

# Research on Legal Regulation of Big Data "Killing Familiarity"

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## Abstract

With the rapid development of the Internet, massive data, algorithms and artificial intelligence and other scientific and technological progress. However, due to the characteristics of technology, concealment and information asymmetry, these technologies bring convenience to daily life, but also produce a series of social problems, ethical problems and legal problems. The core of "big data maturity" is the abuse of consumers' personal data by Internet platforms on online platforms. At present, due to the lower cost of data access to individual consumers and the country, the legislation is not perfect, data is relatively backward technology, the Internet platform for excessive amount of data collection and illegally collected more and more, lead to the Internet platform for survival in the competition in the network, morally, take dishonest means, one-sided pursuit of profit maximization. Although China's "big data maturity" supervision is very difficult. However, in the long run, while supporting the development of network economy and data economy, the network platform also has its effective side of promoting economic development. The state needs to respond to expectations of consumer protection.

## Keywords

Internet; Big Data Kill; The Algorithm; Data Abuse; Protection of Consumer Rights.

## 1. The Legal Definition of Big Data "Killing Familiarity"

### 1.1. The Concept and Characteristics of Big Data "Killing" Behavior

Big data "killing" refers to the phenomenon that the price or attributes of the same goods or services are much more expensive than those of new buyers. It refers to that after Internet operators collect personal information, they use algorithm tools to analyze and sort out the information, label each user, outline the user's portrait, and then share and merge the information through different trading platforms.

In practice, the process of "killing familiar" behavior of big data has a very strong concealment, and consumers are still faced with the difficulty of obtaining evidence and cross-examination after being harmed, thus the problem of consumer compensation cannot be developed. Another characteristic of big data "killing" behavior is the extreme information asymmetry between Internet operators and users, which means that operators are in an absolute information advantage in online transactions[1].

### 1.2. Big Data "Kill Familiar" Legal Nature

#### 1. Differential Pricing Theory

It refers to the differentiated pricing strategy that network merchants use big data technology to classify and analyze the collected user information and carry out hidden price raising for old customers so as to maximize profits.

#### 2. Price Discrimination Theory

It refers to that e-commerce companies make accurate analysis of users by virtue of big data technology and calibrate different prices for different users for the same goods or services.

### 3. Price Gouging Theory

According to the regulation, sellers can be identified as price frauds only if they “fabricate facts or conceal the true situation by means of bidding or price”[2].

### 4. Algorithmic Discrimination Theory

There are three main types of algorithm discrimination: one is that the algorithm designer combines objective and neutral data together, which will inevitably be replaced by the designer's subjective consciousness in the design process, resulting in discriminatory consequences; Second, the traditional stereotype is directly reflected in the Internet tools; The third is the “killing” behavior of big data discussed by the author.

## 2. Big Data “Kill Familiar” Caused by the Legal Issues

### 2.1. It is Difficult to Obtain Evidence and Provide Proof of Private Law Model

#### 1. The fault of Internet platforms is hard to prove

Instead of exploiting information asymmetry with different consumers and the flow of information between different consumers, online platforms obfuscate the standard price of goods or services, which has nothing to do with the price of goods or services seen by others. On the other hand, there are a variety of algorithms on the network platform. Different companies and industries have different priorities for the use of user data, and the rules of computer algorithms and user patterns used are also different. Through artificial intelligence, autonomous learning and other computer definitions, it is difficult for individual users to determine whether they have been used and calculated. Even if they find they have been cheated, it is also difficult for consumers to refute and prove, because online platforms are capable of using big data and other technical means to distinguish prices, resulting in blurred consumer minds.

#### 2. It is difficult to identify consumer losses that are “killed and cooked” by big data

Looking at the big data published by the public, even if it is possible to simply calculate the loss of consumers, the recoverable price taken from a consumer is very small. It is not cost-effective for consumers to pursue compensation for lost time and economic expenses. Because the power is too weak, many consumers find that their interests are damaged in the face of big data, and generally prefer to suffer losses. In most cases, they hardly ask for compensation or compensation.

### 2.2. Public Law Model Regulation Basis and Means are Insufficient

#### 1. The Provisions of the Personal Data and Algorithms Control Ordinance are Still Incomplete

On August 20, 2020, culture and tourism department issued the interim provisions on the online travel business service management, is only stipulated the regulations on security of personal information, collection and use of information and notice and agree to the rules of the legal purpose, but to protect the right of the data content, nature and there is no clear definition, There are also no clear rules on the appropriateness of data use [3].

#### 2. The Subject of Unified Supervision is Absent, and the Means of Supervision Cannot Keep up with the Development of Technology

Regulators of backward technology and equipment, training condition of relevant technical personnel is not enough, lead to the managers don't want to take over, unable to meet the needs of law enforcement, due to the specific law enforcement operation, the current in pricing and management of new infringement form has not been unified legal solution, there is no specific law enforcement agencies, the applicable law is difficult to reach regulation effect, it is difficult to form coercive power.

### **3. Legal Suggestions on Improving China's Big Data “Kill” Regulation**

#### **3.1. Legislation - to Expand the Extension of Users' Right to Know**

Internet platform operator can be in the same conditions to the user request different prices, should first shows facts and reasons to request different prices, consumers can then use their own trading right to switch to choose, but in front of the collected data, the Internet platform in front of the user to choose the use of personal data, an operator should be clear to inform us of the price of offer, Registering the use of personal data after obtaining the consent of the user; When there is doubt about the price difference between products or services, the competent Marketing Department may, after providing relevant traces and dealing with the impact of injecting abusive data on the legitimate rights and interests of users, apply to require the operators on the Internet platform to make clear and specific explanations, and the content must reach the level that users generally understand [4].

#### **3.2. Law Enforcement -- Improving Market Supervision Capacity**

##### **1. Improve supervision**

The supervision department of Internet platform can learn from the current network security detection and management mode, which is managed by the government, and use big data technology to monitor and monitor all kinds of behaviors by purchasing services. It has also improved the capacity of the executive branch to monitor, enforce and collect evidence through technical means to correct deficiencies resulting from lagging laws.

##### **2. Expand the channels for user feedback**

Network and the market price supervision departments through official weibo account, WeChat official account supervision and complaint channel, can quickly understand the behavior of the network platform, and use their corresponding authority within the scope of the corresponding MoZha, for does not belong to the jurisdiction of the department of complaint, directly to the department in charge of communicate and inform the related claim, in addition, Companies monitoring and encouraging each other can also control data abuse across the board.

#### **3.3. Judicature -- Sharing the Burden of Proof Appropriately**

From the current judicial practice, the direct loss of consumers is small, but the cost of filing civil lawsuits is relatively large. With the burden of proof, it is possible to reverse the rules and regulations in the handling of civil cases related to “killing” by big data. With regard to data use behavior, the cost of obtaining evidence for Internet platforms is negligible, which will increase the burden of proof to prove that they can go unexamined based on no error. In addition, under the condition of large amount of data and complicated algorithm, the part of evidence involving contradiction and dispute will be more obvious. Therefore, the evidence provided by online platforms helps to limit “big data killing” [5]. In this case, the network platform may not provide conclusive evidence for winning the case, but since all relevant evidence is preserved, judging from the scenery, the application of the existing rules of evidence is limited if the evidence holder does not submit adverse evidence in the custody of evidence, which is considered to be an adverse fact. With the technical awareness of law enforcement officials and the assistance of expert witnesses, the responsible rule is “big data kills” and restrictions on Internet use are appropriate.

#### **3.4. Law-abiding Aspects -- Mobilize Consumer Social Responsibility**

On the Internet platform used to achieve consumer transparency, the process is to collect, use and share consumer personal information data, and consumers have the right to ensure reasonable risk management and security obligations based on different circumstances and the use of appropriate fair trade rights. Consumers should also place reasonable trust in Internet platforms. As the main body of the market, when consumers are protected by the state, society

and operators, they should assume certain social responsibilities so as to establish a good market order[6].

#### 4. Conclusion

The application of big data in this era has brought scientific and technological innovation to social development. Algorithms and artificial intelligence are reflected in every field of our life, because it can effectively save consumers' information retrieval costs and gradually break down market barriers. Open up new channels between expanding market and entering market, and finally promote market competition. The Internet platform has become more easily extracted from large data redundancy cost, science and technology progress is inevitable, as the new era of "big data", under the current legal framework, the problem of social mobilization can be resolved in the short term, by expanding the consumer's right to know, greatly increase the channels of market regulation, in does not affect the premise of technological innovation, Rationalization of data and algorithms remains a long and arduous task.

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