



Research on Civil Law Protection of Network Personal Information

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Abstract

Due to the rapid development of Internet technology, the transmission and processing of information have become more convenient and fast. The commercial value of personal information is gradually being realized, and its importance is becoming increasingly prominent. At the same time, the abuse of personal information is also increasing, and the protection of personal information has become an important issue facing modern society. However, the state's protection mechanism for online personal information is not very mature, which is detrimental to safeguarding individual citizens' basic rights and promoting economic and social development. In short, our legislative technology is well-developed, citizens are clear-headed, and there is a transparent system in place. With the government's operations being transparent and the laws continuously perfected, we will be able to better protect citizens' personal information. Therefore, it is necessary to establish the concept of the right to personal information, strengthen research on the protection of personal information, formulate and improve the relevant legal system as soon as possible, protect and regulate personal information, and create a safe, efficient, and harmonious environment for the use of personal information.

Keywords

Personal information right, The principle of presumption of fault, Punitive damages

1. General theory of online personal information

1.1 The concept of online personal information

The provisions of China's Civil Code on personal information: "All kinds of information recorded by electronic or other means that can identify the identity of a specific natural person or reflect the activities of a specific natural person alone or in combination with other information." Include name, ID number, telephone contact information, address, passwords of various accounts, property status, whereabouts, and track (Wang Liming, 2020).

1.2 The relationship between personal information and privacy

From a legal point of view, there is a conceptual overlap and conflict between personal information and privacy rights. First of all, the Civil Code stipulates that personal privacy belongs to the category of personal information, which is a part of personal information, there is a common part between the two, and in personal information, there is highly private personal information that is considered unwilling to disclose (Ye Mingyi, 2018). Moreover, if a person's information is leaked, abused, illegally used, then his information will be greatly affected, and his reputation, privacy, personal dignity, physical and mental health, mental health, etc., are greatly affected (Li Yimeng, 2022).

1.3 The characteristics of online personal information

Network personal information has both the characteristics of general personal information and its own characteristics.

1.3.1 Property

There is no denying that personal data on the Internet is often used for commercial purposes because of its inherent value. For example, a shopping site could direct them to targeted ads or based on their purchase history. It is precisely because of the value of personal data in the network itself that it has the possibility of abuse.

1.3.2 Fast Speed

Today, with the rapid development of Internet technology, people's actions and the network can not be separated, anyone at any time, any place, any time, any place, will produce personal information, and quickly spread in the network. In the 5G era, the speed at which personal information is generated, produced, and disseminated is constantly increasing.

1.3.3 Sensibility

Compared with ordinary personal information, personal information in the network has strong sensitivity. Personal information on the Internet exists on the Internet. In the network, wherever there is a network, there will be the generation and dissemination of information, including identity information, location information, preference information, medical information, etc., and even in-depth analysis of the above information. In addition, on the Internet, the generation and transmission of personal information is more secret and simple, for example, a micro-blog can unknowingly transmit its own location information to the network (Zhuang Huaijin, 2021).

2. Current situation of personal information protection in the civil law of our country

2.1 Legislative status

The 2012 Decision of the Standing Committee of the National People's Congress on Strengthening Information Protection (hereinafter referred to as the "Decision") focuses on how to protect citizens' personal information, and in the era of big data, information collectors, including online information processors, must both follow their own codes of conduct and guidelines. Particular attention is paid to the obligation of data collectors and processors not to sell, modify, or trade citizens' personal data.

The Cybersecurity Law, which came into effect in 2017, is a product of network informatization, which provides a legal guarantee for the protection of personal information in the network environment. Therefore, the Network Security Law strictly protects citizens' personal information from the system and provides a strong guarantee for network operators to safeguard citizens' personal information. In the analysis and processing of personal data, the Cyber Security Law proposes for the first time that information collectors shall not exceed the data they collect and shall not exceed the purposes and guidelines of the services they provide. The "safe harbor principle" can be adopted for network information infringement. The "Network Security Law" has certain requirements for network operators, that is, network operators should strictly keep confidential the user data collected, and establish a protection system for user information to ensure that network operators follow rational principles when collecting and using data to deal with hackers on the network, especially the intrusion of military secrets. It will lead to the paralysis of the management system of the state and society. When collecting personal information, in order to ensure the security of user information, it is necessary to establish a firewall to prevent the trust of users to users from being leaked, sold, or illegally used (Shen Qi, 2019).

2.2 Judicial status

In the Internet era, the sale of personal information not only reflects huge economic interests but also has a considerable scale, its characteristics of concealment and rapidity, which further damages the information security of citizens. In China's judicial practice, disputes about personal information are mainly based on the General Principles of Civil Law, Tort Liability Law, and Anti-Unfair Competition Law. Internet infringement of personal information rights goes back more than 20 years to the controversy over personality rights, which set off a huge storm in Chinese society. At that time, China did not have any legal protection on personal rights such as reputation, and the news media lacked corresponding legal knowledge and remedies. In December 2020, the Supreme People's Court published the

Provisions on the Causes of Civil Cases, which came into effect on January 1, 2021, and set up a separate cause of action, namely, "Disputes over the protection of personal information", so that judicial protection of information security no longer depends on the original or reference to similar rights. In the past three years, the number of Internet personal information infringement cases accepted by the court has increased year by year, with personality rights disputes accounting for 75 percent and online reputation rights cases accounting for 37 percent, according to a report released by the Beijing First Middle Court in December 2013. Therefore, the author believes that with the development of Internet technology, infringement cases involving personal information are increasing (Yu Jun, 2019).

3. The realistic dilemma of civil law protection

3.1 The principle of liability is unreasonable

Article 1194 of the Civil Code stipulates that Internet users and Internet service providers who use the Internet to infringe on the civil rights and interests of others shall bear tort liability. As can be seen from these provisions, in the case of infringement of personal data rights by online platforms, the general principle of fault applies, that is, the injured party must prove that there was an error in the collection, processing, or use of personal data by online platforms. However, in the big data environment, the platform's technical advantages and human and financial advantages make the burden of proof and legal status of the two sides unequal, and it is difficult for the victims who are obviously at an economic and technical disadvantage to prove that the network platform is at fault.

3.2 The subject of responsibility is difficult to identify

The subject of the infringement of personal information rights by the network platform is extensive, and the various functions and services provided by enterprises on the Internet naturally have the virtual characteristics of the Internet, which is different from the real infringement. Therefore, when the infringement occurs, the consumer is both the party and the responsible person. "Intangible without quality", or only in the form of a program, a set of small procedures, the object of its responsibility will be very different. It uses information technology to make violations difficult to detect (Zhang Xian, 2021). The platform is only the intermediary between the infringer and the infringed, and the joint infringement of the platform developer, operator, third party, or most people is the real infringement.

3.3 Remedies are hard to come by

The infringement of personal information on the Internet platform is reflected in the infringement of the user's personal and property rights. The Civil Code stipulates various remedies such as stopping the infringement, eliminating the impact, restoring reputation, and offering an apology. It can be either independent or compensatory, and its purpose is to prevent the occurrence of infringement and prevent the expansion of damage. Elimination of influence and restoration of reputation mainly refers to the disclosure of personal information on the network platform, especially involving sensitive personal information, or the publication of untrue personal information, which has a negative impact on the reputation and privacy of the parties, but due to the rapid spread of information on the network, once you find that your rights have been violated, in such circumstances, The infringer needs to correct the results of his actions in order to save his reputation, but its role is very limited (Wang Liming, 2019).

4. Suggestions on civil law protection of network personal information

4.1 Apply the principle of presumption of fault

On this basis, the author believes that in the infringement of Internet platforms, the burden of proof of fault cannot be used as a proof method, which damages the legitimate rights and interests of data subjects. On this basis, this paper puts forward a burden of proof system of e-commerce platform based on e-commerce platform. Compared with the right to privacy, the rights and interests of personal information have the dual needs of protection and utilization. Therefore, the protection of personal data should be moderate and should not take precedence over the needs of social development. Therefore, in this case, it is more reasonable to introduce a presumption of liability (LI Yimeng, 2022). The content of the presumption is that the platform is liable for the damage caused, and if the platform cannot prove that it is not at fault, it must bear the responsibility, that is, the burden of proof is transferred to the platform. First, since the platform controls personal information, it is possible to provide relevant evidence, and in this case, because

the platform does not know the full story of the matter, it is difficult to prove it. Second, according to the above analysis, through the thought of comprehensive evaluation, after determining the subject of responsibility, on this basis, the platform violates the trust of the user and infringes on the user's legitimate expectations, then subjectively, this can be attributed to the fault of the platform. So, if the platform cannot prove that it is not responsible, then the plaintiff only needs to prove that the defendant is responsible, and does not need to prove that he is at fault.

4.2 Define the subject of responsibility

Due to the wide scope of the responsible subject of the Internet platform, it is difficult to determine the responsible subject (Cheng Le, 2021). Therefore, the obligation of information disclosure should be strictly performed on the Internet platform. The obligation of disclosure means that in order to protect the user's right to know, the platform must provide the user with true, complete, accurate, and timely information. When collecting, processing and using personal data, online platforms will provide more information processes and processing tools. When personal data is leaked, users can directly contact the platform to obtain information related to information processing, or contact relevant departments to ask the platform to disclose the leaked information, and the strict disclosure requirements of the platform have played a great role in determining the responsible subject. At present, China's legal provisions on corporate information disclosure are mainly aimed at the internal business activities of the company, and the specific content of the internal information disclosure is not clear. In short, the scope of information disclosure of the platform should be clarified, that is, what information should be disclosed and what information cannot be disclosed. In principle, the information involved should be disclosed, including the specific types involved, server IP addresses, mobile phone terminal identification, and third-party information sharing. How to balance the contradiction between the platform's information disclosure responsibility and corporate confidentiality?

4.3 Perfect relief method

As mentioned above, after the infringement of the network platform, the current compensation method has been unable to protect the legitimate interests of users, so it is urgent to improve the adequacy and effectiveness of the compensation method (Wang Liming, 2020).

For example, in terms of eliminating impact and restoring reputation, the scope of the application should be determined according to the nature of the infringement. When the user suffers a real and imminent danger, the infringer should be quickly found and asked to stop the infringement immediately and issue a statement to restore the user's reputation. If the danger brought by the infringer to the user is not imminent, it should be used within a limited time. Take the necessary steps to restore the user's reputation.

For an apology, the nature of the infringement and the method of apology should be carefully considered. If an apology is made publicly, the victim's personal information will be further exposed and spread, causing secondary damage, and the apology should not be made publicly.

5. Conclusion

With the rapid development of Internet information, a large number of data technologies have highlighted the commercial value of personal information, while some illegal users' personal information has been stolen by illegal acts, which has caused great harm, but also posed a threat to the public safety of network information. In the network environment, always ensure the security of personal information.

There are still many problems to be solved in the protection of personal information in our country, so we should face new opportunities and challenges with a hopeful and confident heart. In short, our legislative technology is well developed, citizens are clear-headed, and there is a system, the operation of the government is transparent, and with the perfection of the law, we will better protect citizens' personal information.

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