

# **Research on Protection Legislation of Personal Information of China under the Background of Big Data**

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**Abstract:** With the rapid development of network technology, human society has entered the era of big data. The application of big data technology puts forward high requirements for the protection of citizen's personal information. China should draw lessons from the experience of developed countries in personal information legislation, formulate personal information protection law, strengthen administrative management, establish civil damage compensation system, and increase criminal penalties to effectively protect personal information.

## **1. Introduction**

The era of big data is coming to us rapidly. The state regards big data industry as a new economic growth point, and enterprises regard big data as an important commercial resource [1]. Data has penetrated into every industry and become an important factor of production. Personalized and accurate advertising push has become the mainstream mode of Internet advertising. The various favorable policies of the state in the development of big data industry also make the data industry flourishing. Nevertheless, although we are bothered to receive harassing calls, text messages, e-mails and inexplicable door-to-door services every day, we have accepted the fact that we are even enjoying the benefits of big data. We are all enjoying the convenience of precise services in travel, dining, mailing and online search. However, we can only hope for the troubles caused by information harassment. Technical measures are adopted to shield it. At present, the problem of network information security in our country is very serious. Due to the lag of legislation, the relevant network security legislation cannot meet the actual needs of personal information protection. Moreover, the security awareness of our netizens is backward. The problem of personal information and security privacy has become a major bottleneck hindering the healthy development of our network. It can be said that in the future business competition, whoever owns the data resources will have the business opportunities. From the perspective of large data applications abroad, the use of personal data information has been extended to finance, medical health, biological gene and other fields. The United States pays special attention to mining the commercial value of data in the data industry, and even has a data broker industry specializing in data transactions. In industrial practice, data brokers have begun to sell and exchange information. The establishment of a standardized data circulation platform is of far-reaching significance for restraining the black-market information transaction, reducing the harassment of spam information, standardizing data transaction behavior, and promoting the development of the data industry [2].

## **2. Challenges of Protection Legislation of Personal Information in Big Data Era**

### **2.1 The Huge Amount of Information Has Caused Great Trouble to the Legislation Protection of Personal Information in the Era of Big Data**

In recent years, the development of new technologies such as Internet of Things, Cloud Computing and Mobile Internet and the popularization of big data technology are a great change to the traditional Internet to a certain extent. At the same time, the development of these technologies

also poses a threat to the information security of every user. These threats are unparalleled in the traditional Internet environment. The personal information security risks in the information technology scenario far exceed people's imagination. The protection of the right to privacy of personal information has been clarified in the Tort Liability Law of our country. Since then, the protection of citizen's privacy has been officially recognized by law. The leak of personal information causes adverse effects, that is, infringement of personal privacy. However, there is a lag in the legislation of our country regarding the behavior and way of infringing personal privacy by social media platform on the internet. Throughout the laws and regulations of developed countries abroad, the protection of network privacy is relatively perfect. Through the way of single-line legislation, the United States has severely cracked down on the leaking of personal privacy by online social media platforms, and protected personal privacy through industry associations [3].

## **2.2 The Virtual Nature of Information Has Caused Great Trouble to the Legislation Protection of Personal Information in the Era of Big Data**

The era of big data is an era of information explosion. The storage of information is increasing, and the openness of data is stronger. With the advent of cloud computing era of big data, more and more network operating platforms collect user's personal information, and the protection of personal information is insufficient, resulting in the leakage of personal information is very common. At present, the number of netizens in our country is increasing constantly, and modern life is difficult to get rid of the influence of the network. The emergence of Internet mobile payment makes code-sweeping payment an important means of current monetary settlement. Behind this payment, there are huge hidden dangers of personal information protection, such as frequent exposure of personal information leakage due to payment problems, and the secret transfer of personal property. There are countless cases. In the era of big data, communication has become virtual, and information exchanges between people no longer need to face to face. Especially in some mobile payment transactions, the capital exchanges between users are more virtual, and there is also virtual in the collection of personal information. It is no longer necessary to contact entities to get all the personal information of users. There is a certain correlation between the data, and user's personal information can be obtained through a variety of channels.

## **2.3 The Concealment of Information Has Caused Great Trouble to the Legislation Protection of Personal Information in the Era of Big Data**

Many applications require access to the user's mobile phone number, address book number, mobile phone storage and other file information when installing. This hidden information permission requirement makes many users have to agree to authorization, because if the user chooses to refuse the application access permission, it will easily lead to the application cannot be installed or normal use. In this case, personal information is collected and identified in the background of the application. For example, in the process of micro-blog registration, there are some hidden characteristics of personal information leakage. Users can register directly through the micro-blog website to obtain the use account, fill in the registration mailbox, password, nickname and other related information. It can be seen that users must provide a lot of personal information to Weibo before they can open their accounts. Users can enjoy microblogging functions provided by other website programs in various ways when using various application authorizations. These various functions are very popular with users. Users also have the risk of privacy disclosure when using these application authorizations [4].

## **3. Strategies of Protection Legislation of Personal Information under the Background of Big Data**

### **3.1 Personal Information Protection Law**

It is suggested that China adopt a unified legislative model and adopt a unified legislative form to formulate a special personal information protection law. But it does not specify personal information.

It adopts the basic principles and systems stipulated by the Law on Protection of Personal Information, the scope of protection of personal information, the subject of rights and obligations of personal information, and other industries to legislate in a way that prescribes professional norms. Most of the special legislation for the protection of personal information is administrative regulations or rules, while other substantive laws only provide sporadic provisions for the protection of personal information. Specialized legislation at the legal level has only expert proposals. Faced with the urgency of personal information protection in the era of big data and the increasing number of cases of personal information leakage, these laws and regulations cannot effectively regulate it. From the content point of view, most of the regulations are directed at the Internet industry, and do not cover all the subjects who have personal information. The contents of these laws and regulations are not comprehensive on how to collect and utilize personal information by state organs. Because of the need for information sharing among state organs, it is possible for the state to establish a centralized large personal information database. This model can make the personal information protection law both unified and flexible. Many countries have enacted basic laws to protect personal information security. Our country should also face up to the major defects in the legislation of personal information protection, and introduce the upper law of decentralized legislation of leading departments as soon as possible. This will play a very important role in strengthening the protection of personal information. The content of legislation should include the scope of personal information, the right attribute of personal information right, the specific content of personal information right, the legal judgment standard of personal information collection and utilization, the organization of protecting personal information and the legal responsibility.

### **3.2 Administration Legislation Protection**

In the era of big data, it is no longer a hollow idea to control people through personal information processing, but the exponential growth of the total amount of data and the rapid development of data processing technology make this control more powerful. Control may take place not only between government and citizens, but also between business organizations and citizens, or between citizens and citizens, or even between computers and people. The risk of control and being controlled exists all the time, and human autonomy is greatly threatened. Our country's legislation should separate the right of personal information from the protection of privacy and general personality rights. Establishing it as an independent personality right is an inevitable requirement to protect personal information in the era of big data. Personal information right enjoys the rights of the subject, including the right to decide information, the right to know information, the right to correct information, the right to delete information and the right to obtain relief. They should include the right of decision, confidentiality, inquiry, correction, blockade, deletion and compensation claim. These powers of personal information right are unique, including positive powers, such as the right to know, the right to dispose of, the right to correct, the right to claim compensation, and negative powers of traditional personality right, excluding infringement and the right to claim relief. Accordingly, the liability for infringement and legal liability of network information security has also been clarified. Its administrative punishment measures have changed from warning to fines of less than one million yuan, filling the gap of administrative punishment for network operators. From a certain point of view, the personal information protection law is in the primary stage of growth, but its appearance makes up for the legislative deficiencies of personal information protection to the greatest extent, and lays a certain foundation for the determination of relevant provisions in the crime of infringing on citizen's personal information.

### **3.3 Civil Law Protection**

Nowadays, only Article 111 of the General Principles of Civil Law, enacted in March 2017, protects personal information. Personal information of natural persons is protected by law. Any organization or individual who needs to acquire personal information of others shall acquire and ensure information security according to law, shall not illegally collect, use, process or transmit personal information of others, shall not illegally trade, provide or disclose personal information of

others. This provision, for the first time, establishes relevant matters of information protection from the legislative level, which has a great impact on the future legislative work. However, the article aims to protect personal information from the aspect of prohibition of infringement, and does not involve infringement of personal information rights and interests. It is a problem many people encounter. However, the relief channels for civil claims facing such infringement are not smooth, because there is no clear provision of law. After the right of personal information is established as the right of independent personality, specific remedies should be provided for the infringement of citizen's rights and interests in law so as to compensate for the economic losses suffered by citizens' rights and interests in personal information. Many scholars believe that personal information right, as a new type of personality right, has double attributes of personality right and property right. Recognizing the property right attribute of personal information right is an inevitable requirement to respond to the commercial value of personal information in the era of big data. The law should protect all personal information with property rights. Personal information has great commercial value for some market participants, and these values should belong to the subject of information right. Therefore, infringement of personal information rights will inevitably cause economic losses to the subject of information rights. In terms of the amount of compensation, punitive damages can be stipulated, the cost of infringement can be increased, the economic capacity of infringement can be curbed, and the loss of the subject of information right can be effectively compensated.

### **3.4 Criminal Law Protection**

Business entities that infringe on citizen's 'personal information include many real estate, employment and marriage agencies, express companies, head companies, recruitment websites, etc. Even some undesirable express companies will publicly sell courier documents as a sideline. The express delivery industry has also become a major disaster area for leaking personal information of citizens. Therefore, the legislation of our country should be further revised, while expanding the subject of crime to all units and individuals that infringe on citizen's personal information, in view of the fact that these commercial subjects are driven by economic interests, and that the act of selling and illegally providing citizens' personal information has increased unabated, it is necessary to increase the criminal punishment for criminals, including raising the starting time of three years and increasing the penalty. In addition, in criminal filing and investigation, China should carry out special actions to increase the proportion of accountability for such crimes. As far as public organs are concerned, the regulation of personal information protection law should be stricter than that of non-public organs. The same liability should not be applied. After all, the rules of personal information protection with the same degree of strictness can only affect the efficiency of relevant actions for public organs, while for non-public organs, they may restrict private freedom. After the above two important classifications of personal information processing behavior, it can be found that there are also hierarchies between personal information processing behavior. The emphasis of different levels of processing behavior is also different, and their needs for protection are naturally different. Generally speaking, the level of protection of the handling behavior of the public organ of personal information should take precedence over that of the non-public organ.

## **4. Conclusion**

In the current era of big data, information is constantly promoting the development of national economy, coupled with the emergence of new technologies and applications of the Internet, the flow and use of information is constantly accelerating, improving the efficiency of information utilization and weakening the control ability of personal information security of citizens. A large number of personal information has been stolen, sold and maliciously used. Information leakage has become an important factor hindering the healthy development of the Internet. We should protect our personal information through legislative means.

## References

- [1] Fu Xiaoqiong, Shi Enlin, Wang Wei. Brief Analysis of Personal Information Security in the Era of Big Data [J]. China Public Security (Academy Edition), 2018(3): 89-93.
- [2] Yue Wenting. On the Legal Protection of Personal Information Under the Background of the Big Data [J]. Journal of North University of China (Social Science Edition), 2017, 33(5): 60-64.
- [3] Yang Jie. Research on China's personal information protection system in the Era of big data [J]. Information and Communications Technology and Policy, 2018(6): 23-27.
- [4] Song Yu. Research on Personal Information Protection in the Age of Big Data [J]. Legality Vision, 2018(24): 82-83.