

An Empirical Study on the Issue of Online Live Streaming Infringing Citizens' Privacy Rights

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Abstract

As a basic personality right, the right to privacy is stipulated in the "Civil Code of the People's Republic of China", which means that citizens have the right to decide whether or not to disclose personal privacy to others and the scope and extent of the public. The development of today's smart devices and the Internet has increased the risk of the privacy of each member of society being exposed to social media live broadcasts. The subject of live broadcasts publicly disseminates their images and actions through the Internet without the consent of the citizens in the live broadcast, which may violate citizens' privacy right. The social media network live broadcast has three characteristics: the synchronization of shooting and broadcasting, the convenience of operation and the aggregation and distribution. The phenomenon of infringing citizens' privacy rights in webcasting continues, and researches should be carried out to find solutions. This paper explores the conflict between citizens' privacy rights and the rights of the broadcasters' freedom of shooting in the context of national live broadcasts, and clarifies the legal relationship and distribution of responsibilities among the live broadcast bloggers, online platforms, and the infringed. Through empirical analysis of cases, we will explore the new behaviors of privacy violations in the new social environment and clarify the rights and obligations of all parties, so as to better adjust the conflict of rights between the three parties mentioned above and maintain more harmony. Friendly social relations and network environment.

Keywords

Right to Privacy; Webcast; Civil Code.

1. Introduction

On May 28, 2020, the "Civil Code of the People's Republic of China" voted by the third session of the 13th National People's Congress defined the right to privacy for the first time, and made specific provisions on the concept and scope of protection of the right to privacy, which is enough to show that my country's privacy policy attention to rights protection. However, under the continuous intervention of the Internet and artificial intelligence technology and the upsurge of national live broadcast, the connotation of the right to privacy is more abundant, and the conflict of rights is more intense. According to statistics, the number of online live broadcast users in my country has increased year by year, reaching 617 million yuan in 2020, and the utilization rate of netizens is also as high as 62.4%. In this context, the author studies the conflict of rights between the freedom of live bloggers and the privacy rights of the masses, in order to explore the boundaries of freedom and the relief of the privacy rights of ordinary people in the context of online live broadcasts. The author will discuss the legal relationship among live bloggers, online platforms and infringed persons around typical cases of live broadcasts infringing on privacy rights.

2. The Connotation of Privacy Rights and the Definition of Privacy Rights in Webcasting

2.1. The Connotation of the Right to Privacy

According to the Civil Code, citizens enjoy the right to privacy. Citizens' right to privacy cannot be infringed by any organization or individual by means of spying, intrusion, disclosure, disclosure, etc. "Civil Code" gives the definition of privacy, pointing out that privacy includes not only "private life peace", but also "private space, private activities and private information that others do not want to know". Among them, private space not only refers to tangible physical space, but also refers to virtual space, such as personal mailboxes, personal online diaries, various online social software and so on. All information that a natural person is unwilling to disclose, which is harmless to social interests and does not violate the law, belongs to personal privacy, and natural persons have the right to not be infringed on their privacy rights. This extends the protection scope of the law to a certain extent.

2.2. Definition of Privacy Rights in Webcasting

The right to privacy in webcasting is the embodiment and extension of citizens' right to privacy on the Internet, which means that citizens' private life, private information, private space and private activities are also protected in accordance with the law in webcasting, and others are not allowed to illegally infringe, know, collect, reproduce, utilize and disclose. If the live broadcast on the Internet does not get the consent of the citizens themselves, especially if they disclose their personal information and private activities without the citizens' knowledge, it is very likely to infringe citizens' privacy rights on the Internet.

3. An Empirical Analysis of the Overall Situation of Bloggers' Shooting Freedom and Citizens' Privacy Conflicts

This article selects live selfies in the bus, live broadcasts of dolls taking naps by kindergarten teachers, live streaming of law enforcement, live streaming into girls' dormitories, live streaming of boys' car windows stuck, boys being live-streamed in Internet cafes, Sun Mou's high-speed rail domination, Mercedes-Benz oil spill, husband A total of 11 cases, including slaps on the face of a wife were broadcast live, a girl was abused on the Internet, and Quan Hongchan's hometown became an Internet celebrity live broadcast site, and the following empirical analysis was carried out on the overall situation of the cases.

3.1. The Time of the Case

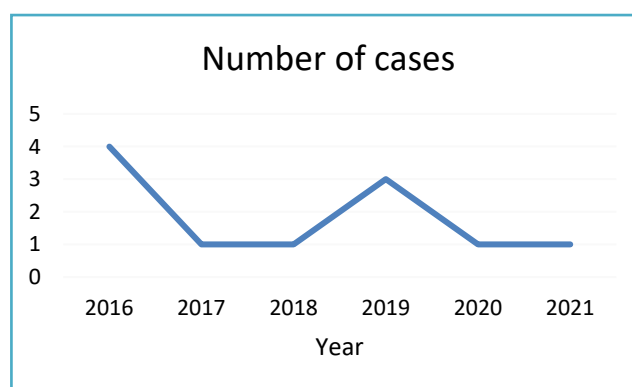


Figure 1. Distribution of Case Occurrence Time

The time of the case is very important to study the trend of privacy violations in webcasting. As can be seen from Figure 1, with the introduction of laws and regulations on privacy rights and

the improvement of people's legal awareness, the phenomenon of online live broadcasts infringing on privacy rights has improved, but infringements still occur.

3.2. The Place Where the Case Occurred

Webcasts violate privacy rights across the country. It can be seen from Figure 2 that the cases selected in this paper involve Anhui, Shandong, Sichuan, Guangdong, Chongqing, Shanxi, Beijing, Henan and so on. It can be seen that the violation of privacy rights by webcasting is unevenly distributed in various provinces and cities.

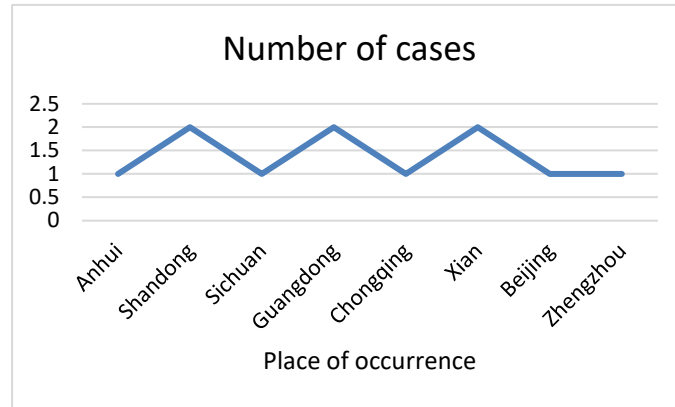


Figure 2. Location of the Case

3.3. The Place Where the Case Occurred

Regarding the places where the cases occurred, some occurred on public transportation such as buses and high-speed rails, some occurred in business places such as Internet cafes and 4S stores, and some occurred in public areas such as schools or roadsides. In general, since the nature of webcasting is unlimited space, the place where webcasting violates privacy rights is not limited.

3.4. Case Damage Types

Through the analysis of eleven cases, it can be seen that the damage types of webcasting are also varied. However, it can be roughly summed up as professional bloggers infringing on the right to privacy in order to gain traffic and attract attention; ordinary people infringe on the right of privacy by sharing their own knowledge based on fun or good intentions; administrative organs live broadcast for the purpose of publicizing the law, thereby infringing on the right to privacy of citizens. That is, as shown in Figure 3, ordinary citizens may be more likely to unintentionally violate the privacy rights of others during live broadcasts.

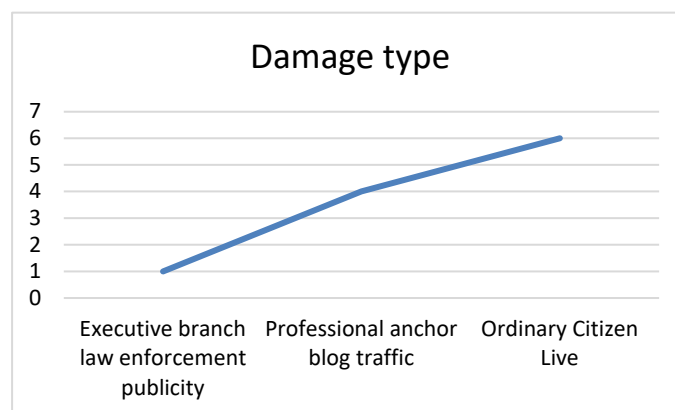


Figure 3. Distribution of Damage Types in Cases

4. Analysis of Key Legal Issues in the Case of Blogger's Freedom of Photography and the Conflict of Citizens' Privacy Rights

4.1. Legal Subject and Legal Relationship

There are three legal subjects involved in the violation of citizens' privacy rights by online live broadcasts, namely, the live broadcasters who use social media to shoot and disseminate live information, namely social media users; the live broadcasters who passively participate in the online live broadcast without their consent; Live broadcast is a network service provider that provides a communication platform and technical support.

During the live broadcast, social media users may intentionally or unintentionally disclose the personal information of the live broadcasters to the public, either to attract traffic for bloggers' attention, or for their hobbies. All the information that the live broadcaster is unwilling to disclose, which is harmless to social interests and does not violate the law, belongs to personal privacy and enjoys the right not to be infringed on their privacy rights. Therefore, the live broadcaster may infringe the privacy of the live broadcaster. At this time, the social media user belongs to the infringing party, and the live broadcaster belongs to the infringed law. This is a manifestation of the conflict between the freedom of speech of social media users and the privacy rights of other citizens, and reflects the boundaries of freedom of speech.

When infringement occurs, network service providers provide network platforms and technical support for social media users to live broadcast. Therefore, the network service provider may bear indirect tort liability for providing assistance or management for live broadcast. Network service providers have the obligation to review the content uploaded by live broadcasters, and also take into account the transmission equipment and mechanisms, and the obligation to broadcast warnings. If citizens' privacy rights are violated due to online live broadcasts, after notifying the platform to delete them, the network service provider has the obligation to take the inappropriate or illegal content offline. Of course, if the network service provider directly participates in the provision of live content, it becomes the subject of direct infringement of citizens' privacy rights, and will bear the direct infringement liability just like ordinary social users.

4.2. The Principle of Imputation

The rules and principles applicable to the live broadcast subject infringing the privacy rights of other citizens are the principle of fault, so it needs to have the general elements of tort liability, that is to say, it needs to have four elements: illegal acts, damage facts, causality and subjective fault.

The principle of fault is also applicable when network service providers infringe on citizens' privacy rights. The network service provider has objectively participated in the violation of citizens' privacy rights in every live broadcast, and has already possessed the objective elements to pursue its responsibility, and what is lacking is only the subjective element, that is, applying the principle of fault to pursue its tort liability.

According to the "Civil Code", if a network user commits an online infringement, the right holder has the right to notify the network service provider to take necessary measures such as deletion, blocking, and disconnection. After receiving the notice, the network service provider shall take necessary measures in a timely manner; if the necessary measures are not taken in a timely manner, the network user shall be jointly and severally liable for the enlarged part of the damage. This provision is also known as the "safe haven" principle for online platforms. The safe harbor rule provides protection for network service providers who meet certain conditions to infringe liability, so as to promote the development of network services. Although the safe harbor principle provides a certain degree of protection to the behavior of network service providers, network service providers cannot abuse the safe harbor principle to infringe

on citizens' privacy rights. On the contrary, network service providers should consciously undertake the obligation to monitor and exclude infringements.

5. Suggestions for Resolving the Conflict between the Freedom of Photography of Bloggers and the Privacy Rights of the Masses

5.1. Legal Aspects

Although the "Civil Code" has been promulgated, there is no regulation about the privacy rights of public figures. The author thinks that we should start from the basic terms of the general privacy rights and set up the privacy rights of public figures as special clauses. The clause should consider the following three aspects: First, clarify the concept of the privacy rights of public figures. The first difficulty in protecting the privacy rights of public figures is that there is no relevant definition in law. Therefore, if the relevant content is added, the relevant definition should be added first. Second, distinguish and protect the privacy rights of public figures. There are many differences in the content of privacy rights of various public figures, and corresponding protection measures should be taken according to the corresponding differences and characteristics. For example, political public figures emphasize the relevance of public interests, and their income, the employment status of their children and spouses, and their entry and exit should be reported in a timely manner. It also reflects the relevant content. As for the property disclosure system, although many scholars have called for transparency and disclosure, so far, many cases in my country for the disclosure of officials' property have not been approved, which shows that the system still needs a certain period of time to develop under China's national conditions, do not act too hastily. Social public figures relatively highlight the boundaries of their own privacy, while objective public figures tend to gain a high degree of attention and influence in society. Commercial public figures, when they decide to enter the business world, have decided to sacrifice part of their privacy in order to maintain the image of the company. Therefore, when considering the scope of privacy protection for such public figures, they should consider disclosing their own reputation and other basic circumstances or major issues. Changes are enough to hinder the business operation, and the scope of such disclosure is limited to the business scope. Literary masters, because the public has high requirements for their morality, matters related to the authenticity of personal information and academic fraud can be considered as public matters. Entertainment, performance, and sports stars are based on general privacy protection. If it is related to public interests, such as problems with the advertised products, or there is evidence that for-profit people set up false propaganda, they can be considered as openable matters. To sum up, considering that there are different types of public figures to protect their privacy rights, it is reasonable to implement different boundary criteria, scope and practice norms. Considering the above points, the following aspects can be regulated: First, the privacy rights of public figures cannot be illegally invaded, disseminated, distorted or interfered without their consent. Second, when defining whether a specific privacy matter falls within the scope of a public figure's right to privacy, the public figure's work nature, popularity, the way to obtain the privacy matter, and the relationship between the nature of the privacy matter and its work should be comprehensively evaluated. Third, in the trial of "involuntary ephemeral" public figures, in principle, the general right of privacy is used for protection. Thereafter, if the public figure continues to use his popularity to obtain specific benefits from the society, the public figure will be transformed into a general public figure. For matters related to the right of privacy, please refer to the second term.

5.2. Social Media Users

Raise legal awareness of social media users' online privacy rights. Citizens of our country have very weak legal awareness in the protection of Internet privacy rights. When being broadcast live, although citizens feel unhappy, they do not realize that their right to privacy has been violated, or although they realize it, they never think about taking up legal weapons to protect their privacy rights. Social media users also lack full awareness of respecting the privacy rights of others online, and often violate the privacy rights of others in live webcasts. In response to this situation, Chinese government departments should play a positive guiding role and take the initiative to carry out education and publicity work on the protection of citizens' online privacy rights. In addition, citizens should respect the legitimate rights and interests of others in their daily Internet operations, develop good Internet habits, and do not arbitrarily involve infringing on others' private information. In addition, citizens also need to learn and understand the laws and regulations about privacy protection and maintenance, and improve their awareness and ability to protect their own privacy, so as to protect their legitimate rights and interests.

5.3. Webcasting Platform

5.3.1. The Online Live Broadcast Platform should have Corresponding Subject Qualifications

As the carrier of online live broadcast activities, the network platform has objectively participated in the violation of citizens' privacy rights. Therefore, corresponding regulations should be carried out on the online live broadcast platform. Engaging in online live broadcast business activities should be licensed, and only the online live broadcast platform has the subject qualification, which facilitates the supervision of relevant government regulatory departments and helps protect the privacy rights of citizens in the online live broadcast. Therefore, the first step in webcasting needs to be resolved whether the webcasting platform is qualified to operate. If market entities want to engage in business activities, they must be approved by the relevant competent authorities and obtain legal qualifications for business operations. Therefore, the online live broadcast platform should be approved by the relevant authorities and have the corresponding subject qualifications.

5.3.2. Increase the Intensity of All-round Supervision

In the past few years, online live broadcast platforms have sprung up like bamboo shoots after a rain. If the privacy of citizens is leaked through the online live broadcast platform, it will cause incalculable harm to the infringed citizens. Therefore, the rise of webcasting has brought greater challenges to the protection of our citizens' privacy rights. If there is no legal regulation and supervision of online live broadcast, it will seriously affect the public order and good customs, and bring a bad atmosphere to the society. At this time, it is extremely important to prevent online live broadcasts from infringing on the right to privacy, and supervision from the source can more efficiently prevent the occurrence of infringements. The cost of real-time, effective and all-round dynamic supervision is lower than the cost of damage after infringement, and it can better protect the rights and interests of citizens. For the supervision of webcasting, it is necessary to take measures according to local conditions, that is, to formulate effective measures in combination with the characteristics of webcasting, such as raising the access threshold of webcasting users, and real-name management of webcasting users. If the live broadcast user repeatedly violates the privacy rights of citizens in the live broadcast, the live broadcast user will be pulled into the "blacklist". The webcasting platform should not only formulate a series of industry codes of conduct for webcasting practitioners, but also comprehensively supervise the behaviors in webcasting through various methods such as network technology and manual screening.

6. Conclusion

In recent years, the vigorous development of webcasting has exposed citizens' privacy to greater exposure risks, so the protection scope and boundaries of citizens' privacy rights also need to be continuously expanded. In our country, whether in the field of public law or private law, there are very few direct regulations concerning the right of privacy. The protection of citizens' privacy rights in online live broadcast is not enough, which brings great drawbacks to the protection of citizens' online privacy rights. There are more and more cases of citizens' privacy rights being violated in online live broadcasts, and the protection of citizens' online privacy rights has become particularly urgent.

To solve this problem as soon as possible, not only the legislative progress is needed, but also the improvement of citizens' legal awareness and quality. In order to improve citizens' awareness of online privacy rights, the government should increase the publicity of the importance of citizens' protection of their own privacy rights, and call on citizens to develop good online behavior habits and respect others' online privacy rights. The government should also carry out strong supervision on online live broadcast platforms, and should issue relevant laws as soon as possible to regulate the live broadcast content of live broadcast platforms, and strengthen the supervision of privacy protection contracts formulated by live broadcast platforms. Only when all parties form a joint effort, can citizens' privacy rights in online live broadcasts be better protected.

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