

Research on the Legal Protection of Personal Information from the Perspective of "Civil Code"

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Abstract

The "Civil Code" created a legitimate premise for the protection of personal information, and provided ideas and basis for effectively solving the infringement dilemma in the era of big data. In the face of the complex and changeable development trend of big data, there are still many uncertainties in the protection of personal information, which has led to a difficult situation in the protection of personal information. Under the current legal background, measures such as strengthening the administrative supervision of personal information protection, advancing the construction of industry Self-discipline management mechanism, and constructing the infringement public interest litigation system for personal information protection, provide ideas for effectively protecting the legitimate rights and interests of personal information subjects to realize big data The protection of personal information and the balance of multiple interests in the era.

Keywords

"Civil Code"; Personal Information; Big Data.

1. Raising the Problem

On the evening of July 4, 2021, the National Internet Information Office issued a notice, and once it was published, it occupied the headlines of major news media across the country. The content of the notification is clear and powerful. According to relevant reports and after testing and verification, the "DiDi Travel" app has serious violations of the collection and use of personal information. In accordance with the relevant provisions of the "People's Republic of China Cyber Security Law", urgently notify major applications The store earnestly rectified the existing problems and asked it to remove the Didi Travel App to effectively protect the personal information of users. This announcement pushed Didi Travel to the forefront of public opinion, and received general support from the public in a short period of time, but at the same time, it inevitably caused the public's troubles and concerns about personal information security.

China is currently in a period of rapid development in the era of big data. People have benefited a lot from the highly developed big data and the rapid spread of information networks. You can learn from everything around you: life, study, work, etc. are inseparable from mobile phones. And many applications in the computer, it can be said that our personal information is stored and flowed in the Internet system in the form of big data. In addition, we have gradually realized that our personal information is being "relentlessly infringed" by criminals. The formal implementation of the "Civil Code" provides basic prerequisites for the protection of personal information in our country, and stipulates the protection of personal information from multiple angles, but it is worrying that there is no law for the protection of personal information infringement. Regulation. In other words, the relevant regulations on the protection of personal information in the Civil Code are too fragmented, making them lack of operability and making the application of the law difficult. They can only provide directional guidance for the infringement of personal information, so it is difficult to make them in practice The problem is

really solved. Therefore, it is necessary to use the infringement dilemma in the era of big data as the basis to conduct related research on the protection of personal information under the perspective of the Civil Code, and to explore more possibilities for the legal protection of personal information.

2. Current Problems in the Legal Protection of Personal Information

2.1. Irregular Collection and Utilization, and the Proliferation of Malicious Disclosure

Violations in the collection and use of personal information are the main dilemma faced by the protection of personal information, including illegal collection and excessive use. It refers to the act of collecting and using the personal information of the information subject through technology or other improper methods without the information subject's knowledge. The methods mainly include illegal means and purposes. For example: when registering and using the APP, you need to register and create your own account through WeChat login, email login, etc., as long as you register and log in through these associated accounts, the APP will steal the user's relevant personal information in the account of WeChat, email, etc. . After entering the APP interface, you must first agree to the authorization to view the address book permissions, location permissions, etc. before it can be used normally. If this method of forced association and authorization is collected by criminals, it will have a serious adverse effect on the subject of personal information. At the same time, under the background of modern big data, the phenomenon of multiple development and utilization of personal information is also widespread. For example, the use of big data processing technology to analyze and process collected personal information, overuse its commercial value, and adopt targeted marketing methods to reduce costs. And then pursue greater economic benefits. It can be seen that the irregular collection and utilization of personal information will cause serious troubles to information subjects, and their legitimate rights and interests will be ruthlessly violated. In addition, the malicious disclosure of personal information is rampant. For example, some lawbreakers who have the public's personal information resources illegally provide or transfer personal information without the public's consent or legal authorization. What's more, personal information is packaged, processed and sold to third parties with interest, so that personal information such as name, mobile phone number, and home address is maliciously disclosed through various illegal channels and flows arbitrarily on the big data platform. Citizens are not aware of it. Under the circumstances, a large number of harassing calls and fraudulent text messages are received. These phenomena seriously affect the normal settlement and life of citizens, and are essentially malicious infringements on the personal interests of information subjects.

2.2. Regulatory Authorities are not Clear, and Industry Standards are not Unified

Our country's personal information protection has some loopholes in administrative supervision and industry supervision. For example, my country currently does not have an independent personal information protection management department and administrative supervision and management agency, and there is an unclear division of labor in the protection of personal information. The main goal of my country's information security administrative power is to ensure the national Internet information security, prevent and combat cybercrimes and information fraud, and ensure the smooth advancement of national information security. Therefore, it is easy to overlook the key protection of personal information security. Multiple administrative agencies have different regulatory purposes or inconsistent regulatory standards, which makes the mutual evasiveness of responsibilities between departments,

which in turn leads to insignificant regulatory effects, and therefore makes it difficult to protect rights when personal information is infringed, and cases of personal information infringement. It is also difficult to get effective treatment. In addition, although my country currently has many relevant regulations and norms based on the "Internet Information Service Management Measures" and the "Internet Internet Service Business Site Management Regulations", etc., and the overall Internet industry management regulations have been initially established throughout the country Framework, but a mandatory punishment system has not yet been established. At the same time, the responsibilities between the regulatory agencies are not clear enough, and the rights and obligations cannot be accurately defined. It is also because of this that my country has not yet formed a unified industry standard and cannot be Standards regulate the development order of the industry.

2.3. The Cost of Infringement is Small and the Relief is Difficult

In the era of "all-encompassing" big data, a large number of application developers have caused personal information to be leaked in pursuit of commercial interests, and it is often difficult for infringed subjects to determine how their personal information has been infringed. In the face of huge commercial interests, many subjects rush into the illegal trajectory of infringement of personal information. They will screen and process the collected personal information in multiple and multi-dimensional ways. It is precisely because of this that the infringed It is often impossible to accurately find the infringing subject, and plunge oneself into a passive and helpless situation. In addition, individuals are at a disadvantage compared to network operators or openers. The infringer and the infringed are not trading on a fair and transparent platform, and the infringed is often at a loss when facing the infringer. According to our country's distribution of burden of proof in the Civil Code, if the infringer consciously uses information technology to infringe on personal information in order to achieve its illegal purpose, the infringer can be directly held accountable. If the artificial intelligence technology itself has flaws or loopholes that infringe on the user's personal information, the relevant regulations on product liability infringement shall be applied for accountability. Victims often need to bear the burden of proof, but personal information has already been processed by multiple hands, and victims cannot find specific infringement subjects. Therefore, the victim's proof is difficult to achieve and requires a higher cost of litigation and rights protection, so it is impossible. Protecting their own legitimate rights and interests through judicial remedies, infringement subjects' infringement of personal information has become more severe, so that it ultimately leads to the dilemma of low cost of personal information infringement and great difficulty in remedy.

3. The Path of Personal Information Protection under the Perspective of the "Civil Code"

3.1. Strengthen the Administrative Supervision of Personal Information Protection and Improve the Personal Information Protection Supervision System

Personal information infringement incidents often occur in the era of big data. One of the most important reasons is the ineffective supervision of government departments, the unclear responsibilities, and the shirk of responsibilities. Therefore, in the process of building a legal system for personal information protection in my country, there is an urgent need to improve the supervision capabilities of public agencies and strengthen assistance in remedies for personal information infringement. First, it is necessary to formulate clear regulatory goals and clear national standards for personal information protection, and establish approval and filing mechanisms for the collection, analysis, and use of personal information. Adopt a combination

of pre-supervision and post-supervision to establish complaints channels for personal information infringement cases, conduct related investigations by accepting reports and research clues, and cooperate with relevant departments to combat illegal collection and use of personal information. Effectively integrate the relevant functions of the government and relevant agencies in the protection of personal information, establish regulatory agencies with clear responsibilities and clear procedures, regulate and protect personal information, and strengthen the collection and analysis of personal information data. Therefore, the state should establish a unified supervision department, improve the personal information supervision and protection system, clarify the responsibilities of public agencies, and play a key role in protecting citizens' personal information.

3.2. Promote the Construction of Industry Self-discipline Management Mechanism and Formulate Industry Norms Related to Personal Information Protection

The subject is the soul of the industry, and the development of the industry is inseparable from the subject's Self-discipline and effective industry standards. Promote the construction of industry Self-discipline management mechanism, and supervise and regulate the collection and use of personal information. Not only can it make up for legal loopholes, but it can also further increase the cost of violations and make relevant entities who illegally collect and use personal information pay more. The big price forced it to abide by the rules. On the one hand, improve the internal operating mechanism of industry associations. The Self-discipline of industry associations is the Self-discipline of employees. Therefore, it is necessary to improve the quality of personnel and focus on supervision and training of employees in the information industry. At the same time, establish a credit evaluation system and standardize information application procedures. And standards. On the other hand, we can consider innovating the punishment system and improving the punishment mechanism. For those enterprises or employees with low Self-discipline and lack of social responsibility, increase the punishment; and for the enterprises and employees with high Self-discipline and strong social responsibility, more positive incentives will be given. In addition, in the face of increasingly serious personal information leakage, the state should strengthen supervision of Internet companies, increase penalties for infringements on citizens' personal information, and at the same time strengthen social restraints, using social public opinion or the effective supervision and regulation of third-party agencies. The behavior of enterprises and related personnel promotes the healthy development of the information industry.

3.3. Constructing a Public Interest Litigation System for Infringement of Personal Information Protection

Our country's procuratorial public interest litigation system has made great achievements in environmental protection and consumer rights protection, and has been widely concerned and recognized by the general public. Therefore, we can consider drawing on the procuratorial public interest litigation system to construct personal information protection infringement public interest litigation. System to effectively alleviate the dilemma of "difficult relief and high cost" in the field of personal information protection in our country. On the one hand, the principle of inversion of burden of proof can be applied to personal information infringement cases, because personal information infringement cases usually have the characteristics of difficult to determine the subject of implementation and concealed means of implementation. These circumstances lead to great difficulties for victims in information rights protection. Therefore, for public interest litigation cases involving infringement of personal information, the principle of inversion of proof can be applied exploratively. The prosecutors can produce evidence to prove the damage caused by the infringement of personal information, and the defendant shall bear the appropriate obligation to cooperate in proof to prove its actions and

There is no causal relationship between the damage results, so as to effectively resolve the dilemma of bearing adverse consequences due to difficulty in producing evidence. On the other hand, in view of the characteristics of information behavior in the era of big data, the construction of a complete tort public interest litigation system requires a combination of civil public interest litigation and administrative public interest litigation, and specific application according to individual cases. The subject matter of civil public interest litigation is the infringement prevented by network operators, while the subject matter of administrative public interest litigation is the misconduct and omission of the administrative agency. In the specific process of applying the personal information protection public interest litigation system, relevant administrative authorities can be supervised. The administrative public interest litigation for the agency to perform its duties is mainly, supplemented by supporting qualified public interest litigation organizations to initiate civil public interest litigation, to coordinate the litigation relationship between the two, and to improve the efficiency of personal information protection litigation.

4. Conclusion

The promulgation of the "Civil Code" and the promulgation of the "Personal Information Protection Law" is a major advancement in the legislation and protection of my country's personality rights, as well as a great initiative that conforms to the development of the times and the prosperity of science and technology. In the era of big data, personal information protection is facing great challenges, and there are greater risks in the face of technological progress. However, we cannot stop the pace and development trend of big data technology, but we should innovate the ways and paths of protection. In the face of huge interests, subjects who master personal information can easily lose themselves, resulting in various improper "disciplinary" of personal information, and seriously harming the legitimate rights and interests of personal information subjects. Therefore, in the context of the promulgation of the Civil Code and the Personal Information Protection Law and the joint efforts of various departments, we believe that the protection of personal information will usher in a better prospect.

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