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Consideration on the Path of Non- original Database Rights Protection

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Abstract

In the current civil and commercial cases involving disputes over the ownership of data, judges tend to use the Anti-unfair Competition Law to regulate and protect the property rights and interests of databases. However, due to the limited scope of adjustment, incomprehensive protection, and other defects of the Anti-unfair Competition Law, the Anti-unfair Competition Law is not sufficient to regulate database rights and interests. In response, the Western countries have adopted special Database Protection Directive which has been transformed into a special protection for databases. There is also a new model of protection under patent laws. In the era of the booming development of big data, the problem of database rights and interests protection urgently needs a more comprehensive legislative solution.

Keywords: Anti-unfair Competition Law, data rights and interests, database, patent

1. Limitations of the Anti-unfair Competition Law in Protecting Data Rights and Interests

The scope of regulation of the Anti-unfair Competition Law is limited. It can only solve the disputes between competitors in specific fields, but it cannot regulate the tortious acts of common persons other than competitors. If common persons illegally copy, steal, and damage the information content of databases, this kind of act will not be regarded as unfair competition. From the perspective of judicial practice of the international community, when determining whether certain actors constitute unfair competition, each country first studies whether the parties thereto are competitive in relation within a certain area of the market. If there is no competitive relationship between the parties, then unfair competition cannot be established. China's Anti-unfair Competition Law is mainly applied to regulate the business operators' acts that violate the provisions of the relevant laws, impair the legitimate rights and interests of other business operators, and undermine the social and economic order. The so-called business operator refers to a natural person, legal person, or other organization that engages in business operation of goods or services for profit. It is not sure whether the Anti-unfair Competition Law can be applied to deal with non-business operators or conduct that is not covered by this Law (Zhou, H.-W., 2019).

In addition, the protection of data enterprises' rights over data through the Anti-unfair Competition Law actually degrades the data rights of data enterprises to a pure economic interest protected by law that can only be recovered when it is infringed in a specific manner. The strength and intensity of the protection provided by the Anti-unfair Competition Law are obviously insufficient (Cheng, X., 2018). This protection method is not conducive to the flow and sharing of data, nor can it sufficiently encourage data enterprises to collect, store, transfer and use more data. In order to better encourage data enterprises to collect, store and use data, and promote the flow of data, the data rights of data enterprises shall be clearly defined in the laws of China, i.e. data enterprises enjoy the right to dispose of all data legally collected, including personal data, which is a new property right in nature independent of personality rights, property rights, creditor's rights, and intellectual property rights.

2. Thinking on the Path of Protecting Data Rights

2.1 Unsuitable for the Current Judicial Situation of Our Country to Apply "Neighboring Right"

The Member States of the European Union vary in their approaches to transforming the Database Protection Directive (hereinafter referred to as the "Directive"). Germany and France incorporate the provisions with special rights into the neighboring rights part, while the United Kingdom and most other countries adopt the approach of separate regulations (Guo, X.-C.).

In general, it is feasible to some extent to transform the copyright instruction by combining it with the copyright

law or separately legislating it to define the special rights. Our country in the introduction of the system of special rights, the separate model of legislation may be more suitable for our country. Although Germany has established a model of special protection of neighboring rights for databases, this model in nature is still a transformation to the <Directive> and still follows the special protection principles established by the <Directive> as a whole. Moreover, the German copyright law system is relatively complete, with relatively detailed provisions on the purpose, elements, time limit and other conditions of the protection of copyright and neighboring rights. Under this situation, incorporating databases into neighboring rights for protection may better integrate with the original system. However, the provisions of the Copyright Law of our country are relatively concise and dry, and the provisions on the neighboring rights system are not perfect. If the special protection of databases is included into the portion of neighboring rights, it is necessary to reshape the neighboring rights system and make detailed and clear provisions for neighboring rights. The legislative cost of this way of revision is no less than that of separate legislation, and it is likely to lead to inconsistency between the revised neighboring rights portion and the original system of the Copyright Law. As a part of copyright law, neighboring rights will inevitably be restricted by the dichotomy of "thought" and "expression". The most valuable part of a database is not its presentation, but the content it contains. We protect the database in order to prohibit others from extracting and reusing the content of the database without permission. In today's highly developed data processing technology, it is not difficult to extract, duplicate and rearrange the content of other people's database. Facing this kind of infringement, the neighboring rights system can not give effective protection to the database, which is the defect of the neighboring rights system as a part of copyright law.

2.2 Protection Models Under the Patent Law

At present, database has not been brought into the scope of patent protection in any country in the world, but the core technology of database production in the modern network environment does meet the requirements of patent law. First of all, database is not excluded from the object of patent law. Because the process of database making includes user investigation, system design analysis, programming and testing. The development of database system is the core of the process of database making, which directly determines the level of database security, the speed of processing information, the compatibility of driver and the capacity of database, and determines the value in use directly. The design of database system is the result of a series of factors, such as computer hardware, computer program, database content, user's structure, and so on. It is based on the use of natural law and scientific truth. Therefore, the database system is also within the protection scope of the patent law.

Besides, the database system conforms to the requirements of the technicalities of the patent law. At present, a database is an aggregate of information, which is carried by computer technology and Internet technology and propagated through server and client terminals. The database information is a collection of logical, physical and storage relationship, which belongs to method patents defined under the patent law.Its producing is not the result of man's simple subjective thinking, nor is it a simple physical phenomenon, but has the technical characteristics of patent law. The innovation and novelty reflected in the making of database system are not obvious to the ordinary technical personnel in the same industry.

Finally, the protection of patent law makes up for the shortage of the protection of copyright law. The patent law can provide protection for the most valuable and core technology in the database, but this part of the technology can not be effectively protected by the traditional copyright law. The protection of computer software in the copyright law is only a simple translation of the computer language of analysis and design in the database, ignoring the core idea. The patent law just overcomes this weakness of only protecting the expression of the work, but not the idea, it protects the expression of the database as well as the idea of the database, so that the functionality of the database is effectively protected. In addition, it is worth noting that the protection period of the patent law is much shorter than the protection period of the copyright law, which protects the private rights as well as the social interests, is conducive to the progress of science and technology, and conforms to the rapid updating of the electronic database (Xu, K., 2017). From a practical point of view, this approach has little impact on the existing legal system, lower legislative cost and higher performance-to-price ratio. Therefore, it is a feasible approach to bring the database into the protection scope of the patent law. In this way, the non- original database will not be excluded from the protection of the law because of its non- original arrangement. As long as the database system structure is original and novel, the rights of the producer of the non- original database can be effectively protected.

2.3 Expansion of the Models of Protection of the Special Rights of Databases

In ruling on database protection cases, the PRC courts deem that the database producer shall have certain civil rights and interests for the input in the database, and admit that such rights and interests shall be protected by law.

The attitude held by this way of thinking is similar to the provisions of the Database Protection Directive of the EU to some extent. In this case, we can separately legislate for the non-original database outside the copyright system, and endow it with special rights, to make up the insufficiency of the current legal framework on database protection in China, and to promote the healthy development of the database industry (Jo, M.-H., 2010).

As the structure of the special rights is based on the concept of protecting investment, the subject of the database rights should be the database producer. To be specific, the subject of the database rights are the persons who make the investment and bear the risks in setting up the database, including natural persons, legal persons and other organizations.

The purpose of the database rights is to protect the investment and efforts made by the database producer. Such rights can directly define the database right holder as the contributor, without taking into consideration the employment relationship.

The object protected by the database rights is the database that is completed as a result of the investment made by the database producer. The object protected by the database rights is the result of such investment, but not the investment itself. Such investment includes the time, money, techniques and energy that the producer has spent on realising the collection, acquisition, verification and validation, demonstration and output of the contents of the database. The collection of information content refers to the cost and effort for collecting and summarising such database information, rather than the cost and effort for creating each piece of data information. Testing and verification refers to the management, verification and updating of the data information existing in the database, including ensuring the accuracy and immediacy of the contents of the database, and maintaining the stability of the structure and presentation of the database. Even if the database does not undergo any substantial significant change, as long as the producer has made substantial investment in the database to ensure the accuracy, immediacy and structural stability of the database, such investment shall be protected by the database rights. Demonstration output refers to the retrieval and transmission of compiled data. Investment in demonstration output, including investment in document digitization, key setting, user interface and layout design, is aimed at facilitating users' access to data.

In summary, given the increasingly prominent issue of database rights in the big data era, and the current legislative situation of the PRC Copyright Law, directly applying the right of service to protect new database rights may not be the best choice. To rely on the patent law to protect database by protecting database system, and refer to the EU Data Protection Directive and separate legislation may be a reference. Meanwhile, it is necessary to strengthen the restriction of industry and business practices, and to jointly encourage and support the trend and environment of development of data rights.

References

Cheng, X. (2018). On Personal Data Rights in the Big Data Era. *Chinese Social Science*, (3).

Guo, X.-C. (2021). Study on Protection Model of Intellectual Property in Database. Research on Database IP Protection Model. *Northern Polytechnic University*. https://doi.org/10.26926/d.cn.ki.gbfgu.2021.000177

Jo, M.-H. (2010). *On the Perfection of the Intellectual Property Rights Protection System of Databases*. Beijing: China University of Politics and Law.

Xu, K. (2017). Analysis of the Intellectual Property Rights Protection of Non-original Databases. *Modern Business*, (4), 176-178.

Zhou, H.-W. (2019). Exploring the Intellectual Property Protection of Non- original Databases. *Henan Science and Technology*, (6), 32-35.

Copyrights