

Interpretation of Interests in the Protection and Utilization of Face Information

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Abstract

The development of information technology represented by face recognition technology has enhanced human face information property attribute and is widely used by data companies. However, the conflict between the business utilization rights of the data enterprise and the protection of the information subject makes the balance of the interests of the two sides become a problem. Therefore, it is necessary to analyze the specific content of the principal benefits through the structure of the benefit, find the source of the conflict, seek core interests protected by legislation and judicial. And through the protection logic between core interests and non-core interests, improve the efficiency in protection, improve protection measures in the utilization, and maximize social interests.

Keywords

Face Information; Interest Decomposition; Risk Configuration; Interest Measurement.

1. Benefit Hierarchy Analysis of Face Information Protection and Utilization

Interest is a sociological term, which corresponds to contradiction. The difference of interest depends on the contradiction. The existence of an objective thing often includes multiple interest levels such as personal interests, collective interests and social public interests. By analyzing the interest opposition in the protection and utilization of face information and seeking the right conflict generated by different subjects when maintaining and using face information, we can find out the core interests protected by relevant systems.

1.1. Basic Content of Interest Measurement Method

As a legal method, the purpose of interest measurement is to resist the rigid model of the traditional logical syllogism of conceptual law. According to relevant literature, the theory of interest measurement was gradually produced in the development process of interest law advocated by German scholar Philip heck in the 20th century. After that, American scholar Roscoe Pound improved the value standard of interest measurement, and classified the interests protected by law into personal interests, public interests and social interests.[1] In China, Professor Liang Shangshang of the school of law of Tsinghua University, in his article "the hierarchy of interests and the development of interest measurement", demonstrated in detail the rise of interest measurement theory in Japan, the comparison between interest measurement methods and conceptual law thinking methods, and the disadvantages of interest measurement theory, and divided the interest structure into the specific interests of the parties, group interests Institutional interests and social public interests further refine the value level of interests.[2]

1.2. Content of Specific Interest Level

The ultimate purpose of interest measurement is to find a balance point that can maximize the interest demands of all stakeholders. In this process, it is inevitable to analyze and consider the interest demands of all stakeholders in the interest system. Therefore, the author wants to take Professor Liang Shangshang's division of interest levels as the standard, Sort out the main interests of all parties in the protection and utilization of face information one by one.

For the protection of face information, the parties are all natural persons, and the object is the face information of natural persons. The face information here can be further divided into all face information generated by natural persons in the process of daily work and life and face information collected by commercialization. The two are not juxtaposed, but an inclusive relationship, compared with the former, the protection scope of face information collected and used commercially is narrower, but the direction of the protected object is also stronger. The author believes that the protection object of face information should be limited to the face information collected and utilized commercially. First of all, for the parties, that is, the subject of face information, they do not exclude the convenience of life and work brought to them by the rational use of face information. When pursuing the protection of their own interests, they often reflect more negative interest demands, that is, the social protection expected when their personal rights and interests are damaged due to the improper collection and processing of their face information, and the main risk source of damaging the parties' personality rights is the face information collected and processed in commercial utilization. At the same time, whether in accordance with the civil code of the people's Republic of China, the personal information protection law of the people's Republic of China and other basic laws, or from the provisions of the Supreme People's Court on several issues of applicable law in the trial of civil cases related to the use of face recognition technology to process personal information, for personal information such as face information, The law and relevant judicial interpretations do not stipulate it as a civil right of natural persons, but as a civil right to be protected. The way of protection is not positive empowerment, but a relatively negative protection. The author believes that the scope of object interests for the protection of face information of the parties should not be too wide, it should be limited to face information collected and utilized commercially. Therefore, to sum up, the group interest reflected in the protection of face information is a natural person's information security right, not a personal information right.

For the utilization of face information, its subject includes data enterprises that collect, store and process face information for the purpose of commercial utilization, and its object is the natural human face information collected by various data enterprises in their operation. In the utilization of face information, we can clearly identify the interests contained in it, for each data enterprise, the commercial utilization rights and interests of data are its individual interests, while the group interests of face information utilization are the development rights and interests of big data industry. [3] The question is why face information, as a kind of personality rights and interests, will be used commercially as data and generate relevant big data development rights and interests. The author believes that, first, as mentioned above, the development of science and technology has made the property attribute of face information increasingly prominent. For example, face recognition technology based on deep learning has promoted the reform of identity authentication, so that face information can be widely used in transportation, e-commerce, financial services and other fields, Thus, face information becomes a valuable data resource for circulation and use in the commercial field. Second, because of its strategic resource attribute, data resources are of great significance to the current development of our digital economy. It can promote the rapid transformation of traditional industries and the rise of emerging industries and new development models. Therefore, the combination of the data value of face information itself and the current development background of digital economy, Derived the development rights and interests in the use of face information.

1.3. Subject Conflict of Interest

The conflict between the subject of natural person and the information user is manifested in the information security interests of natural person and the rights and interests of data commercial utilization. Specifically, first, in the original collection link, due to the limited cognitive ability of natural persons, they sometimes do not know the collection behavior of data enterprises, or although they know it, they do not clearly express their opposition because they do not understand the utilization ways and possible adverse consequences of face information collection, resulting in tacit consent to the collection behavior of data enterprises, Finally, when their own interests are damaged due to the collection behavior, the interest conflict between the two sides can appear, and one of the reasons for this conflict is the unequal information between natural persons and data enterprises. In order to pursue low cost and high efficiency, data enterprises do not clearly inform the collection behavior, collection methods and subsequent processing mode of natural persons, The subject of natural person can not know through his own behavior, which leads to the occurrence of conflict. Second, in the information use stage, when the data enterprise fully informs the natural person subject of the name or contact information of the personal information processor, as well as the processing purpose and processing method of the personal information, and obtains the explicit consent of the natural person subject to collect the natural person's face information, it is completely in an unregulated state in the use process, As a kind of biometric information, face information belongs to a kind of sensitive personal information. Once it is leaked or illegally used, it is easy to cause the human dignity of natural persons to be infringed or the personal and property safety to be endangered. Third, the processing after the use of information is also one of the reasons for the conflict of interests between the two sides. The control of natural persons over their own information can only play a role in the two nodes at the beginning of information collection and the end of processing. After the information is collected by the data enterprise, the natural persons have been in a state of losing control over the face information they keep, If the information subject is not given the right to delete, it will cause great damage to the autonomy of the information subject for personal information. At the same time, due to the particularity of face information, when combined with other personal information, it will clearly identify the information subject, resulting in the information subject in a "panoramic prison". Fourth, if the damage of the natural person subject is unfortunately caused by the improper behavior of information collection and processing, because the collection and processing of information between the natural person subject and the data enterprise does not form a kind of entrustment or other contractual relationship, great difficulties will occur in the protection of the rights of the natural person subject, and if the damage is caused by information leakage, Then multiple data enterprises will come into contact with natural person information, and due to the lag of damage, it will also bring great difficulties to prove the causal relationship between information processing behavior and damage results. [4]

2. Research on Core Interests

After analyzing the specific interests of both sides in the protection and utilization of face information, we need to explore its core interests, and take the core interests as the standard to find a reasonable path for the measurement of interests. Therefore, the author wants to analyze the core interests in the protection and utilization of face information from the perspectives of legislation and judicature.

Law is a powerful weapon for resolving disputes and dealing with conflicts of interest. It is the product of balancing the interests of all parties and realizing fairness and justice. When realizing its inherent value to meet the needs of the subject, the law must face the value conflict between different levels and different subjects at the same level. The essence of this value

conflict is the interest conflict generated by each subject in their pursuit of their own interests. In order to realize its value, the law must solve this interest conflict, Meet the interests and needs of all parties. The regulation on the protection and utilization of face information, personal information, covers many legal fields, including civil law, criminal law and network security law. However, at these legal levels, it is more about the negative protection when the relevant interests involved in face information are infringed, and there are not many regulations on the utilization of face information, Therefore, the author chooses to analyze it from the information protection law of the people's Republic of China, relevant legislative documents and legislative theories.

Firstly, from the perspective of legislative purpose, it is explained in Article 1 of the personal information protection law of the people's Republic of China, which summarizes the legislative purpose into three aspects: First of all, Protecting the rights and interests of personal information; The second, Standardize personal information processing activities. The third, Promote the rational use of personal information. From the perspective of legislative purpose, it defines the legitimacy of protecting personal information as a right, but does not point out the rights and interests in the use of personal information. The standardized processing and rational use of personal information is also a measure to promote the protection of personal information rights and interests. From the perspective of legislative content, the personal information law of the people's Republic of China has made strong restrictions on the processing of personal information, especially for the protection of sensitive information, which gives special chapter provisions and higher intensity protection, constructs a strict system for the protection of personal information rights and interests, and fully reflects the importance attached to personal information rights and interests. At the same time, for the use of personal information, there are no relevant provisions on the rights of users of personal information. In addition, in the legislative process, The description of the personal information protection law of the people's Republic of China (Draft) is on the formulation of the personal information protection law of the people's Republic of China It is also pointed out that it is necessary to coordinate the protection and utilization of personal information, promote the rational and effective utilization of information data according to law and promote the sustainable and healthy development of digital economy through scientific and effective system rules on the basis of protecting the rights and interests of personal information. Therefore, to sum up, in the current protection and utilization of personal information in China, protection is the foundation, and the core interest lies in the protection link of personal information, especially for face information subordinate to personal information and sensitive information.

3. Path to Maximize Benefits

In view of the protection interests of natural human face information and the commercial utilization interests of data enterprises, the former is recognized as the core interest at both the legislative and judicial levels. According to the general consensus, the core interest is the dominant interest, and the non core interest is subordinate to the core interest. When the two conflict, Non core interests should be selected according to core interests. [5] Therefore, maximizing the avoidance of conflict is an ideal way to fully protect the interests of both sides and maximize their interests and social welfare. The way to maximize conflict avoidance is not to realize the protection of core interests through excessive restrictions on non core interests. According to the economic analysis of law, the optimal level of prudence can not lead to the lowest level of expected accident loss. Therefore, the author believes that rational allocation and risk dispersion are the effective way to maximize the interests of both sides. [6]

3.1. Risk Allocation and Risk Avoidance in Face Information Protection

According to the above analysis of the conflict in the process of face information protection and utilization, the source of the conflict includes two aspects: one is the conflict between the natural person subject and the information user, and the other is the conflict between the natural person subject, the information user and the social public interest. The main source of the risk in face information protection lies in the former, That is, the conflict between the subject of natural person and the user of information. In the collection, use and processing of conflicting information, the natural person subject of face information is in a relatively weak position and is also the main undertaker of post conflict damage. The main reason is that the natural person subject lacks an effective information source to determine the risk of individual face information being collected and used by data Enterprises, and due to the lack of incentive measures, The data enterprises pursuing efficiency and profit will not disclose the relevant contents of their collection and utilization of face information when they do not need to bear responsibility, which makes the natural person subject lack the ability to avoid risks. Therefore, it needs the intervention of law and use public power to help the natural person subject avoid risks. The existing personal information law of the people's Republic of China has made more restrictions on the collection, processing and preservation of personal information by information users, which can restrict the behavior of data enterprises from the initial stage, reduce the occurrence of conflicts and protect the interests of natural persons. However, there are still some deficiencies in the relevant provisions on the protection of interests and the relief of conflicts.

First of all, both the civil code of the people's Republic of China and the personal information law of the people's Republic of China protect personal information as a right rather than a right. [7] The author believes that this legislative consideration may be due to the difference between the rights and interests of personal information and the rights of personality such as the right to life, body and privacy. To a certain extent, personal information is necessary to be disclosed and used. Therefore, it is not stipulated as a right, leaving a certain space for the free development of data enterprises. However, face information is different from natural person's name, date of birth, ID number and other personal information. It belongs to sensitive personal information and has strong recognition. Once it is improperly used, the damage caused is also extremely huge. At the same time, due to the wide application of face recognition technology and the lack of regulation of technology, it has a great risk of abuse, Protecting it together with other personal information as personal information rights and interests reduces its protection level, which is not conducive to the most favorable protection of face information.

Secondly, in the use of face information, the natural person can not control the expansion of risk and loss. In other words, the use of tort liability means to protect face information has a lag. When the information subject knows that the personal face information has been improperly used, but the legal degree of damage has not yet occurred, it is difficult to remedy through tort liability because it does not meet the requirements of the damage results in the tort elements, and can only allow the expansion of risks and losses. Moreover, the use of face information is carried out in a data-based way. The information subject is limited by its information source and technical ability, which will also cause some difficulties in obtaining evidence, which is not conducive to the protection of the interests of the information subject. To sum up, identifying personal information as a specific personality right and expanding the relief channels for improper use of information are of great significance to strengthen information protection and reduce conflicts.

3.2. Risk Allocation in Face Information Utilization

The risk in the use of face information comes from the data enterprise itself, that is, the liability risk when the data enterprise unreasonably collects and uses face information to cause damage

to the information subject. There are two ways to avoid risks. One is to design reasonable utilization methods and channels by taking face information as data resources through law, so as to provide relatively clear guidance and effective incentives for the information utilization of data enterprises. [8] With the rapid development of digital economy, information data has become an important carrier to promote industrial transformation and drive economic development. As a new data resource, face information has also become an important object of the data market. Its use and development cannot and will not be prohibited or excessively restricted because of its personality attribute, Therefore, we can establish a legal path to use face information as data through unified norms, and guide data enterprises to improve their own data processing rules on the track of legalization. The second is to establish a unified data trading and data supervision platform. On the basis of respecting the existing business order, guide data enterprises to consciously disclose the information processing progress and processes other than trade secrets to the information subject, so as to make the information processing transparent. Information disclosure is that the information subject finds out the improper information processing behavior in time, so as to stop the improper behavior in time, An effective way to prevent the expansion of losses. At the same time, strengthen the crackdown on information abuse and increase the amount of damages. Because when the amount of compensation after the damage is lower than the loss caused by the information abuse of data enterprises, data enterprises are often in a risk neutral state, so the legal regulation can not produce effective deterrence and supervision. Therefore, increasing the amount of compensation can increase the degree of caution of data enterprises to a certain extent, reduce the probability of conflict and reduce the cost of corporate responsibility.

4. Conclusion

The protection and utilization of face information are not tit for tat, but promote and complement each other. The development of the two should be carried out simultaneously. The collection and processing of face information should not be in a disordered free state for the needs of marketization, nor should the use of information by data enterprises be excessively restricted for the protection of the interests of information subjects, Instead, we should balance the interest relationship between the two sides on information protection and utilization, seek an effective path to reasonably allocate information resources and damage risks, reduce interest conflicts, take into account the protection of social and public interests, and promote the benign development of the data market.

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