

# *Legal Protection of Online Personal Information*

Yang Hui<sup>a</sup>

*Teacher of School of Political Science and Law, Zhoukou Normal University, Zhoukou, Henan, China*

*<sup>a</sup>59659045@qq.com*

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**Abstract:** In today's information age, the network brings convenience and convenience to people at the same time. Our personal information is also violated to a certain extent and the way of infringement is not only more and more frequent, but the infringed are facing the situation of difficult rights protection. These problems urgently need to be solved.

## 1. Introduction

In the Internet era, no matter our work, study or life and shopping are inseparable from the Internet. While the Internet meets our needs, our personal information is also recorded to varying degrees. These records are used by some criminals, and our personal information is exposed, which affects our life.

## 2. Basic theory of network personal information right

### 2.1 The definition of network personal information

Generally speaking, network personal information refers to computer and network in the form of electronic data, information symbols and other forms of data that can directly or indirectly identify personal information, which relates to a person's society, economy, family culture; It can also reflect a person's psychological [1], physical, intellectual and many other aspects.

Network personal information is mainly formed through two forms. For example, personal information generated by the use of the network, such as registered email address, IP address and website [2] login password; The other is the information such as id card, name, address and so on obtained through the collection, reprocessing and reprocessing of personal data on the network. These two kinds of information which is violated, the interests of the parties will suffer certain damage.

### 2.2 Nature of online Personal Information Right

Property rights theory. Scholars who insist on this thought believe that the reason why personal information is collected and benefited in the network is precisely because of its certain economic value, which is the fundamental reason for the infringement of personal information on the network. In most cases, the Internet personal information is used for the benefit of the offender, but we

cannot deny that in a few cases, such as name and height, some information can not bring benefits to the offender, so this idea is biased.

Privacy theory. Some countries, represented by the United States, regard the right of online personal information as a right of privacy. These scholars believe that online personal information is a part of personal privacy, and the protection of online information is essentially the protection of personal privacy. We all know that the so-called privacy right is a right not to be known, disturbed, used and disclosed by others, and the right holder has the right to completely control whether and to what extent these information are disclosed. However, online personal information such as gender and so on is not in the category of personal privacy, so it cannot be completely equal.

The new concrete personality right theory. Although our country already has complete personality right, include name, portrait, honor, reputation, credit, privacy, life health and so on right. However, in the Internet age, if a person's name, gender, date of birth, home address and other personal information is collected and used by others, it does not constitute the infringement of our existing personal rights such as name and portrait. We cannot protect it from the point of view of specific personality right, which is undoubtedly a lack of right protection. The network personal information right can be upgraded to a new type of independent personality right.

### **3. Problems existing in network personal information protection**

#### **3.1 Weak sense of self-protection**

On the one hand, most people do not protect their personal information from their own source when using the Internet, for example, they register their account password on the website, leave their name, phone number and other relevant information, and lack the protection meaning of their personal information.

On the other hand, some people just know their rights but do not know how to protect them. Some people choose to be silent and indifferent when their own interests are violated, which undoubtedly helps the infringer.

#### **3.2 There are many legislative subjects of network personal information protection and lack of systematization**

At present, the highest level or relatively centralized protection law in China is the Decision on Strengthening the Protection of Online Personal Information. This legal protection is not comprehensive, but other protection is scattered, mostly reflected in local laws and regulations and some departmental rules, with many legislative subjects and inconsistent standards.

2004 "Shanghai information system security evaluation management method", 1994 "Beijing computer virus prevention and control measures for the administration of information system, in 2002 the measures for the prevention and control of a computer virus in tianjin, the measures for the administration of Internet information service, the computer information network security protection measures for the administration of international networking fourth and fifth paragraph of article 10 of rules It has established user registration systems, information management systems and harmful information review systems for Internet units, access units and legal persons and other organizations that use computer information networks and international networks. In addition, some basic laws also reflect that Article 38 of the Constitution only provides to protect the personality and dignity of citizens. From this article, we can protect personal information from the perspective of personal right. "General principles of civil Law" 100, 101 provisions: citizens enjoy the right to portrait, without their consent, not to profit for the purpose of using citizens portrait; Citizens and legal persons shall enjoy the right of reputation, and the personal dignity of citizens shall be

protected by law. These two mainly protect personal information from the perspective of citizens' rights of reputation, honor and name. Article 6 of The Criminal Law and Tort Law stipulates that the infringement of the rights and interests of Internet service providers requires corresponding tort liability, etc. However, the provisions of Chinese laws are scattered, incomplete, systematic, principled and lack of operability.

### **3.3 It is difficult for Internet users to provide proof**

Our country law stipulates clearly who advocate who proof, for personally, under the network environment for infringement of their personal information on the Internet interests, is undoubtedly a very difficult thing, due to the particularity of time, space, regional network environment, sometimes don't know when their information is what and in what way and leaked out of the way, Even if the aggrieved party is aware of its limited capacity, it is difficult to collect enough evidence, which makes it very unrealistic for the parties to safeguard their interests.

### **3.4 The industry self-regulation is general and lacks special legislation**

Article 2 and Article 36 of the Tort Liability Law, Article 253 of the Criminal Law Amendment (7), The Law on Administrative Punishment, the Law on Administrative Review, the Law on the Protection of Minors, the Law on the Protection of Women's Rights and Interests and other laws in China all involve the protection of personal information. Article 7 and Article 18 of the Administrative Measures for The Security and Protection of Computer Information Networks and International Networking have relevant provisions on the protection of personal information.

China also has network self-regulation organizations. For example, China Mobile, China Telecom, China Unicom, Sina and Sohu and hundreds of other network companies have signed the China Internet Industry Self-Regulation Convention. We will consciously protect the personal information of network users, consciously safeguard their legitimate rights and interests, do not use our own technical advantages to disclose any content related to users' personal information to violate the legitimate rights and interests of users, and adhere to our own professional ethics.

Although China has protected personal information in terms of legal system and industry self-discipline, these protections are generally not operable and relatively general, which makes it difficult for the parties concerned to get their opinions when the rights of online personal information are violated.

## **4. Suggestions on measures related to network personal information protection**

### **4.1 Establishing special administrative departments and channels for safeguarding rights**

A specialized information resource supervision and management agency with government departments as the main force should be established, which not only has the right to take compulsory measures, administrative sanctions and penalties, but also needs to coordinate among different departments. At present, China's network personal information protection is basically in the state of no management, no responsibility, in order to make the network personal information infringement problem can be quickly solved, it is necessary to have the government to come forward, lead the management of the infringement problem, to prevent the relevant departments to blame each other, kick the ball.

Set up a separate service window in the justice department, because of the complexity of the network personal information is being violated, it is hard to resolved timely and effective, but also because the network information infringed events occur frequently, so it is necessary for the

judiciary to network infringement cases set up a separate service window, so that you can empty to professional timely and quickly find out the case for arteries and veins, Resolve infringement cases as soon as possible. At the same time, the judicial department can also carry out online complaint system, set up full-time commissioner to deal with daily complaints.

Whether the government management department or judicial litigation department, can be aimed at different groups of people: school students, community personnel, company personnel and so on the network security law publicity and education from time to time.

#### **4.2 Inversion of burden of Proof**

The essence of law lies in the strong inhibitory action, is from the perspective of better enough to protect the interests of the disadvantaged groups, so we might as well to solve the personal information under the network environment from a different Angle interests violated when the present situation of the difficulties of proof, the onus probandi inversion, the interests of the violation by the party or the operator proof to prove that their behavior comply with relevant legal provisions, Only when they can prove that they have not infringed upon their own interests or there is no causal relationship between the fact of personal injury and their own behavior, they will not assume legal liability, otherwise they will infringe upon the interests of the parties.

In the network environment, the subject of the protection obligation of network personal information is mainly network service providers, including network content providers and Internet access service providers. The infringed only need to prove the existence of service contract relationship between them and the fact of damage. However, due to their own technical conditions and resource advantages, network content providers and Internet access service providers need to prove that they have fulfilled their responsibilities to protect the personal information of network users. If they cannot provide sufficient evidence to fulfill their obligations of protection, they will be liable for infringing the personal information rights of the parties concerned. This measure mainly protects network users from the perspective of service providers' omission as the subject of infringement. Article 36 of China's Tort Liability Law has made provisions for service providers' infringement of network users' personal information.

#### **4.3 Increase the severity of punishment**

In real life, infringement of online personal information occurs frequently, mainly because it is easy, convenient and cheap to collect online personal information. On the one hand, it is to increase penalties. For example, in the Protection of personal information in the United States, the use of other people's identity information without permission can be punished up to 30 years in prison. High damages may be imposed in relatively minor cases. This kind of punishment is a deterrent and a warning, which can make some people give up the idea of committing crimes.

#### **4.4 The combination of legislation and industry self-discipline mode**

Both legal regulation and industry self-discipline play a normative role together.

Adopt personal information protection mark authentication system. That is, the website involving personal information to implement the licensing system, and for the record registration; At the same time, these websites promise to abide by the rules of online personal information collection and comply with management. Only the sites that meet these conditions will be given the certification of the personal information protection mark. This flag is website to show itself to the consumer is willing to keep and protect the safety of network personal information as a status symbol, and at the same time also makes the consumers can easily get through the website logo

logo to identify safety reliable url, which can also be from consumer oneself to prevent the happening of the network information security problems.

Industry self-discipline mechanism has a great deal of flexibility, cannot enforce each site or service providers must obey rules and regulations, in view of the current use only self-discipline mode of countries, such as: the United States and other countries of the thinking, our country in order to better protect the interests of consumers, but also need to develop a separate personal information protection law to police, along with all the only in this way can adapt to the rapid development of today's Internet age.

#### 4.5 Allow public interest litigation

Academic circles in our country so far to the public interest litigation has not been unified understanding, generally in accordance with the applicable law of nature or of the different division of the object (object) public interest litigation including civil public interest litigation and administrative public interest litigation, according to the main body of public interest litigation can be divided into individual filed a lawsuit of public interest litigation, other social organizations and procuratorial organs filed public interest litigation, The former is called civil prosecution or administrative prosecution, and the latter is called general public interest litigation.

#### 5. Conclusion

At present, China's personal information protection environment is still in the primary stage of development, personal legal meaning is weak, the subject of infringement is not high self-discipline, and the litigation conditions are difficult. In this environment, personal information is difficult to get effective legal protection. So we can allow legal meaning strong procuratorial organs or other social organizations to beyond personal information infringement of personal influence is filed a public interest litigation, in the hope to wake up early in the personal information rights protection in our country individual sleeping legal protection, promote the development of the personal information.

Network infringement occurs frequently, we increase the punishment, improve the protection measures at the same time to improve the network awareness, the protection of foreign experience and China's national conditions and their own legal characteristics, to find suitable for China's protection approach.

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