

# Criminal Law Protection of Citizens' Personal Information under the Background of Internet Finance

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## Abstract

In recent years, with the rapid development of the Internet, Internet finance has been gradually favored by people. However, in this process, the leakage or theft of citizens' personal information will become more obvious, and it will easily lead to extremely serious consequences. Shandong "Xu Yuyu case" is a typical example. Through a brief analysis of the basic contents of citizens' personal information, it is considered that it is necessary to strengthen the criminal law protection of citizens' personal information security. By combing the provisions of the criminal law text and investigating the judicial status quo, it is found that there are many shortcomings in the protection of the current criminal law. Therefore, the corresponding measures should be put forward from three aspects: promoting the promulgation and implementation of the Personal Information Protection Law in time, deleting the contents of "relevant state regulations" in the Interpretation, and increasing the sentencing range of the crime of infringing citizens' personal information.

## Keywords

Internet; Personal information of citizens; Financial platform; Personal Information Protection Law.

## 1. Introduction

In recent years, relying on Internet technologies and tools such as big data, cloud computing, blockchain and mobile APP, Internet finance has developed rapidly. Internet finance not only brings convenience to people's lives, but also leads to the disclosure, theft or tampering of personal information such as user identity, credit and funds, which leads to a series of crimes such as fraud and extortion. Shandong's "Xu Yuyu case" reflects the harmfulness of personal information disclosure. In this context, although many scholars have expressed their views on how to protect citizens' personal information security, on the one hand, it is rare to issue articles that respond to the current situation with the provisions of criminal law. On the other hand, we often talk about countermeasures only for some problems, and lack of systematic combing of the text and practice of citizens' personal information. In view of this, based on a comprehensive analysis of citizens' personal information, the author summarizes the existing problems in the protection of citizens' personal information in criminal law, and puts forward corresponding countermeasures, in order to help the healthy development of Internet finance.

## 2. Introduction of Problems

In 2016, Xu Yuyu, a senior 3 student, passed the English major of Nanjing University of Posts and Telecommunications. On August 19th, more than ten days before the school started, I received a strange phone call. The other party provided Xu Yuyu's name, school, home address and other information, and claimed that a scholarship of RMB 2,600 would be given to her. Xu Yuyu had no doubt. In the afternoon, Xu Yuyu transferred the tuition fee of 9900 yuan to the account provided by the other party, and waited for no reply. She dialed the other party's

account, but the other party turned off the phone. When Xu Yuyu realized that he had been cheated, he was extremely annoyed and blamed himself, and died of cardiogenic shock on his way home. After the case occurred, the Ministry of Public Security immediately set up a task force to carry out investigation. In July 2017, seven defendants, including Chen Mou and Du Mou, were sentenced to life imprisonment and fixed-term imprisonment ranging from three to fifteen years, deprived of political rights for life, and confiscated all personal property. Reflecting on the course of the case, the key to the tragedy is that Du Mou, the defendant, used technology to attack the online registration information system of the 2016 college entrance examination in Shandong Province, and implanted a Trojan horse virus. After that, Chen Mou bought 1,800 high school graduates' information from Du Mou at the price of each 0.5 yuan, and used the real information of Xu Yuyu to cheat. If there is no real information about Xu Yuyu in Chen Mou, perhaps the tragedy will not happen, which reflects the phenomenon that a large number of citizens' personal information is leaked under the background of Internet popularization.

With the development of Internet finance, personal information will be more massive and comprehensive synchronized to the network, involving citizens' real names, genders, ID numbers, home addresses, bank accounts, ID card verification and so on. If used by criminals, it will lead to a sharp increase in the number of fraud crimes. According to Xinhuanet, in 2019, a total of 200,000 telecommunication network fraud cases were cracked and 163,000 criminal suspects were arrested, up by 52.7% and 123.3% respectively. It confirms this fact. Under this background, how to play the last "defense line" function of criminal law, to protect citizens' personal information security, is an urgent problem to be solved in current legal research.

### 3. Basic Contents of Citizen's Personal Information

#### (1) Connotation of citizen's personal information

From different angles, the concept of citizen's personal information can be understood differently. According to the Supreme People's Court and the Supreme People's Procuratorate jointly issued the Interpretation on Several Issues Concerning the Application of Laws in Handling Criminal Cases of Infringement of Citizens' Personal Information (hereinafter referred to as the Interpretation). Citizen's personal information refers to "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, including name, ID number, communication contact information, address, account password, property status, whereabouts, etc." In practice, the concept and content of citizens' personal information are mainly defined according to the provisions of the Interpretation.

#### (2) Characteristics of citizens' personal information

As a collection of citizens' basic attributes, citizens' personal information is composed of various characteristics. Specifically, the first is sociality, which identifies a specific individual in society through specific personal information. The second is exclusivity. Everyone has his own information. Such as fingerprint, height, appearance, etc. By combining all the information, we can find the natural person who has the information at the same time. Third, it is legal. Citizens enjoy the right to privacy according to law, and the right to privacy is inextricably linked with the right to personal information, which means that personal information is often protected by law. Fourth, the value of citizens' personal information is characterized by its availability and space for transforming into economic benefits. This is also the main reason why criminals sell them for profit.

### (3) Security of citizens' personal information

#### ① Improper storage method

According to the Statistical Report on Internet Development in China in 2020, as of March 2020, the number of Internet users in China was 904 million, and the Internet penetration rate reached 64.5%. In this process, the emergence and development of Internet finance was also accelerated [3]. When we enter a certain online financial platform, we need to register my account number, which includes real name, home address, ID number, contact information and other information. After collecting this information, the network financial operators will filter the parts that can be used by themselves, or save them internally in the form of data, or disclose some information related to privacy on the network platform. In fact, it is easy to cause problems such as improper keeping of personal information.

#### ② Poor protection ability

Admittedly, Internet finance realizes diversified services such as payment, transaction, and financing, which carries a large number of privacy-related contents such as user identity information, capital information, and identity information. If leakage, theft or tampering occurs during storage or transmission, the negative impact on people is extremely obvious. However, due to the profit-seeking of criminals, and the weak security awareness and poor protection ability of Internet financial platforms, personal information is seriously leaked.

#### ③ Social risk is high

The disclosure of citizens' personal information will provide convenient conditions for criminals to commit crimes, but it will affect people's normal peace of life by selling and publicizing by telephone or short message. More seriously, some lawless elements use personal information to achieve "accurate" fraud, or engage in kidnapping, extortion and other criminal acts that endanger citizens' life and health or property. Thereby causing serious consequences and reducing the social safety factor.

## 4. The Necessity of Criminal Protection of Citizens' Personal Information

### (1) Safeguard the property safety of citizens

With the popularity of smart phones, Alipay, WeChat payment, Ant Credit Pay, Jingdong Baitiao and Internet finance are increasingly favored by people, and the connection between personal information and property is also closer. However, convenient financial methods also create more opportunities for criminals to commit crimes. Criminal law is severe, and punishment can enhance the crackdown, strengthen the protection of personal information, and reduce the incidence of network financial crimes to a certain extent. While effectively protecting the safety of citizens' personal property, it is also conducive to promoting the development of the whole society and economy, and pushing people's lives towards a safer and more efficient direction.

### (2) Guarantee the compulsory and authority of criminal law

Due to the rapid development of internet finance, the illegal ways to collect and sell citizens' personal information are becoming more and more diversified. In this context, in recent years, with the efforts of relevant departments and scholars, China has continuously promoted the promulgation of the Personal Information Protection Law. At present, although the Personal Information Law (Draft) has been completed and entered the deliberation stage of the Standing Committee of the National People's Congress, it has not yet been promulgated and implemented. Moreover, "Personal Information Law" is a preponderant law, its intensity is far less than that of criminal law, and it cannot form a powerful deterrent effect. If the criminal phenomena that should be regulated are not stopped in time, it is bound to undermine the mandatory and authoritative nature of criminal law. Therefore, we should strengthen the criminal law protection of personal information security.

### (3) Perfecting the shortcomings of relevant legislation

Although the fundamental laws and departmental laws of our country both provide for the protection of citizens' information security, there are still some shortcomings. Among them, the Constitution, as the fundamental law of our country, embodies the protection of citizens' personal information in terms of "citizens' right to freedom and privacy of communication", but these provisions are too principled to really "land". The most common administrative law involving citizens' personal information is the Law on Public Security Administration Punishment, which has special administrative penalties for voyeurism, sneak shots, eavesdropping and spreading others' privacy, but there is no specific provision for the non-private content of citizens' personal information. This leads to the fact that some citizens' personal information cannot be included in the scope of punishment of the Law on Public Security Administration Punishment. Civil law and administrative law have relevant laws to protect citizens' privacy, name, reputation and other civil rights and interests, but the content is complex, the relevant provisions overlap, and the punishment is relatively insufficient. The Cyber Security Law only clearly stipulates that stealing or otherwise illegally obtaining, illegally selling or illegally providing personal information to others does not constitute a crime. Therefore, it is necessary to protect citizens' personal information through criminal law, which can make up for the defects and deficiencies of relevant legislation.

## **5. Textual Carding and Problems of Criminal Law Protection of Citizens' Personal Information in China**

### (1) Textual analysis of criminal law protection of citizens' personal information

Looking back at the formulation and revision of China's criminal law, in February 2009, the Criminal Law Amendment (VII) added a provision on the crime of infringing citizens' personal information to Article 253 of the Criminal Law as one of Article 253. Among them, from the perspective of the provider and the acquirer, paragraphs 1 and 2 respectively stipulate two kinds of crimes of infringing citizens' personal information. The specific crimes are "selling and illegally providing citizens' personal information" and "illegally obtaining citizens' personal information". The third paragraph stipulates the unit crime of infringing citizens' personal information, and stipulates the corresponding punishment for the above crimes, that is, "if the circumstances are serious, they shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and shall be punished with a fine [4]." In August 2015, the Standing Committee of the National People's Congress issued the Criminal Law Amendment (IX) in view of the new situation and new problems of network crimes. The main points of this revision on citizens' personal information crimes are as follows: firstly, the scope of criminal subjects is expanded, and the staff of state organs, financial institutions and other units are expanded to general criminal subjects. Second, the provisions on the circumstances of sentencing have been added, and the provisions on illegally selling or providing citizens' personal information "if the circumstances are particularly serious" and their penalties have been added. Third, "violation of state regulations" was changed to "violation of relevant state regulations", which expanded the scope of crime constitution. Fourthly, in order to facilitate the identification of crimes in practice, the crime of selling and illegally providing citizens' personal information and the crime of illegally obtaining citizens' personal information are unified into the crime of infringing citizens' personal information. Subsequently, in June, 2017, the Interpretation made a detailed analysis of the scope of citizens' personal information, the standards of conviction and sentencing, and the problems of crime competition, unit crime and quantity calculation.

(2) The issue of criminal law protection of citizens' personal information

① No unified pre-law has been promulgated

According to the foregoing, although the Law on Public Security Administration Punishment regulates the behavior of infringing citizens' personal information, what kind of behavior is subject to administrative punishment is carried out with personal privacy as the axis, which does not completely cover all the situations summarized in the Interpretation for citizens' personal information. In practice, under the background of Internet finance, the defendant is often punished by criminal law without violating administrative law because of the absence of relevant provisions of the pre-law or the excessive dispersion of the pre-law provisions. The practical disadvantages brought by it are: because of the offside of criminal law, it sacrifices the guarantee attribute of criminal law compared with other departmental laws, which is contrary to the basic practice of a criminal country ruled by law.

② The "relevant provisions of the state" in the interpretation contradict the original legislative intent

Compared with the Criminal Law Amendment (VII), the Criminal Law Amendment (IX) changes the constitution of the crime of infringing citizens' personal information from "state regulations" to "relevant state regulations". However, no matter which way of expression, blank charges are adopted for the identification of this crime. For the content of "state regulations", according to Article 96 of the Criminal Law, it refers to "violation of laws and decisions formulated by the National People's Congress and its The Standing Committee, administrative regulations formulated by the State Council, prescribed administrative measures, decisions and orders issued." For the content of "relevant state regulations", according to Article 2 of the Interpretation, it refers to "violation of laws, administrative regulations and departmental rules on the protection of citizens' personal information." Compared with the two, the former includes "decisions" and "orders" in addition to "laws", "regulations" and "rules", which obviously can be based on a wider range of normative documents and is more conducive to protecting citizens' personal information security. However, judging from the original intention of modifying this expression, its purpose is to "expand the scope of criminal subjects" on the basis of "national regulations" [6]. However, "Interpretation" limits the "relevant state regulations", resulting in its content not as broad as "state regulations", which contradicts the original intention of legislation.

③ The determination of criminal circumstances has the color of severe punishment

As for the criminal circumstances of the crime of infringing citizens' personal information, the criminal law simply stipulates "serious circumstances" and "especially serious circumstances", while the criminal law does not list the contents of the two specific circumstances accordingly [7]. According to Article 5 of the Interpretation, "serious circumstances" includes 10 specific circumstances. To sum up, they are: criminal purpose (item 1-2); The amount of information (items 3-6 and 8); Illegal income (items 7 and 8); Criminal record behavior (item 9); Others (item 10) [8]. It can be seen that the main criteria for "serious circumstances" are the amount of personal information and the amount of illegal income, and the situation of "especially serious circumstances" is similar. But observing the content of each plot, the criminal purpose only requires that the personal information provided or sold be used for "crime". The amount of information is divided into more than 50 articles, more than 500 articles, more than 5000 articles and more than half of the above amount according to different types. Illegal income is more than 5,000 yuan or more than 2,500 yuan; According to the difference between criminal punishment and administrative punishment, criminal punishment or administrative punishment within two years for infringing personal information. Others are blanket regulations, aiming at preventing new phenomena from appearing in practice. Compared with other crimes in criminal law, it is not difficult to find that the threshold of the crime of infringing



citizens' personal information is too low. In the context of Internet finance, taking the amount of information as an example, there are tens of thousands of leaks and thefts of citizens' personal information, while the minimum requirement for "serious circumstances" is only 50. Obviously, the standard of determining the circumstances of a crime has the color of severe punishment, which is contrary to the modesty of criminal law.

## 6. Path Analysis of Criminal Law Protection of Citizens' Personal Information

(1) Timely promote the promulgation and implementation of the personal information protection law

For a long time, due to the absence of the prior law of citizens' personal information crime or the scattered regulations, many criticisms have been caused in the academic circles. As for overseas practices, as of March 2017, a total of 120 countries in the world have enacted special personal information protection laws [9]. For example, the Privacy Act of the United States, the Federal Personal Data Protection Act of Germany, the Personal Information Protection Act of Japan and the Personal Data Protection Directive of the European Union, etc. [10]. In addition, Hong Kong, Macao and Taiwan have promulgated Personal Data (Privacy) Regulations, Macao Personal Data Protection Law and Taiwan Personal Data Protection Law respectively. Therefore, it is imperative to promote the promulgation of the Personal Information Law. Looking back at the legislation of citizens' personal information in China, in fact, as early as 2003, the State Council commissioned relevant experts to draft the Personal Information Protection Law, and the expert proposal was completed in 2005 and submitted to the Standing Committee of the National People's Congress for deliberation, but it has not yet been deliberated and passed. At present, in order to ensure the security of citizens' personal information under the background of Internet finance and highlight the attribute of criminal law as a safeguard law, the promulgation and implementation of Personal Information Law should be promoted as soon as possible.

(2) Delete the content of "relevant provisions of the state" in the interpretation

The Interpretation is a judicial interpretation, which limits the legislative intent of the Criminal Amendment and actually breaks through the hierarchy of the superior law, so it should be amended in time. There are two ways to amend it. One is to continue to delete the contents of the "relevant state regulations" in the Interpretation through judicial interpretation, and not to explain the "relevant state regulations", but to equate "relevant state regulations" with "state regulations" according to the practice before the publication of the Interpretation. Second, continue to amend the "relevant state regulations" by means of judicial interpretation, and amend them to be similar to Article 96 of the Criminal Law. The author thinks that it is more appropriate to delete the contents of "relevant state regulations" in the Interpretation directly. The reasons are as follows: First, from the perspective of legislative willingness, the "national regulations" are revised to "relevant state regulations", the purpose is to expand the subject of crime and include more violations of citizens' personal information in practice. If "relevant state regulations" are directly equated with "national regulations", this also Second, under the background of internet finance, with the popularization of internet and the development of technology, many new ways and means of infringing citizens' information are constantly emerging, the concept of personal information is bound to be innovated, and the crime composition of this crime needs to be adjusted in time. If the specific content of "relevant state regulations" is not stipulated, as long as normative documents are issued when new situations arise, whether they are laws, regulations or rules, they can be cited as the crime constitution of this crime, which actually improves the adaptability of the crime of infringing personal information.

### (3) Improve the sentencing range of crimes against citizens' personal information

According to Article 253 of China's Criminal Law, the crime of infringing citizens' personal information needs to satisfy either "serious circumstances" or "especially serious circumstances". This kind of textual stipulation of constitution of crime is extremely rare in criminal law. Generally speaking, "serious" or "very serious" is the aggravating circumstance as the result of expressing a certain crime [11]. In my opinion, there are two main reasons for this regulation. First, due to the absence of the pre-law, there is no definition of the pre-law, and the basic conditions are lost. It is difficult for the criminal law to intuitively and comprehensively summarize the behavior pattern of the crime of infringing citizens' personal information. Second, the reason why it meets the conditions of "serious circumstances" or "especially serious circumstances" is that the penalty for the crime of infringing citizens' personal information is not high, and the top penalty can only be 7 years in prison, which is compared with the serious consequences that the crime may lead to, it is indeed possible that the crime and punishment are incompatible [12]. For this reason, on the one hand, we should promulgate the pre-law, which has been discussed in the previous article, so we will not repeat it here. The second is to increase the sentencing range of this crime. The specific path is to increase the harmful consequences of infringing personal information according to the provisions of the pre-law, and take it as a general case of the crime of infringing citizens' personal information, and impose a fixed-term imprisonment of not more than three years or criminal detention, with a fine or a single fine. At the same time, the contents of "if the circumstances are serious" and "if the circumstances are particularly serious" in the Interpretation were revised. On this basis, if the circumstances are serious, they shall be sentenced to fixed-term imprisonment of not less than 3 years but not more than 7 years and fined. If the circumstances are particularly serious, they shall be sentenced to fixed-term imprisonment of more than seven years and fined, so as to achieve a balance between crimes and punishments.

## 7. Conclusion

By investigating the security of citizens' personal information under the background of Internet finance, it is found that there are still many deficiencies in the current criminal law in China. In order to avoid the similar case of "Xu Yuyu case" in Shandong Province, this paper mentions the protection measures of criminal law for citizens' information security from four aspects, but it must be acknowledged that the above four aspects are only some key improvement measures. In practice, there are still many new situations and problems to be discovered and responded to. In addition, strengthening citizens' information security under the background of Internet finance is, after all, a systematic project, and protection through criminal law is only a specific part, and other relevant laws and regulations need to be improved to form a "joint force" to protect citizens' personal information security.

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