

On the Legal Regulation Dilemma of Network Platform Using Big Data to Infringe Citizens' Privacy—From the Perspective of Big Data Murder

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Abstract

With the popularization of computers and smart phones, the number of Internet users in China is increasing, and network technology is also developing. The resulting big data and related technologies have brought a series of economic benefits. However, there are some network platforms that only seek profits and ignore business ethics. They use big data to kill users.

There are different opinions on the concept of big data in China. However, there is no doubt that the network platform using big data murder seriously violates the privacy of consumers, and causes consumers to suffer property losses, resulting in adverse social impact.

Although there are many laws to protect citizens' privacy in our country, there is still a dilemma of legal regulation for the infringement of citizens' privacy by network platform and the use of big data. The reason is that big data as a new technology, the original law inevitably lags behind; moreover, due to its high technical requirements, ordinary citizens have great difficulties in perception and proof of big data familiarity killing due to information asymmetry.

Keywords: network platform, big data, killing, privacy

1. Background

1.1 The Number and Increment of Netizens in China Is Large

The 45th 'China Internet Development Statistics Report' was released in 2020, which shows that the total number of Internet users in China has reached an alarming 904 million by March 2020, and about 7.58 million new Internet users have been added throughout 2020. It also points out that China has a high Internet penetration rate of 64.5%.

1.2 Big Data Access to Civic Information Is Also Evolving

Among them, 710 million active network users have brought about an increasing surge in consumption capacity, resulting in the emergence of network precision marketing, which has brought the dilemma of legal regulation of network platform using big data to violate citizens' privacy. The network platform can push related advertising products according to the preferences of network users. The reason behind it cannot be separated from the network tracking technology. Through the collection, analysis and processing of personal data, cookie uses big data analysis to 'remember' the preferences of network users, and even understands everyone's 'life trajectory' and peeps at the privacy of network users, which can not help but arouse public attention to the possible infringement of their personal privacy.

1.3 Citizens' Growing Awareness of Privacy Protection

At the end of 2018, based on the results of big data platform data and the measurement of social influence of public opinion, the lack of personal information protection ranks second among the top ten hot spots of consumer rights protection sorted out jointly by China Consumer Association and People's Network Public Opinion Data Center. China Consumer Association released the '100 Apps Personal Information Collection and Privacy Policy Evaluation Report' also shows that about half of the 100 Apps tested in China have privacy provisions that are beneficial to the website and do not meet the standards. And there are 91 Apps that collect

personal information beyond the scope of network users and violate privacy.

2. Literature Review

The study of privacy in our country started later than the western developed countries. Professor Zhang Xinbao pointed out in the 'legal protection of privacy' that 'privacy is a right of citizens' private life and personal information is not illegally disturbed, collected and used by others. Professor Wang Liming believes that privacy is a kind of personality right enjoyed by natural persons to dominate their personal information, private activities and private areas unrelated to public interests. It is also considered that the subject of the right to privacy can only be a natural person, which is not only a right of active domination, but also a negative right not to be infringed. The Civil Code defines privacy as 'the peace of private life of natural persons and private spaces, private activities and private information that do not want to be known to others', strengthening the protection of personal privacy. In the early 21st century, the development of information economy, some scholars began to pay attention to the study of privacy under the network environment, Li Decheng in the 'network privacy protection system' that 'network users have the right to protect their personal privacy is not known to others, illegal collection and disclosure of a personality right. In Zhang Xiulan's "Research on the Protection of Network Privacy," it is considered that network privacy is not a legal term, but an extension of traditional privacy from a theoretical point of view, mainly including the personal data of network users and the peace of private life.

The most representative definition is that the network privacy right refers to a personality right that citizens enjoy private life peace and private information on the Internet, are protected according to law, and are not illegally infringed, collected, processed, used and disclosed by others. This definition covers all the contents of the privacy right, including the privacy right in the traditional sense, and all the manifestations of the privacy right on the Internet. It is a broad definition of the network privacy right. The author agrees with this view. This view holds that the network privacy right will be treated as a civil right, and the private spatial information and secrets enjoyed by the information subject in the network environment are not infringed and interfered by others. Unless the network users themselves allow, they can use their personal information. At present, in daily life, the infringement of the privacy right of the network users has occurred from time to time, and it is more common in the free environment of the network environment. Therefore, the protection of the privacy right of the network users is imminent.

In addition, China's Civil Code responds to privacy and personal information, and further strengthens the protection and regulation of privacy and personal information, which is also the requirement of the progress of the Internet era. They are all personality rights that only natural talents can enjoy. The close relationship between the two is that private information belongs to privacy, is protected by privacy, and can also apply to the legal provisions of personal information protection. In the context of the development of information technology, China introduced the 'China Internet targeted advertising user information protection framework standard' in 2014, defined the network precision marketing as using the Internet technology to collect the relevant behavior information of network users and predict the interest preferences of network users, and accurately advertise the mobile devices of network users. The rapid development of network precision marketing mode will inevitably lead to the infringement of network users' privacy. At present, there are few laws and regulations that can be applied to the protection of network privacy in network precision marketing in China, and the industry self-discipline of websites is not mature enough. There are few discussions on what kind of protection mode should be applied in China. Therefore, the focus of this paper is to construct the privacy protection mechanism in network precision marketing. In short, the right to privacy in network precision marketing is the product of the development of information age, to recognize its unique characteristics.

3. Right to Privacy in the Era of Big Data

3.1 Definition of Big Data

At present, there is no unified conclusion about the definition of big data in academia, and many scholars have their own opinions on this. Here, this paper adopts the interpretation of the State Council of China on the Action Plan for Promoting the Development of Big Data, that is, big data is a data deposition that stores a large amount of personal information, and its main characteristics are fast access, rich types and high economic value.

3.2 Right to Privacy in Big Data Era

Professor Wang Liming believes that privacy is a kind of personality right enjoyed by natural persons to dominate their personal information, private activities and private fields unrelated to the public interest. The personality characteristics of privacy in the traditional era are obvious. In general, the harm of privacy disclosure is mainly manifested as the damage of human dignity.

But the infringement of privacy in the era of big data will bring more damage to the victims. In the era of big data, users often leak personal privacy unconsciously. For example, sharing life on social media may reveal information such as personal travel and geographical location; connect free WIFI in public places, may leak mobile phone models, phone numbers and other information; default or direct neglect of 'requesting authorized user information' pages when landing a Web page or using social applications such as WeChat. The damage caused by privacy disclosure not only damages human dignity, but also usually causes direct economic losses. One of the most well-known examples is 'big data murder.'

3.3 Big Data Killing

Different scholars have different views on the "killing familiar" of big data. Ding believed that the so-called "killing familiar" of big data refers to the same goods or services provided by operators, and the price seen by old users is much higher than that of new users. Zhang Yunyun pointed out that big data "killing acquaintances" is the behavior of operators who use the Internet to conduct business activities to analyze the price sensitivity and consumption ability of different users through big data statistics, retrieval and analysis techniques, and finally achieve accurate portraits of consumers and the pricing of thousands of people. Liu Chaofan defined the big data "kill familiar" as the business entities of the Internet platform. Through a series of big data technologies, he collected and excavated a large number of consumer personal consumption data, analyzed the consumption habits and consumption capabilities of different subjects, and constructed unnecessary user portraits. He divided users into different levels through different portraits, and used different prices for different levels of customers, which led to the phenomenon that the price of old users was higher than that of new users.

4. Privacy Protection

4.1 Legislative Status Quo

The first is the Constitution. As China's fundamental law, the Constitution stipulates in Article 38 the protection of citizens' human dignity, and the right to privacy is included in human dignity, which provides the basis for subsequent laws and regulations to protect citizens' privacy.

The second is the "Civil Code," and the independent composition of the personality right of the "Civil Code," which is an innovation of China's civil law system and another guarantee for citizens' privacy right. In Article 102, Article 103 and Article 104 of the "Civil Code," it not only clarifies the protection of citizens' privacy right, but also lists many violations of privacy right.

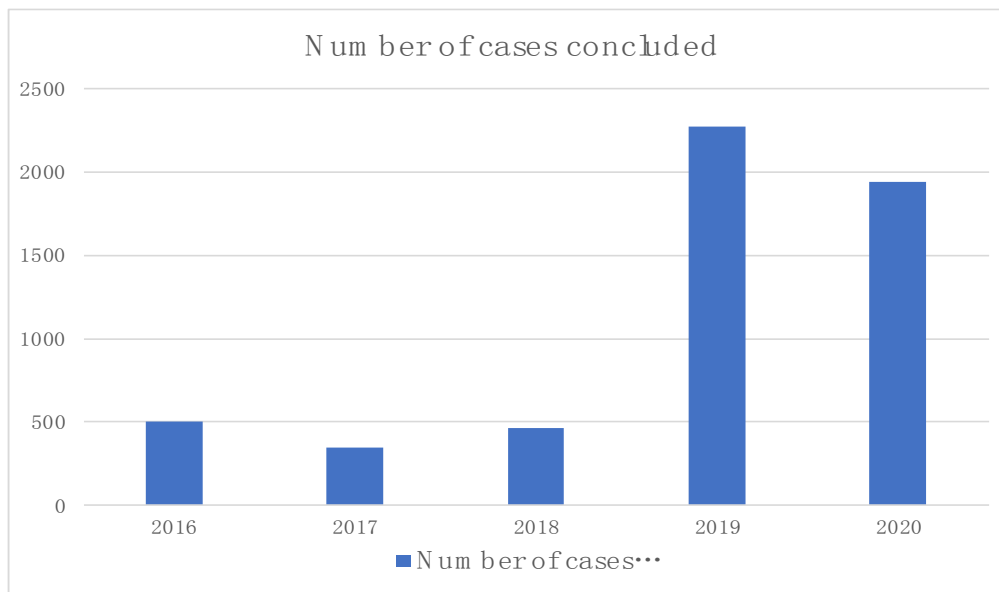
Then came the "Law on the Protection of Personal Information of Citizens" to be implemented on November 1, 2021. In the "Law on the Protection of Personal Information", it not only requires the protection of personal information of citizens, but also makes detailed provisions on the rights, obligations and responsibilities of network managers.

Finally, the judicial interpretation and some related legal documents, such as 'the Supreme Court on the use of information network infringement of personal rights and interests of civil disputes applicable law provisions', 'the Standing Committee of the National People's Congress on the maintenance of Internet security decisions' and so on, have made relevant provisions to protect the privacy of citizens when using the Internet.

4.2 Case Retrieval

Through the website of Beida Fabao, China Judgment Documents Network and other websites to retrieve cases of network platform infringement of citizens' privacy. Taking 'privacy dispute' and 'network tort liability dispute' as the cause of the case, 'network' and 'company' as the title keywords, and combined with case correlation retrieval, 6148 cases can be retrieved, including 9 typical cases issued by the Supreme People's Court. Nearly forty percent of the cases cited 'Consumer Protection Law'.

According to the division of referee years, the following table can be obtained. It can be clearly seen from the table that the number of related cases increased sharply after 2019.



4.3 The Dilemma of Legal Regulation on Big Data Maturity

The original law is difficult to regulate. Due to the natural lag of law, big data technology as a product of scientific and technological progress in recent years, which contains technical problems exacerbated the lag of law. The exercise of traditional privacy in China is mostly used to protect the dignity of citizens, but big data is used to damage the property interests of citizens by violating the privacy of citizens. Different from the traditional privacy right, the dissemination of private information in the network privacy right also has new characteristics such as immediacy, boundarylessness and irreversibility, and the consequences of network privacy infringement are extremely serious. These are not envisaged in the development of protection of traditional privacy laws, resulting in the original law is difficult to regulate the existing big data murder.

It is difficult to regulate platform exemptions. For example, 'Zhu Ye v. Baidu company infringement case' second instance of Baidu company does not constitute infringement. One reason for the correction was that the company had posted a statement on its website and the parties clicked 'consent' to indicate the terms of consent. The network platform uses big data to kill must first obtain user information, and one way to obtain user information is to request permissions to the user in the 'user agreement', and only when the user's agreement is open to the user, and the user in order to use the platform software, services, can only have to agree and authorize. Many similar cases can be found when retrieving similar cases. In judicial practice, 'consent of the parties' is a common exemption for the network platform, which makes it difficult for judges to define whether the network platform constitutes infringement.

Big data is hard to sense. Network platform based on user browsing web pages, view goods, trading habits, consumption level of data, targeted finishing, and ultimately achieve the 'kill cooked' purpose. In this process, all the behaviors of the network platform are quietly carried out, and high-tech means make it convenient and hidden to violate the privacy of users. Users have no way to know whether their data is collected, or even 'killed'. Torts are so hidden that there are more than 6,000 cases of perceived and prosecuted violations. What is the number of violations in reality?

Big data is difficult to prove. In the case retrieval, it is difficult to prove that users have a certain number of allegations of network platform infringement of privacy. Many cases can not get relief because the plaintiff cannot provide corresponding evidence. The traditional trial according to the principle of 'who advocates, who proofs' burden of proof distribution, however, from the perspective of evidence collection technology, capital and other costs, users as ordinary people, have no ability to provide evidence hidden by network platform with technical means. Therefore, objectively speaking, the law should not and cannot expect to require users to provide evidence to prove that the network platform leaks its privacy information.

It is difficult to define the consequences of damage caused by big data murder and to obtain reasonable compensation. When the network platform violates users' privacy, it not only violates users' personal dignity, but also causes economic losses and mental pain. Network platform in the network users do not know the case of its

'accurate portrait', the price of its sophisticated infringement of user property interests; the personal information is transmitted to the third-party advertisers, pushing advertisements that are difficult to accept, causing users' pain and anxiety, resulting in medical expenses and miswork costs. For example, in the case of privacy disputes between Pang Lipeng and Jonah Company, the court of second instance only decided Jonah Company and Donghang Company to apologize to Pang in the form of announcement. The rights and interests infringed by the parties cannot be compensated.

5. Conclusion

The rapid development of information technology is a "double-edged sword," which brings convenience to people's daily life, but also provides a hotbed for the use of technical means such as big data killing violations of civil rights. When citizens use APPs and browse web pages, due to information asymmetry, even if they are over-obtaining personal information, they cannot know, let alone how to maintain privacy.

Personal privacy is being hit by the flood of big data. Although our country has many laws on privacy, but the protection of network privacy needs more extensive research to form a complete protection mechanism. However, solving the problem of privacy protection in the era of big data is not a matter of discussion on paper. It not only requires the state and the government to carry out legal infrastructure construction at the legislative level, but also requires scholars to conduct theoretical research to conduct a more in-depth analysis of the privacy problems and reasons caused by big data technology in China and to find a more practical solution. In short, the protection of privacy will change with the continuous development of society, which is a process of continuous change and improvement.

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