

An Empirical Study of Privacy Protection Cases in the Era of Big Data by Civil Law

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Abstract

In line with the changing background of The Times, the connotation of privacy is constantly enriched and expanded. However, it is not a commodity that can be bought and sold at will. However, more and more privacy infringements and disputes occur accordingly. There are many vacancies in the civil law protection in this aspect. This article researches on this. The first part is the overview, introduces the research background and significance, and briefly analyzes the characteristics of privacy in the era of big data. The second part is the use of actual cases to introduce the status quo and existing problems of privacy protection by civil law. In the face of the situation that the definition of personal information right and privacy is to be clarified, the legal protection of privacy is not in line with big data, the identification of tort liability is not clear and the remedy way is not perfect, the lack of special and systematic legislative protection, etc. Corresponding measures should be taken to clarify the boundaries of personal information right and privacy, legal protection of privacy and industry self-discipline protection, improve the tort liability and right relief mechanism, develop a special and systematic legal protection system of privacy, so as to improve citizens' awareness of privacy protection, promote the civil law protection of privacy under the background of big data.

Keywords

Privacy; In the era of big data; Civil law protection.

1. Overview

1.1. Background and significance of the research

With the rapid development of Internet technology, people have entered a never-before-seen information era -- the era of big data. Data has become an indispensable and important factor in people's life and work. It plays an immeasurable role in all walks of life and various fields. Big data has changed our way of life and brought great convenience to people at the same time, but also produced many problems, so that the protection of citizens' privacy has been seriously challenged, such as harassing phone calls, fraudulent information, junk mail and so on appear in our electronic software one after another. Identity information, website password, home address, personal photos have also been improperly used and spread by some criminals..... Have become a means and weapon to violate our right to privacy, so the legal protection of privacy in the era of big data is very important. However, the development of big data is both a challenge and an opportunity for the protection of privacy. At present, the protection of privacy is not independent in China, and there are no laws specifically aimed at the right to privacy and personal information. In addition, citizens' awareness of privacy protection is weak, the identification of tort liability for privacy is not clear, and the remedy is single. To sum up, the protection of privacy law in the era of big data is urgent. We should combine various forces, keep pace with The Times and combine the protection mechanism and system with big data technology, and make joint efforts to effectively protect the privacy of citizens.

On the one hand, through the study of this paper, the existing civil law protection of privacy can be summarized. In the background of the era of big data, people's research on the legislative protection of privacy has increasingly become an important research field. From the perspective of practical application, how to carry out civil law protection of privacy in the era of big data is interpreted. It can make the public deeply realize the importance of privacy protection, effectively protect their rights and use legal means to solve problems in the face of infringements. On the other hand, through the research of this paper, the overall analysis of the protection of the privacy law in the era of big data from various angles, and according to the existing legal system and content of the exploration, concrete combined with typical cases to find the shortcomings, from the theoretical aspect of promoting the privacy legislation and the improvement of the related relief mechanism. And combined with big data technology to build a scientific and unified protection system of the civil right to privacy, and finally achieve effective protection.

1.2. Characteristics of privacy in the era of big data

1.2.1. The subject of privacy infringement is diversified

With the rapid development of big data technology, the propagation speed of citizens' personal information increases. Coupled with the non-real-name system, many Internet users are accustomed to Posting or disseminating some statements and information anonymously or using their online names. These people, often in the way of "anonymous", carry out verbal attacks in real life or online, with the help of high-tech means to collect, leak and disseminate others' privacy. In these cases, the general public, network operators, government agencies, commercial companies... Are likely to become the subject of privacy infringement.

1.2.2. The scope of the object of privacy infringement expands

In the past, people's cognitive concept, the violation of citizens' privacy refers to those we do not want to let the outside world know or public information is illegally collected, used and spread by others, but now with the rapid development of Internet technology, electronic products, the scope of the object of privacy is constantly expanding, its enrichment in all aspects of our lives, as small as diary, family status, To browsing history, account password, location access, as big as state secrets, everything that can be recorded by data can be involved in the privacy of citizens.

1.2.3. It is difficult to identify the right to privacy tort liability

The advent of the era of big data has brought many problems, one of which is privacy infringement. As citizens often engage in civil activities in an anonymous way, their behavior has become more secretive, and privacy infringement has become easier and more common. However, big data makes the subject of infringement diversified and complicated. It is difficult to find out who carried out the tort, and it is difficult to find out the causal relationship between the damage result and the behavior. The lack of these conditions makes it impossible to identify the tort liability in detail, and also makes it difficult for the infringed to obtain effective relief.

1.2.4. The right to privacy has dual attributes

With the continuous development of social economy and the progress of science and technology, the original business model has been changed. More and more people exploit the economic benefits of privacy rights by exploiting the loopholes of the Internet, and obtain huge profits from it. Then in this process, the implementation of these behaviors will inevitably produce irreconcilable contradictions with personal privacy, but also bring us unprecedented challenges and risks. Therefore, once the privacy right of citizens in the era of big data is violated, it will not only bring us physical and psychological harm, but also cause economic losses of citizens. Therefore, the right to privacy has the dual attributes of personality right and property right.

2. Current situation and problems of civil law protection in judicial cases of privacy in the era of big data

2.1. Current situation of relevant judicial cases

Close installation of visual doorbell can constitute infringement of neighborhood privacy -- face recognition device infringement of neighborhood privacy case. The original defendant is living in the same community before and after the building of the residents, the nearest distance between the two is not more than 20 meters, the defendant in order to observe their own security situation, in the property has been installed in the building monitoring on the basis of the door installed a face recognition, can take photos and video and automatic storage of the visual doorbell, its location is right to the plaintiff and other neighbors' bedrooms and balconies. The plaintiff believes that the defendant can control the visual doorbell through electronic devices, long-term surveillance of our house, violation of their own privacy to disturb their own life, so the defendant sued to the court. From this case, it can be seen that when the use of Internet technology conflicts with the legitimate rights and interests of citizens' privacy, the right to privacy should be given priority protection, which is conducive to the legitimate and standardized use of high-tech products, so as to avoid the infringement of citizens' privacy. As society enters the era of big data, the connotation and scope of privacy rights are also changing compared with the traditional right of privacy. The scope of protection of privacy rights is expanding. What was not considered to be the right of privacy can now be included in the protection scope of privacy rights after analysis. The traditional right of privacy emphasizes the right of personality. In the era of big data, the right of privacy contains two attributes of personality right and property right, which has economic value. If the right of privacy is infringed, it will not only cause spiritual damage, but also cause economic losses. In addition, with the progress of science and technology in the era of big data, the risk of privacy disclosure of citizens is increased, and the means of infringement are more sophisticated. Compared with the traditional era, it is more difficult to investigate the subject of infringement and the consequences of damage.

Pang Mou and Beijing Qunah Information Technology Co., LTD. And other privacy disputes appeal case. Pang ordered a ticket to China Eastern Airlines Co., Ltd. through Qunar, a website affiliated to Beijing Qunah Information Technology Co., LTD. The website recorded Pang's name, ID number and mobile phone number in detail. One day, Pang received a text message from an unknown source, stating that the flight had been canceled due to a mechanical problem. After contacting staff, Pang verified that the message should be a scam. However, Pang did not leave Lu's mobile phone number when she commissioned Lu to buy the ticket, so Pang believed that Quda and other companies had leaked their private information and demanded them to admit their mistake and pay compensation. After hearing the case, the court held that China Eastern Airlines and Qunar were highly likely to have leaked Pang Lipeng's private information and were at fault, so they should bear the corresponding tort liability for violating the right to privacy. With the development of science and technology and the spread of information, the protection of citizens' privacy rights has become a common concern of the society. This case is a dispute caused by online ticket purchase involving the violation of citizens' privacy rights by relevant companies and platforms. The parties have distinct positions, and the focus issues are very typical and representative. In the era of big data, individual and isolated personal information can be easily integrated and collected by technology. Once this information is leaked out, it will seriously damage citizens' right to privacy and become the most convenient way to violate citizens' right to privacy, and the consequences will be more profound. Therefore, in the face of this difficulty, we should be flexible and changeable, adapt to the rapid development of technology, but also pay attention to the construction of the network environment, learn to balance and coordinate the interests of all aspects.

2.2. The existing problems in the protection of the civil law of privacy in China

2.2.1. The definition of the right to personal information and the right to privacy needs to be clarified

Privacy means that citizens do not want to be disturbed in their private life and do not want their private information and activities to be known by others, emphasizing privacy. The right of personal information refers to all kinds of information that can identify a citizen's personal identity alone or in combination with other information, including but not limited to ID card number, fingerprint, facial recognition information, etc., which has strong identity identification. There is a close relationship between the right of personal information and the right to privacy, whose subject and content are overlapped and crossed, but they cannot be arbitrarily identified as the same. A clear definition of its connotation, scope of application and other aspects is more conducive to the protection of the legitimate rights and interests of civil subjects.

2.2.2. The protection of privacy rights fails to be in line with big data

With the rapid development of modern society and continuous progress of science and technology, information explosion generates massive data, and people communicate more and more closely on the Internet. At the same time, all kinds of information of citizens also keep leaving traces on electronic devices, which will be used by those criminals if they make a little mistake, thus posing a threat to the privacy of civil subjects. However, the protection of privacy in China is mostly indirect and the scope of protection is too narrow, which does not adapt to the characteristics of big data such as multi-dimension and comprehensiveness. In addition, in the face of super information collection ability in the era of big data, the abuse of other people's information becomes common. In this context, once the privacy of citizens is violated, the consequences will be unimaginable, and the previous prevention and protection measures appear to be more inadequate.

2.2.3. The identification of tort liability is not clear and the remedy way is not perfect

In the era of big data, due to the diversification of data sources and use, some merchants, network operators, government agencies and other subjects use a variety of means to collect, disseminate and utilize citizens' personal information, such as through search keywords, user authorization and so on. Complicated data, complex personnel composition, secret means and so on increase the possibility of infringement of citizens' privacy, privacy is often in conflict with freedom of speech, the right to know, and once the infringement occurs, it will be difficult to effectively protect rights due to the infringement subject can not be identified, the causal relationship between the damage results and behavior is unclear and the damage consequences can not be quantified. In addition, the remedy of privacy in China has a single approach, a loose system, and public relief, private relief and industry self-discipline cannot be organically integrated, leading to the failure of these remedies, which also fully reflects the inadequate protection of privacy.

2.2.4. The lack of special and systematic legislative protection

According to statistics, up to now, China has no special and systematic laws and regulations on the protection of the civil law of privacy, which is only involved in some relevant provisions of laws and regulations, normative documents, etc. However, it is relatively scattered, with insufficient legal effect and enforcement force, and has not formed a complete protection system. In recent years, with the increase of privacy infringement cases, the public attaches more and more importance to the protection of privacy right. Although the current legislation reflects the spirit of privacy protection, it does not protect privacy as an independent right, thus weakening the role of legal protection of privacy right in the era of big data.

3. Suggestions on the protection of privacy law in the era of big data

3.1. Clarify the boundary between the right to personal information and the right to privacy

For a long time, the boundary between personal information and privacy has not been accurately distinguished in China, but to clarify the relationship between the two can more accurately and comprehensively protect the legitimate rights and interests of citizens. First of all, in the nature of rights, privacy is mainly a kind of personality right, with the development of big data, its property rights have gradually been paid attention to; The right of personal information is a comprehensive right with both spiritual and property attributes. In addition, the right to privacy emphasizes "privacy" and does not want to be known by others or disclosed to the public. Its specific forms are diversified. The right of personal information is mainly expressed as the carrier of information recording. In terms of content, the right to privacy focuses on not knowing personal secrets and does not emphasize the use of them. The right of personal information emphasizes on the control and use of information, which has initiative. Finally, at the level of protection intensity, if you want to know the privacy of citizens, you must obtain the explicit consent of the right holder, not the implied consent. The right to personal information can be in two ways.

3.2. Privacy law protection and industry self-discipline protection

The generation and development of big data technology has two sides, bringing convenience to us but also causing a lot of harm. In the face of new changes and new situations, the legal protection of privacy should also have new methods and new measures. In this context, we should focus on the regulatory effect, comprehensively improve the ability to supervise according to law, and keep the boundaries of the legal mobile phone and the use of personal information of the whole people. Resolutely safeguard citizens' privacy rights. Competent authorities have strengthened supervision over the protection of the right to privacy, set up a clear punishment system, and strictly enforce the law when enterprises and social organizations violate citizens' right to privacy, so as to effectively implement the legal protection of citizens' right to privacy. Internal supervision should also be carried out, if the relevant authorities can not take advantage of their position to harm the privacy of citizens to gain benefits; Departments should strengthen exchanges and communication, improve the efficiency of law enforcement and supervision, clarify the scope of rights and obligations, and avoid empty positions, failure to do practical work and buck-passing.

In addition, corporate social responsibility should be clarified to promote self-regulation in all industries. With the rapid development of market economy in the era of big data, the industry should not slack off in self-regulation of privacy protection. In terms of industry self-regulation of privacy protection, China can learn from the experience of the United States and Germany, implement loose market policies, mainly rely on the self-restraint of network users and effective supervision of industry associations, and find a balance between the protection of users' privacy and the development of the information industry, so as not to let the industry illegally collect and use citizens' personal information for economic interests. Strictly regulate the behavior of network users and other subjects. Abide by relevant industry norms. To assume certain social responsibilities, while providing services for citizens to fulfill their obligations, further practice the real-name system, fully respect the user's choice in the granting of software permissions, prohibit binding use, and protect their privacy from infringement. However, industry self-regulation is not omnipotent, and it is easy to fail under the influence of market regulation. Therefore, the government should play its due role in it. Taking the government as the leader and industry self-regulation as the supplement, the two pronged approach will surely produce twice the result with half the effort.

3.3. We will improve the tort accountability and right relief mechanisms

In accordance with the corresponding principle of "who claims who provides evidence" in litigation, it is difficult for the infringed party in the vulnerable group to effectively safeguard its legitimate rights and interests. In view of the extensive and complicated subject of infringement in the era of big data, as well as the multiple changes and hidden means of infringement, if there is not a complete set of tort accountability and right relief mechanism, We cannot effectively protect citizens' right to privacy. On the one hand, we need to start from the source, formulate clear infringement rules and legal consequences for individuals, relevant industries, government agencies and other subjects, and promote fair and efficient law enforcement. On the other hand, there are often many victims when privacy rights are infringed, and a single person has weak power and high cost, and some people are afraid to give up the trouble to protect their rights. In view of this, China should learn from the practices of the United States and Germany, introduce the mechanism of class action and public interest litigation, reduce the cost of rights protection, expand the influence, produce warning and learning effect, and further enhance the ability of law to protect the right of privacy.

3.4. Formulate a special and systematic legal protection system for the right to privacy

First of all, privacy protection concerns every one of us. We should further enhance citizens' legal awareness of privacy protection. However, due to the rapid development of society and the continuous updating and application of Internet data, relevant civil subjects have not fully established their awareness of privacy protection, which allows some criminals to take advantage of the opportunity to enter. Citizens should adapt to the development of the era of big data, establish the concept of privacy protection, enhance the ability to learn the legal protection of privacy; It is also necessary to strengthen publicity efforts, let the elderly and children also participate in the formation of an all-round protection umbrella, reduce the possibility of infringement, and do not give the illegal elements the opportunity.

Secondly, in order to respond to the public's increasingly strong demand for privacy protection, China should further improve the legislation, build a scientific and unified legal protection system of privacy, with civil law protection as the central idea, and other related activities carried out simultaneously, so as to ensure that citizens' privacy rights are not infringed. In addition, while clarifying the scope and type of the protection of the privacy law, it should be combined with the characteristics of the era of big data to keep pace with The Times. In addition to strengthening the study of the protection of privacy, the legislature should also timely introduce concrete and feasible laws and regulations and related judicial interpretations.

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