

Protection of Personal Data from the Perspective of Legal Economics

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Abstract: In recent years, with the popularity of mobile Internet and online transactions becoming more and more common in our daily life, the cases related to personal data in China are also rising, and individuals are also facing a potential threat. From the perspective of legal economics, there are two deficiencies in the existing means of protecting personal data: weak personal data awareness and imperfect enterprise management measures. Therefore, China must promote as soon as possible to strengthen personal data security awareness and improve enterprise management measures, so as to better protect personal data.

1. Introduction

In 2016, the privacy regulator in Hamburg, Germany, banned Facebook from handling the personal data of users of WhatsApp messaging service in Germany. According to relevant principles, Facebook must obtain the consent of relevant users in advance for whether users want to connect WhatsApp accounts with Facebook. However, Facebook did not comply with this requirement. Therefore, Facebook will face censorship from the United States and the European Union because it has changed some WhatsApp privacy policies, and the cartel authorities have expressed doubts that social networking sites abuse their market dominant position to collect and sort out relevant sensitive information, and also said in a statement: “it is initially suspected that Facebook's terms of use violate the data protection law”[1-2].

In terms of relevant personal data cases, there are not only relevant cases in foreign countries, but also similar cases in China[3-5]. For example, private hospitals use mandarin duck prescriptions to defraud huge premiums, and hospital employees use their position convenience to defraud patients' personal information or use relevant hospital data to prescribe prescriptions to obtain some improper interests, which also uses personal data at different levels, thus violating the ownership of citizens' personal data. There are also a large number of cases of using personal data to engage in some illegal things, the most typical of which is the “Xu Yuyu case”, because the relevant personal data was improperly disclosed by people or institutions, resulting in the occurrence of the case.

Combined with the above cases, since the popularity of the Internet, the circulation of various types of data has been increased, and the corresponding range of data collected will be wider and wider[6-8]. However, in China's current environment, China has not carried out corresponding constraints and management on the right of various institutions to collect data. From the current situation, the personal data security of citizens is neither strong nor safe. Know which departments

and institutions keep and manage personal related data. While storing and managing these data, they also need to pay a certain cost to maintain it. Therefore, it is necessary to analyze this problem from the perspective of law and economics, and rationally treat and manage personal data from the perspective of cost and benefit, so as to look forward to finding a way to bear the cost and benefit of relevant subjects To the balance point, so as to better protect personal data, so as to promote the high-quality development of digital economy.

2. Economic theory of optimal management

The world economic forum pointed out in its 2011 report that personal data is becoming a new category of economic assets, which is a valuable resource that can reach all corners of society in the 21st century. At present, the value of personal data has gradually been concerned and valued by the public on the premise of relatively determining the management of personal data, the managed resources (relevant management costs, labor, management technical means and benefits) The corresponding subjects managing personal data will neither manage nor be able to manage all personal data. Therefore, selective management of personal data will slowly become a social norm, and then there will be relatively chaotic management. For the relevant subjects, as long as there are no clear provisions in relevant laws and regulations, what are the numbers According to the cost of management, it is a matter of free choice. Therefore, different management subjects need to be considered to better balance the relationship between cost and benefit.

The management of personal data by relevant entities is a kind of investment cost and will also have corresponding benefits. The management investment cost includes but is not limited to management funds, human resources, facilities and corresponding technical equipment. Without these management investment costs, the corresponding activities of managing personal data will not be carried out. What is brought by managing personal data The benefits brought by different subjects are different, but in general, the ultimate benefit of managing personal data is to protect the security of personal data and promote the circulation of personal data, so as to promote the rapid development of digital economy. Therefore, in terms of the quantity and quality of management data, we should take different measures to manage and operate according to different subjects and try our best to make every individual A management entity undertakes the management of the corresponding data within its maximum cost bearing range, so as to expect to achieve the optimal management scheme, and try to find an equilibrium point between the management cost and the management data. If it is too high or too low, it is not conducive to the protection of personal data.

3. Suggestions for improvement of data manager

At present, with the rapid development of digital economy, the weak legal environment of personal data in society, the weak awareness of rights protection of citizens and the abuse of personal data in China coexist in a large number, which leads to the failure of relevant individuals and enterprises to manage relevant personal data legally and reasonably.

(1) Individuals who manage personal data

At present, due to the weak awareness of individual rights protection, cases of infringement of personal data occur from time to time, which is more or less based on the fact that individual rights protection needs to pay a certain cost, and the results of rights protection can not reach the expected benefits. Individuals do not care too much about managing personal data in daily life, so we can learn from mydata (it can be translated into personal data management, or it can be understood as my data I decide) Mydata constructs a new concept of personal data management, which helps individuals protect personal data. Mydata mainly refers to that individuals should not only actively manage and control their personal data, but also use some personal data in some processes of credit

management and asset management. Its service purpose is to strengthen the protection of personal data. At the same time, it should also create some new opportunities for enterprises, that is, to develop an innovative service based on personal data based on mutual trust. Moreover, the author believes that mydata is a win-win choice, which can not only bring benefits to individuals and enterprises, but also increase each other's benefits. By learning from the advantages of mydata and properly combined with China's basic national conditions and actual situation, it can be applied to the personal data management of Chinese citizens.

On the other hand, when facing the challenge of personal data, scholars in academic circles need to appropriately strengthen the research on personal data. To make specific analysis on specific problems, they can not only unilaterally start from the perspective of consumer protection, but also appropriately absorb some foreign new ideas on personal data protection and management, and pay attention to the development and development of foreign digital industry New trend, tracking and learning from European and American personal information protection legislation and relevant policies and system design in data industry .And so on, so as to better enrich our citizens' ideas on personal data protection, make citizens know more about the new trends in data protection, and then provide a more reasonable choice for individuals to manage personal data.

(2) Enterprises managing personal data

In the current digital age, compared with individuals, enterprises are easier to obtain a large amount of personal data, so enterprises should take appropriate measures to protect personal data. Although enterprises will spend a certain cost, while protecting personal data, enterprises will also obtain some business opportunities based on the collected personal data, so as to obtain some business benefits for themselves. Therefore, when relevant enterprises promote their business to the outside, they should establish some strict data protection procedures, anonymize the personal data obtained when used in business, and ensure that the user's personal data information will not be exposed in the process of commercial use, this can effectively reduce the risk of personal data disclosure. For example, for e-mail used in daily activities, the e-mail content should be sent to all external customers as confidential as possible, rather than CC or directly displayed in the receiver column. This can prevent the risk of e-mail address disclosure of external customers; another example is the internal collection of customers User data, market analysis based on these personal data and customer images in the process of external activities of the enterprise need to be anonymously processed; after the corresponding anonymity processing, the enterprise cannot identify customers based on these data in the future commercial use process. Therefore, the enterprise needs to formulate some clear privacy terms and business agreements. And other express ways to obtain the right to collect and use customer personal data.

On the other hand, in the internal database systems of enterprises (such as SAP, ERP, etc.), hierarchical management system and procedures for setting access rights should be implemented as much as possible, and the sensitive data considered by enterprises should be encrypted or anonymously processed accordingly. In particular, internal employees cannot easily access the enterprise's database in the strict authority system, so as to obtain the personal data of external customers, third-party partners or internal personnel of the enterprise, so that the enterprise can protect the personal data of relevant participants in an all-round way. Moreover, if the enterprise plans to carry out data outsourcing services, the enterprise must cooperate with the service Sign the corresponding data protection agreement, properly consider taking relevant management measures, require the other party not to compare and analyze the anonymous data with other data in the signed agreement, so as to realize the function of identity recognition, and take effective regulatory measures such as it audit to supervise the other party's performance of the obligations of the agreement. For example, Apple has done so in this regard Better: Apple has made it clear in the relevant documents that it attaches great importance to the user's personal data, and the relevant

personnel have no right to access the personal data stored in its health records software. And these data will not leave the personal phones of relevant users. Apple indicates that other companies approved by it cannot use the corresponding personal data for advertising, marketing or other purposes based on the use of personal data, except for the purpose of public interest and research. Most importantly, these approved companies must obtain the corresponding personal data before use License. Secondly, the tools used by the enterprise in collecting personal data are equivalent to a public platform to some extent. When collecting and sorting personal data on the public platform, the enterprise cannot sign corresponding confidentiality agreements with the owners of all personal data. Therefore, the enterprise itself should formulate corresponding management methods and corresponding operating procedures subject to supervision and review to ensure that The confidentiality and security of personal data, otherwise the enterprise will bear corresponding legal responsibilities.

4. Conclusion

At present, digital economy has gradually become a basic force to promote China's high-quality economic growth and comprehensively reconstruct the mode of production, lifestyle and governance. In the context of digital economy, the importance of personal data is self-evident. Individuals and enterprises should work together to build an optimal personal data protection system and achieve the optimal results at the lowest cost, so as to better commit to the protection of personal data.

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