

# *Research on the Content of consumer's Right of Privacy in Scanning Code Payment*

Zhang Jiangpeng, Huang Yiyang

*1.School of Humanities and Social Sciences, Nanjing University of Aeronautics and Astronautics, Nanjing, 210016, China*

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**Abstract:** With the arrival of the internet age, Internet Plus Payment, which is mainly based on scanning code payment, has been widely used in daily life. However, due to the lag of the law and other reasons, scanning code payment in violation of consumer's right to privacy is frequent and difficult to regulate. This paper aims at redefining the content of consumer's right to privacy in scanning code payment, defining the new concept of privacy with the core of private information, and clarifying the nature of privacy as a constitutional right and a specific right of personality, finally expounding the specific sub-rights of information privacy, space privacy and activity privacy. The purpose of the paper is to provide theoretical support for the protection of consumer privacy in scanning code payment.

## 1. Introduction

With the rise of the Internet economy, mobile payment based on scanning code is favored by people because of its convenience and gradually becomes one of the indispensable payment methods in people's daily life. However, due to the rapid development of scanning code payment and the lag of law, a series of problems associated with scanning code payments are becoming more and more serious. Based on scanning code payment, this paper explores the concept, nature, and content of consumers' right to privacy.

## 2. The Concept of Consumer Privacy in Code Scanning Payments

In the Consumer Protection Law (hereinafter referred to as Consumer Law), there are two kinds of consumers: one is the consumer who needs to buy, use goods, or receive services for daily consumption; The other is a farmer who buys Means of production directly for agriculture. At present, although there are differences in the concept of consumer, it is consistent with consumer law as a whole. The consumers studied in this paper are limited in the framework of scanning code payment. The particularity of consumers in the process of scanning code transaction is that the carrier of payment is converted from cash to electronic currency. But the change of carrier does not affect the definition of the concept of the consumer. Therefore, the author believes that the concept

of consumers in the process of scanning code payment is the same as the definition in Consumer Law.

### **3. The Concept of Consumer Privacy in Code Scanning Payments**

#### **3.1 Traditional Concepts of the Right to Privacy**

The concept of privacy originated from the common law system and developed in the common law system first. Based on the common law system, the civil law system has developed and perfected the concept of privacy. The right to privacy first appeared in an article entitled “Privacy” published by American jurists Warren and Brandeis in “Law Review” in 1890. They believe that privacy is a right to be free from interference, or the right to be alone. Then, Prosser summarized the legal precedents and concluded that there are four types of behaviors prohibited by the right to privacy: unreasonably invading the privacy of others; stealing the names or portraits of others; irrationally publicizing the private lives of others; exposing the false image of others.[2] it enriches the connotation of the right to privacy and develops the concept of the right to privacy. According to the Oxford Dictionary of law, the right to privacy is the right not to be disturbed by others. It is a claim for the inviolability of one’s private life or the unlawful disclosure of one’s private life. Posner divides the right to privacy into two parts, the right to be alone and the right to keep secrets. Due to the joint efforts of the civil law system and the common law system, it can be concluded that the mainstream view of the legal community holds that the right to privacy is a kind of right that private life can not be disturbed without consent and private secrets can not be made public.

The research on the right to privacy in China started late. Before the promulgation of the Civil Code (draft) of the People’s Republic of China(PRC), there are only a few vague provisions related to privacy protection, and these provisions have not yet put forward a clear concept of the right to privacy. There are several viewpoints about the right to privacy in the academic circle of China. One is positive domination, represented by Professor Wang Liming, who believes that the right to privacy is a natural person’s right to control his personal information, private activities, and private domain, which has nothing to do with the public interest. [3] but this is an early view of professor Wang Liming, which he disproved by himself in the later theoretical Research. The second is the theory of passive exclusion, represented by Professor Zhang Xinbao and professor Wang Liming, whose views are similar to each other. In a word, the right to privacy means that citizens enjoy the peace and security of their private lives and their private lives are protected by law, a personal right not to be illegally invaded, known, collected, used and made public by others. [4] at present, the mainstream view in academic circles is the second theory. To fill the gap in the legislation on the right to privacy, “Civil code (draft)” the right to personality stipulates that “Natural persons enjoy the right to privacy. No organization or individual may infringe upon the privacy of others through prying, intruding, divulging, publicizing, etc. . From the provisions of the Civil Code, the author generalizes that the concept of the right of privacy in the legislative circle of China is the right of natural persons to enjoy the privacy of private space, activities, and information without being violated by means of prying into, intruding into, divulging, publicity, etc. In the light of the above-mentioned domestic and foreign contents on the traditional concept of the right to privacy, in the traditional field, the author agrees to adopt the theory of exclusivity, that is to say, the right of privacy is the right of the natural person to enjoy the privacy of private space, activities, and information without being violated by means of prying, intruding, divulging and publicity.

#### **3.2 The Concept of Internet Privacy**

The right of network privacy is the evolution of the traditional right of privacy in the network age. The theory of the concept of network privacy is mainly divided into a broad sense and narrow sense. Narrow-minded scholars believe that the right to online privacy is only for digital personal information. Therefore, the narrow sense of the right to privacy in the information age is limited to the new field of personal data privacy. [5] In the broad sense, scholars think that the right of network privacy is not the independent right of privacy, but the embodiment of the right of privacy in the network environment. Its concept should be a kind of personality right that citizens can enjoy private information and personal life in the network environment without being violated by others. [6] the author generally supports the broad concept of network privacy but believes that more emphasis should be placed on the inviolability of private information. Because in the network environment, the invasion of privacy is often from the start of access to private information. The infringer illegally collects private information and interferes with private life through spam messages and so on. Therefore, the author thinks the concept of network privacy is the right that the natural person enjoys under the network environment, which is based on private information and supplemented by private space and activities and is not violated by means of probing, invading, divulging, publicity, etc.

### **3.3 The Concept of Privacy in Code Scanning Payments**

The scanning code trading process is generally divided into two stages, the first stage for the selection of goods stage, the second stage for the payment stage. In the first stage, the scanning code transaction is no different from the traditional cash transaction. In the second stage, the scanning code transaction changes the payment carrier from cash to electronic currency in the network platform through the behavior of scanning code. The scanning code payment can be divided into two modes: user to merchant or user to user. Besides, there are two modes of active sweeping and passive sweeping in the mode of user and business. According to the above-mentioned payment process, scan code payment will convert the user's personal information into electronic data, so the right of privacy in scan code payment is more characteristic of network privacy. The author indicates that in the private environment, the natural person should enjoy the right not to be invaded by others, to know, to collect, to use, and to make public, which is based on private information and supplemented by private space and activities.

## **4. The Nature of CONSUMERS' Right to Privacy in Code Scanning Payments**

### **4.1 The Right to Privacy in Code Scanning Payments is a Constitutional Right**

According to the above analysis, the consumer's right to privacy is not an independent right of privacy, but an extension of the traditional right of privacy, so it is a special traditional right of privacy. And the right of privacy belongs to the category of the right of personality. Therefore, to explore whether the right of privacy is the essence of a constitutional right or civil right is to explore whether the right of personality is a constitutional right or a civil right.

The scholars, represented by Prof. Yin Tian, hold that the right of personality is a constitutional right. Firstly, the scholars of constitutional rights believe that the right of personality, as a constitutional right, can be verified from its origin and development. At the origin stage, the right of personality, as a tool to distinguish classes, came into being in Roman law, which proved that the right of personality had obvious public law nature from the date of its emergence. In modern times, the Napoleonic Code did not specify the right of personality but merely stated that everyone had civil rights. The legislators of the Napoleonic Code formulated this provision since they believed that the right of personality was not a legal right, but a natural right that took precedence over a

legal right. It showed the fact that the legislators recognized the right of personality as a fundamental constitutional right. At the same time, the Bürgerliches Gesetzbuch, while regulating the content of the right of personality, only regulates some specific rights of personality rights from the angle of protection rather than that of empowerment. The reason is that the right of personality is a constitutional right, so the norms of entrusting the right of personality should be stipulated in the constitution, so the civil law can only stipulate some protective norms of the specific right of personality. Subsequently, the right of personality also experienced new development in Germany after World War II and was finally recognized as a fundamental constitutional right by the federal court. Finally, to further support their argument, the scholars of this school also put forward a very incisive question: “Does the right to life of human beings come into being after the civil law has been established? “[7] in addition to the exploration of the historical roots, by means of the theory of property in a broad sense in France, the scholars of this school further endow personality with property nature and explain why the right of personality stipulated by civil law has political and social attributes that belonged to the constitutional right.

Scholars who claim that the right of personality is a civil right first refute the former viewpoint from the angle of historical origin. They argue that the origin of civil law predates the constitution. The right of personality is also first stipulated in the civil law. Therefore, the right of personality should be defined as a civil right. Secondly, they think that scholars of another school have confused the concept of personality when they expound their views. They think personality can be explained in two ways. From an abstract point of view, the right of personality is the highest principle that human beings should abide by and the premise of all other rights. Personality is an abstract concept on the same level as the general concepts in the legal world such as subject qualification and right capacity. The scholars of this school also maintain that the human dignity in German law refers to the right of personality in this connotation, and from a concrete point of view, the right of personality is all kinds of specific interests of personality, such as name, reputation, etc. . The scholars of the School of civil rights hold that the personality in the right of personality should be the concrete personality, that is, the various personality interests in the civil law. The personality discussed by the scholars of constitutional rights refers to the abstract personality, so there are serious mistakes and confusion in the view of scholars who support personality rights as constitutional rights. [8]

In addition to the above two mainstream theories, some scholars deem that the right of personality is a dual attribute. They maintain that the fundamental rights in the Constitution can be divided into two broad categories according to their nature, one being rights of a completely public law nature, such as the right to vote and the right to be elected, and the other being rights of the mixed nature of public and private law. The rights that have a mixed nature not only regulates the relationship between the state and citizens, but also the relationship between citizens, such as human dignity, personal freedom, and so on. The provision of personality right in civil law can be regarded as secondary empowerment of the personal dignity of the constitution. [9]

The author holds that the right of personality belongs to the constitutional right.

The traditional theory often divides the right into the public law right and the private law right. Public law rights regulate the relationship between the state and citizens, while private law rights regulate the relationship between citizens. But that’s not a good division. The modern constitutional theory holds that some fundamental rights in the fundamental law are valid for all laws. [10] this universal effect derives from the dual nature of constitutional rights. The theory of dual nature emphasizes that the fundamental rights stipulated in the constitution are characterized by both subjective rights and objective law. The subjective right is that an individual can request the protection of his fundamental rights by the state according to his will. The objective law is the reflection of an objective value or the most basic human value and dignity. [10] the objective legal

nature of constitutional rights determines that they are bound to be observed by all laws, including private law. Therefore, the objective law in the dual nature of constitutional rights essentially provides the source of law for private law. This is the most fundamental reason why constitutional rights can guide private activities. The above argument can also be proved in the phenomenon of private law and the public law of the private law which has become more and more obvious in recent years.

In the author's opinion, there is a gap in the system of dividing public law rights and private law rights, and the constitutional right is to fill the gap. So the right can be divided into public law right, private law right, and constitutional right.

Given the above argument, some scholars may raise the following doubts: the dual attribute theory of constitutional rights seems to support the theory of dual attribute of personality rights. My point of view is just the opposite. The theory of dual attribute of personality right wrongly equates constitutional right with public law right, so it holds that personality right is the third right besides constitutional right and private law right. The key point of the dual attribute theory of constitutional rights is to see the essential difference between constitutional rights and public law rights and to separate constitutional rights from the traditional dichotomy of rights. This action is a thorough reconstruction of the basic theory of law.

The dual attribute theory of constitutional rights can be further proved in the ought-to-be level and the actual level. 'Der Mensch und überhaupt Jedes Vernünftige Wesen existiert Zweck an sich selbst', which comes from Immanuel Kant's book named by Kritik Praktischen Vernunft, has elevated personality to constitutional rights on the level of ought. And at the practical level, the Basic Law for the Federal Republic of Germany and the declaration of human rights also see the personality as a constitutional right with universal effect. [11]

To sum up, the right of personality is a fundamental constitutional right. In this way, the protection of the right of personality can be improved from the protection of a single equal subject to the protection of all subjects, which is also conducive to the further development of the right of personality.

#### **4.2 The Right to Privacy in Scanning Code Payment Should Be the Concrete Right of Personality in the Interest of Information Freedom**

The right of personality can be divided into the general right of personality, which covers the general interests of personal dignity, equality, and freedom, and the specific right of personality, which covers the rights of name and life. In the beginning, the right of personality was protected by civil law in the form of a concrete right of personality. After the development of personality right in Germany, the concept of general personality right was first put forward and defined as a fundamental right in the constitution. Since then, heated academic discussions between the general personality right and the specific personality right have emerged.

There is no doubt that the right to privacy as a specific right of personality. The abstract personality interest of the right of privacy can be either personal dignity or personal freedom. However, the abstract personality interests of consumers' right to privacy under the situation of scanning code payment are still controversial. The author considers that the abstract interest at this time is the embodiment of the freedom of personality, or more accurately, the embodiment of keeping the freedom of information in the freedom of information.

Freedom of information can be classified as the freedom of keeping information and the freedom of developing information. The freedom of keeping information is mainly embodied in the freedom of information subject to hold information freely without being invaded by others. Freedom of getting information is more embodied in the disposition of information and the use of information

freedom. The right to privacy is more about preventing the theft of information than processing information. Consequently, consumer privacy right in scanning code payment should be the concretization of the personal interest of keeping information freedom, instead of freedom of information. [13]

## **5. Consumer Privacy Content in Code Scanning Payments**

The right of privacy in scanning code payment comes from the mode of Internet plus right of privacy. Therefore, on the one hand, it should inherit the passive defensive attribute of the traditional right of privacy and on the other hand, it should take the right of information as the core. According to the concept of consumer privacy in scanning code payment, the content of the private right ought to include the following sub-rights:

### **5.1 Right to Information Privacy**

In the process of scanning code payment, the links involved in collecting consumer information are mainly the preparation phase before the purchase and the post-purchase phase. In the pre-purchase phase, the consumer needs to provide the identity information necessary to purchase the goods. In the post-purchase phase, consumer preferences will become extremely valuable information. Infringers often illegally obtain information before committing subsequent acts of infringement on the private space or activities of the obligee. Therefore, the protection of information has become the priority of consumers' right to privacy in scanning code payment. Therefore, the right of information privacy has become the core in the right of privacy while scanning code to pay.

### **5.2 The Right to Privacy in Space and Activities**

The right to privacy of space and activities in scanning code payment mainly refers to not utilize the information obtained by improper means to intrude, know, collect, use and make public the private space and private activities of consumers, for example, payment platforms themselves use pre-collected information to disrupt private lives by harassing phone calls, harassing text messages, and use data such as consumer preferences to create personalized consumer advertising and push it when specific consumers engage in other daily activities.

### **5.3 Privacy Claims**

As the saying goes, "No remedy, no right", it is necessary to have a complete remedy system for the full exercise of the right to privacy. [15] under the current protection system, in the field of private law, damages can be claimed from the infringer following the provisions on the protection of the right of privacy in the tort liability of the Civil Code of China. At the same time, the author thinks that we should comply with the appeal of the current academic circles to increase the consumer's right to privacy in the Consumer Protection Law, and further improve the protection mechanism of individual privacy in the consumer field; At present, there is no perfect protection mechanism. According to the nature of the constitutional right of privacy, the judge should make full use of the basic principles of Law and play its supplementary role.

## **6. Conclusion**



The definition of the content related to consumer's right to privacy in scanning code payment will help to make clear the new development of the right of privacy in the era of network payment and provide theoretical support for defining and perfecting the protection of the right of privacy in scanning code payment.

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