android operating system. The Court determined that such copying constituted “fair use” under Section 107 of the *Copyright Act* because Google’s use “added something new, with a further purpose or different character, altering the copyrighted work with new expression, meaning or message.” The Court held that Google’s Android platform was transformative because it was designed for a mobile device, wherein the Java API was designed for desktop and laptop computers. The Court emphasized that the transformative purpose should weigh in favor of fair use, even when the alleged infringement is for a commercial purpose.

2021，美国最高法院最终结束了长达十年的谷歌诉甲骨文案。在该案中，最高法院在涉及受版权保护的计算机代码的案件中显著扩大了合理使用辩护。在本案中，谷歌从Sun Java API中复制了11500行“声明代码”，用于其新的Android操作系统。法院认定，根据《版权法》第107条，这种复制构成“合理使用”，因为谷歌的使用“增加了新的东西，具有进一步的目的或不同的特征，用新的表达、意义或信息改变了受版权保护的作品”。法院认为，谷歌的Android平台具有变革性，因为它是为移动设备设计的，其中所述Java API则应用于台式机和笔记本电脑。法院强调，即使被指控的侵权行为用于商业用途，但变革性用途的意义大于商业用途，因而在法律上构成合理使用。

**Conclusion**

**结论**

During the 20th century, the United States successfully transformed itself from a pirate haven of the 18th and 19th centuries into the world’s leading beacon and enforcer of intellectual property rights. But its efforts are not always consistent: note the withdrawal of the U.S. from the Trans-Pacific Partnership (TPP) and its successor agreement. Likewise, 2021 saw a potentially damaging trend when the Biden Administration voiced support for mandated waivers of patents regarding COVID-19 vaccinations, which could chill further innovations by pharmaceutical and biotech companies, and could portend fallout for innovators in other sectors.

在美国成功地从18世纪和19世纪的盗版天堂转变为20世纪世界领先的知识产权灯塔和执法者。但美国并不总是一往无前：请注意，美国退出了《跨太平洋伙伴关系》（TPP）及其后续协议。同样，2021，拜登政府表示支持强制豁免有关新冠肺炎疫苗的专利，这可能会抑制制药和生物技术公司的进一步创新，并预示着其他行业的创新者会受到影响。

Nevertheless, the U.S. continues its overall trajectory to enumerate and enforce IP rights, while actively encouraging other countries around the world to do so also. Furthering IP protection looms as enormously important for the country’s economic vitality as the rate of innovation remains at or near historically high levels.

尽管如此，美国继续其列举和执行知识产权的总体轨迹，同时积极鼓励世界各国积极仿效。创新速率保持在或接近历史最高水平，加强知识产权保护对一国的经济活力至关重要。