

Research on Legal Protection of Data Rights of E-Commerce Platform Operators

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ABSTRACT

With the advent of the era of big data, the utilization rate of data in business activities is getting higher and higher, and the competition is also getting bigger and bigger, and the disputes about data among operators of e-commerce platform are also increasing. At present, there is a relative lack of laws and regulations on data rights and interests of e-commerce platform operators in China. E-commerce platform operators do not have specific and in-depth clarity on data collation, collection and processing, which is not comprehensive. With the rapid development of big data in European and American countries in the 20th century, the corresponding laws and regulations and theoretical academic research also appear. China can study the similarities, which has great reference significance for the development of big data and the improvement of laws and regulations in China. This paper will investigate and study the data rights and interests of e-commerce platform operators, and deeply analyze the characteristics, attributes, protection mode and basic principles of data rights and interests, especially the legal regulation of e-commerce platform operators' data rights and interests. Combined with the law of e-commerce, the law of data security, the law of network security, the law of personal information protection and other relevant legal theories, this paper analyzes the data rights and interests of e-commerce platform operators, discusses the legal protection and implementation practice of the data rights and interests, and puts forward some countermeasures to improve the legislation, law enforcement and judicial protection. For the boundary coordination between operator data and user data of e-commerce platform, this paper analyzes and divides the boundary, and puts forward relevant improvement countermeasures. China needs to speed up the improvement of e-commerce platform operators' data rights and interests protection legislation, improve the regulation of e-commerce platform operators' unfair competition behavior; Improve the legal regulation of data monopoly of e-commerce platform operators, bring enterprise data into the adjustment scope of anti-monopoly law, and investigate the legal responsibility after data monopoly; The data rights of the operators of e-commerce platform should be given clearly; Improve the allocation of data legal liability of operators of e-commerce platform.

KEYWORDS: E-commerce platform operator; Data rights and interests; Legal regulation

I. INTRODUCTION

With the advent of the era of big data, the utilization rate of data in business activities is getting higher and higher, and the competition is also growing, and the disputes about data among operators of e-commerce

platform are also increasing. At present, there is a relative lack of laws and regulations on data rights and interests of e-commerce platform operators in China. E-commerce platform operators do not have

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specific and in-depth clarity on data collation, collection and processing, which is not comprehensive. With the rapid development of big data in European and American countries in the 20th century, the corresponding laws and regulations and theoretical academic research also appear. China can study the similarities, which has great reference significance for the development of big data and the improvement of laws and regulations in China. This paper will investigate and study the data rights and interests of e-commerce platform operators, and deeply analyze the characteristics, attributes, protection mode and basic principles of data rights and interests, especially the legal regulation of e-commerce platform operators' data rights and interests. Combined with the law of e-commerce, the law of data security, the law of network security, the law of personal information protection and other relevant legal theories, this paper analyzes the data rights and interests of e-commerce platform operators, discusses the legal protection and implementation practice of the data rights and interests, and puts forward some countermeasures to improve the legislation, law enforcement and judicial protection. For the boundary coordination between operator data and user data of e-commerce platform, this paper analyzes and divides the boundary, and puts forward relevant improvement countermeasures. China needs to speed up the improvement of e-commerce platform operators' data rights and interests protection legislation, improve the regulation of e-commerce platform operators' unfair competition behavior; Improve the legal regulation of data monopoly of e-commerce platform operators, bring enterprise data into the adjustment scope of anti-monopoly law, and investigate the legal responsibility after data monopoly; The data rights of the operators of e-commerce platform should be given clearly; Improve the allocation of data legal liability of operators of e-commerce platform.

II. The status quo of legal protection of data rights and interests of e-commerce platform operators

From the above analysis, it is not to say that the data of e-commerce platform operators is not protected, because the information content behind it has value, so its protection has a certain significance. We can carry out legal protection according to its application, and use different laws to protect the data in different aspects.

A. Property law protection of data rights and interests of e-commerce platform operators

According to the existing property right theory, our property right theory is mainly based on Germany as

a reference. The German theory thinks that the object protected by property right is a tangible object, but for the data, it seems that it does not have this characteristic. E-commerce platform operator data has economic value, usually take strict protection mode, if any e-commerce platform operator want to infringe or steal, it will invade the internal system of other companies, destroy each other's computer information system. Infringing the ownership of other people's computer system will also infringe the ownership of data. It seems that the real right is infringed here, but according to the above views on the object of real right, it seems unreasonable, and there is no way to use the existing theory and system of real right to explain. Therefore, some scholars propose that the data right can be regarded as a new kind of right to protect the data rights and interests of enterprises. Although this can alleviate certain problems, it can also temporarily explain the legal protection of the data rights and interests of e-commerce platform operators, but this new right theory also has disadvantages: under the existing property law theory, there will be some contradictions in the future interpretation and application; It also conflicts with the protection of personality right; The creation of new rights may create a precedent for the future, so that in the future, if new objects cannot be protected by law and related theoretical interpretation, they will be treated as new rights, creating a large number of new rights, resulting in the proliferation of rights. Therefore, to sum up, the use of property protection methods in accordance with the existing legal theory or cannot be properly solved.

B. Protection of data rights and interests of e-commerce platform operators by Tort Law

In the civil code (tort liability), it is stipulated to protect individual rights, among which the right to life, the right to health, the right to name and so on are absolutely owned by individuals. However, the following words expand the scope of protection of tort liability. In addition to absolute rights, they also imply that the right to life, the right to health, the right to name and so on are absolutely owned by individuals According to the civil code of France, if the actor has subjective fault and damage behavior, and there is causal fault between the damage result and damage behavior, the injured person can be protected by tort liability. When the data rights and interests of e-commerce platform operators are infringed and stolen, the data rights and interests as a kind of property rights and interests are infringed, which can be divided into the range after "equal words". Due to the openness of the tort liability provisions, it also provides a new protection path for the data rights and interests of e-commerce platform

operators. However, no rights and interests can be included in the protection scope of the civil code (tort liability). When the data of e-commerce platform operators are protected by tort liability, the personal rights and property rights after the word "equal" still have certain limitations.

C. Intellectual property law protection of data rights and interests of e-commerce platform operators

According to the provisions of Patent Law, trademark law and copyright law, only works with originality, novelty and prominence can be protected by intellectual property rights. Nowadays, many e-commerce platform operator data include some works, which are protected by intellectual property rights, and these works are also in line with the characteristics of intellectual property rights. The data including these works should be protected by intellectual property rights, but the protection must only focus on the data including these works. For other aspects of data, it is obvious that it will not and should not be the object of intellectual property protection. Therefore, some data can be protected through intellectual property protection, and the rest will cause difficulties in judicial application and confusion in judicial order if they are also protected by intellectual property. Therefore, the use of intellectual property protection will also constitute some data errors and legal errors.

D. Competition law protection of data rights and interests of e-commerce platform operators

Anti Unfair Competition Law protects trade secrets, which have both commercial value and confidentiality. Using unfair competition means to obtain the analyzed and processed data from others is regarded as stealing trade secrets. The data of e-commerce platform operators are integrated and analyzed through technical means, and it is economical. In the case of public comments v. Baidu, baidu steals the user data in public comments and uses the products developed by itself. What Baidu steals is the data that the public comments are not open and stored by secret means. Therefore, the data stolen by Baidu is completely in line with the characteristics of trade secrets. Baidu's stealing the data of public comments also destroys the market order of free competition and disrupts the market balance, which belongs to unfair competition. Therefore, it is reasonable to use the Anti Unfair Competition Law to protect the data rights and interests of e-commerce platform operators. When the "Anti Unfair Competition Law" is applied to protect data, it can be identified as a type of improper

behavior. For example, it can be identified as a series of anti unfair competition behaviors, such as helping others to make false propaganda (Article 8 of the Anti Unfair Competition Law), destroying others' network services (Article 12 of the Anti Unfair Competition Law), and infringing trade secrets (Article 9 of the Anti Unfair Competition Law). If there is no way to identify the relevant behaviors as the above-mentioned types of anti unfair behaviors, If necessary, Article 2 of the Anti Unfair Competition Law can be used as the basis for data protection.

III. Improve the legal system of data rights protection for e-commerce platform operators

A. Improve the legislation of data rights protection for e-commerce platform operators

At present, the national data standards and local laws and regulations attach importance to the development of data economy and data security, and there are corresponding provisions on the information security of users. These regulations clearly require the e-commerce platform operators or data processors to take responsibility for data and protect information security. The government is very supportive of data development. In data construction and funding, the government is the leader, leading the development of data economy, providing strong support for data collection and processing of e-commerce platform operators. However, the government's protection of personal information is lacking. Users in the face of some intelligent applications, systems, it is easy to leak personal information, so the government in the future construction or legislation should pay attention to user information security. With the popularity of big data, cloud computing, mobile Internet, social networks and various intelligent terminals, personal data has no place to hide, while users' natural weak position makes it difficult to control their own data. Therefore, data collection should be strictly regulated.

In the regulation of e-commerce platform operators, the premise should be established: only qualified e-commerce platform operators can collect data, and have mature technical conditions and infrastructure, in order to prevent information leakage in the collection link. Moreover, there should be strict regulations on the scope of data collected by e-commerce platform operators. Data related to their business software can be collected, but for other purposes, it cannot be collected. E-commerce platform operators should collect data according to the actual needs of operation, and e-commerce platform operators have the obligation and responsibility to delete irrelevant data. For e-

commerce platform operators to collect data should also be specified, only after the consent of users can be collected. Relevant conditions, users' responsibilities and rights should also be highlighted to enable users to clarify their rights and interests. Finally, the e-commerce platform should ensure the security of data. When the data is leaked or improperly handled, the operators of the e-commerce platform should bear the corresponding responsibility and take remedial measures to enhance the user's sense of security.

Nowadays, 42% of the people use the Internet to pay, 56% of the people use mobile phones to access the Internet, 54% of the Internet users suffer from network security problems, and 85.2% of the Internet users suffer from information leakage. In the face of such a huge number and severe form, we have not yet promulgated corresponding laws, and the process is slow. At present, only Hong Kong has set up a special agency to protect the privacy of personal information in China, and it is also the only agency to protect privacy in Asia. Data can only be used in accordance with the six principles stipulated in the Hong Kong Ordinance of China. If it does not comply with any of these rules, the data users will be stopped using, interviewed, investigated and other consequences. In order to create a good environment for the use of big data, we should strengthen the protection of personal information and set up corresponding institutions for investigation and supervision.

B. Improve the legal regulation of data unfair competition of e-commerce platform operators

In the follow-up data use process, e-commerce platform operators will reach data sharing agreements with other e-commerce platform operators, in which data use, data use and purpose are limited. When both parties agree to sign the agreement, they agree to the rights and obligations in the agreement. The other party who wants to obtain the data cannot use the data improperly in violation of the provisions of the agreement, or continue to use the data after an agreed time. It is effective not only for the opposite party of the contract, but also for any third-party e-commerce platform operator. If the data holder notifies the third-party e-commerce platform operator to stop acquiring data and other data related activities, the third party shall immediately stop. Against the will of data holders and market competition rules constitutes anti unfair competition.

E-commerce platform operators pay technology, labor costs, money costs to obtain the data are the results of e-commerce platform operators, if other e-commerce platform operators use, grab, with a very low cost to

easily obtain other people's labor results, it will lead to market disorder. It will be against the principle of fair competition for operators of various e-commerce platforms to grab data from each other. As a result, the value of data will be reduced and the data market will not develop healthily. Therefore, according to the data cost of e-commerce platform operators, it is also an important basis to judge anti improper behavior.

To sum up, we need to judge whether there is unfair competition according to the agreement between e-commerce platform operators and the corresponding data cost. In actual cases, we should not abuse the Anti Unfair Competition Law to punish market competition at will and ensure the normal operation of the market. For those who want to speculate and make profits and disrupt the normal trading of data, they should also be severely punished with legal weapons.

C. Improve the legal regulation of data monopoly behavior of e-commerce platform operators

1. Bring the data of e-commerce platform operators into the adjustment scope of The Anti Monopoly Law

E-commerce platform operators, who have the upper hand in the data market, have formed a certain scale and have a certain degree of maturity in data processing and application. At this time, the operators of this e-commerce platform will use their experience and resource advantages to exclude some e-commerce platform operators who have just entered the data market, and are unwilling to share market resources and transaction data information with them. It is also possible to give unfair trading terms when trading with them, abuse the monopoly position of the market, and make the normal circulation of resources impossible. Therefore, the operators of small microelectronic business platform will survive in the cracks. The Anti-monopoly Law regulates the improper competition behavior in market competition, promotes the rational distribution and circulation of resources and constructs a healthy market order. But the data market will also change every day, so we should make new adjustments to the law. Therefore, in order to prevent the occurrence of monopoly, according to the relevant provisions of the national anti-monopoly law, China has formulated the anti-monopoly guide, in order to solve some of the focus problems such as "big data killing" and "two choice and one".

First, according to the provisions of the guide, how to define the anti-monopoly behavior in the platform economy should first analyze whether the e-commerce platform operator is the market dominator,

and then pay attention to whether the e-commerce platform operators abuse the dominant position to form monopoly. For the "two choice and one" behavior in the market, the guide also judges whether the operators of e-commerce platform have restricted transaction behavior from the two aspects of incentive and punishment. If platform operators carry out power reduction search, technical shielding, traffic restriction, margin deduction and other punishment measures, it will cause direct economic damage to the merchants in the e-commerce platform. Platform operators also give incentives such as preferential, monetary subsidies and discounts to platform merchants. If such behaviors affect market competition, they will also be considered as restricting transactions.

Second, some platform operators will also use "big data kill" to treat merchants differently. The Anti-monopoly Law clearly stipulates that if platform operators use their dominant market position to treat merchants differently under the same conditions, it will constitute anti-monopoly behavior. The guide also provides for whether the difference treatment is constituted. If the platform analyzes the user's preferences, economic ability and habits according to the algorithm and big data, it usually constitutes monopoly behavior to implement different transaction prices for different users. Different transaction prices should not be set in the platform according to the privacy, preferences, habits, etc. of users. If different transaction prices are set, it is considered as anti-monopoly.

2. improve the legal responsibility of data monopoly

According to The Anti-monopoly Law, if the operators of e-commerce platform attempt to monopolize resources, which leads to the unreasonable distribution of market resources and free competition, monopoly will bear penalties such as fine and confiscation of illegal property. Although there are provisions for the punishment of monopoly, the provisions are not clear enough to constitute deterrence to monopolists. Therefore, the anti-monopoly organizations should add new punishment measures and formulate corresponding legal responsibilities according to the degree and mode of anti-monopoly. Anti-monopoly behavior will make some small e-commerce platform operators unable to survive, after a long time, they will exit the market, which is not conducive to stimulate market vitality. At the same time, after punishing the operators of e-commerce platform, anti-monopoly organizations can also require e-commerce platform operators to share resources, share the degree, scope, time and way

according to specific cases, but in the process of sharing, they should also respect the privacy of personal information and avoid damaging the interests of individuals.

D. Give the operators of e-commerce platform corresponding data rights

The data rights of operators of e-commerce platform should be aimed at promoting data transaction and giving full play to the value of data. Because the objects protected by data rights as intellectual property rights are intangible, data rights can be established by reference to the relevant contents of copyright law and patent law. Patents can be circulated and used through five situations: sales, manufacturing, promised sales, import and use. Article 11 of the patent law also stipulates that the patentee has the right to sell, manufacture, promise to sell, import and use the patent. Articles 10 and 12 also specify the licensing and transfer of patents. In the copyright law, 17 specific contents of copyright are also stipulated, which are closely related to the circulation and use of works. Therefore, we should draw on the above mentioned basic content of circulation and use in determining the specific content of data rights.

E-commerce platform operators usually use and copy data. E-commerce platform operators process, integrate, analyze and store data through the right of use. E-commerce platform operators can also use the copy right to copy the stored data, or prohibit other enterprises from copying their data. Without the permission of the operator of e-commerce platform, they cannot copy the data of e-commerce platform operators at will. Some operators of e-commerce platform violate the data replication right of e-commerce platform operators by stealing data.

E-commerce platform operators communicate, share and trade through the circulation data. Enterprises share data with other platform operators, not only can discover the greater economic value of data, but also make the data play the greatest utility value. Communication refers to the enterprises can make data public to the society, so as to let the society understand the data, so that it cannot only increase the influence of enterprises but also increase public interests. The premise of data sharing is that data can be used together because of its non-material nature. Transaction refers to the transfer of the corresponding rights of data to others, and other enterprises enjoy all the rights of data. Enterprises can also obtain economic benefits through transactions. Therefore, according to the way of data circulation, the right of communication, sharing and transaction of enterprises should be established accordingly. In addition,

enterprises should be given the right of income to data, and enterprises can obtain corresponding economic rewards through the right of return.

IV. Conclusion

The society is constantly improving, and information data are changing and affecting our lives. The scope of data utilization in society is becoming larger and larger, and the value is also gradually improved. However, there are also many legal problems in data. The data rights and interests of operators and users' data of e-commerce platform should be balanced. The legal protection and legal attribute of the operator data rights and interests of e-commerce platform have become the focus of our research, and the privacy protection and security of users are also the key issues. But the current relevant laws are not perfect. The author compares the domestic and foreign laws and some local regulations, and provides some suggestions for the protection of the data rights and interests of operators of e-commerce platform and the protection of user information. It is a good way to adopt the means of behavior regulation. At the same time, the operators of e-commerce platform cannot exceed the bottom line in collecting, processing, developing and using data, and violate the privacy of users when developing data. On the basis of this, e-commerce platform operators can freely exercise their rights to carry out data mining. This paper analyzes the characteristics, legal attributes, relevant legislative protection and relevant restrictive principles of e-commerce platform operator data, and provides ideas for the protection of data rights and interests of e-commerce platform operators. By giving users the right, users can independently safeguard their rights and interests, protect the data information security, and provide a way out for standardizing the data behavior of e-commerce platform operators and related legal protection. Although the author's ideas are not perfect and there is no way to solve the real problems immediately, some suggestions are provided for the future user information protection, the data rights and interests of e-commerce platform operators and relevant legal regulations, which can bring about some valuable results.

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