

Research on Legal Protection of Personal Data Privacy of E-Commerce Platform Users

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ABSTRACT

As a product of the information age, e-commerce platform not only changes people's daily life, but also brings unprecedented impact and infection to users' personal data privacy. Under the influence of various factors, the phenomenon of data privacy infringement emerges in endlessly and becomes more and more common. Strengthening the protection of data privacy has become an urgent problem to be solved. At present, China has initially established laws and systems on the protection of personal data privacy, but they are not enough to effectively deal with many problems that have emerged. There is still a lack of comprehensive and systematic legal provisions and specific and effective implementation measures in legislation, law enforcement and justice. How to further control the violation of users' personal data privacy has become a new challenge we need to face. Based on the relevant laws and regulations such as the e-commerce law and the civil code, this paper analyzes the value, current situation, problems and other specific contents of the personal data privacy right of the users of e-commerce platform, points out the current situation of the legal protection of the rights and interests of the users of e-commerce platform, and further analyzes its shortcomings. Based on this, this paper leads to the e-commerce platform users' personal privacy, so as to put forward countermeasures and measures, and put forward the path to improve the legal system construction. The author thinks that we should innovate the concept of data privacy protection, learn from foreign advanced experience, strengthen domestic legal protection, improve the law enforcement means and the internal governance mechanism of the platform, so as to improve the legal system of personal data privacy of e-commerce platform users in China, maintain the order of e-commerce platform, and promote the sustainable and healthy development of data economy.

KEYWORDS: Data privacy; Electronic Commerce; Laws and regulations; Personal information

I. INTRODUCTION

The infringement of personal data privacy of e-commerce platform users is serious, and it is urgent to improve the relevant legal protection system. This paper analyzes the current situation and problems of legal protection of e-commerce platform users' rights and interests, leads to the relevant content of e-commerce platform users' personal privacy, and expounds the relevant countermeasures and measures. According to the laws and regulations, this paper expounds the current situation of the legal protection of the users' personal data privacy of e-commerce

platform, and analyzes the legislative, law enforcement, judicial and internal governance of e-commerce platform enterprises. In view of the current situation and problems of the legal protection of e-commerce platform users' personal data privacy, this paper puts forward the path to improve the legal system construction; This paper explains from four aspects: clarifying the concept definition and protection principles of e-commerce platform users' personal data privacy, improving the legal protection system of e-commerce platform users' personal data

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privacy, formulating the supervision methods and legal regulation means of e-commerce platform users' personal data privacy, and strengthening the awareness and ability construction of users' personal information protection.

In the era of big data, human beings are always coerced in the turbulent wave of electronic information technology. Our daily life and big data are interrelated and inseparable. With the Internet as the media, the extensive use of personal information has become an important part of people's communication. In the process of compiling the civil code of the people's Republic of China (hereinafter referred to as the civil code), we have fully considered the background of the era of big data. In order to fully meet the needs of social reality, our legislature has proposed a new system: personal information protection system. This move shows that the state attaches great importance to the privacy of personal data of public platform users. However, at this critical period of great development, great change and great adjustment, its legal status is not clear. Therefore, scholars in China's legal circles have launched a heated discussion based on the "e-commerce law of the people's Republic of China" (hereinafter referred to as the "e-commerce law"). To guide judicial practice with legal theory and provide comprehensive legal protection for users' personal data privacy. Based on the civil code, the e-commerce law and the data security law, this paper takes the privacy and legal protection of personal data of users of e-commerce platform as the research object, analyzes and discusses the theory and practice of the privacy and legal protection of personal data of users of e-commerce platform combined with relevant legal theories, and puts forward some suggestions on improving the legislative system, law enforcement and legal protection. The Countermeasures of judicial protection system aim to improve the theoretical analysis of personal data privacy and legal protection of e-commerce platform users, so as to better protect the implementation of civil code, e-commerce law and relevant laws and regulations.

A. Background of topic selection

This paper relies on big data technology as the background, as a mass of data aggregation, came into being a new way of data analysis beyond people's imagination. In our real life, e-commerce platform is the product of demand in the context of big data. It provides an extremely convenient communication channel for e-commerce transactions and promotes the rapid development of e-commerce. But in recent years, while electronic information technology provides convenience for people, personal data

information is also facing the risk of being mined, disclosed and processed. At present, the existing forms and systems of personal information protection cannot keep up with the new situation of the rapid development of digital industry in the data era. The fragmentation of relevant laws and regulations, the lack of supervision, and the weak self-protection awareness of citizens are very prominent. It is still a long way to go to maintain the privacy and security of personal data of users of e-commerce platform.

B. Research significance

1. Theoretical significance

First, further deepen the theoretical research on the right of personal data privacy of e-commerce platform users, excavate the theoretical basis of the "e-commerce law" on the right of personal data privacy of e-commerce platform users, and improve the research field of the right of personal data privacy of e-commerce platform users combined with the specific content of the "Civil Code". Secondly, it summarizes the close relationship between the civil code, e-commerce law and other domestic laws and regulations, explores the basic concept of personal data privacy of e-commerce platform users, and promotes the construction and improvement of the theoretical framework and structure. According to the legislative concept of "e-commerce law" and the needs of social reality, this paper explores new research fields in the era of big data. This topic further expands the theoretical research on the personal data privacy of e-commerce platform users, explores and demonstrates the basic principles, concepts and scientific framework of the personal data privacy of e-commerce platform users.

2. Practical significance

In the field of legislation, it provides legislative ideas for improving the legal protection of users' personal data privacy in e-commerce platform, and promotes the judicial interpretation of users' personal data privacy in e-commerce platform, so as to continuously improve the construction of China's legal system. In the judicial field, starting from the relevant concepts of the "e-commerce law" and combining with the relevant laws and regulations at home and abroad, this paper further defines the personal data privacy right of users of e-commerce platform, so as to provide valuable reference for the court to settle disputes and stop disputes, so as to further ensure the fairness and justice of the case trial and maintain the judicial justice and order. In the field of law enforcement, we should pay more attention to the infringement of users' personal data privacy by strengthening the e-commerce platform, strengthen the supervision and management of e-commerce

platform, refine the implementation of law enforcement steps, and improve the law enforcement quality and level of administrative law enforcement personnel. This topic and related research results or conclusions can provide scientific basis for the legal protection of personal data privacy of e-commerce platform users, provide scientific countermeasures for relevant legislation, law enforcement, justice and e-commerce enterprise platform governance, and put forward legal, reasonable and feasible legal system construction and improvement scheme.

II. Status quo of legal protection of personal data privacy of e-commerce platform users

E-commerce platform refers to the legal person or unincorporated organization that provides relevant information services for the main body in the e-commerce transaction business for the main body to carry out the transaction business independently. E-commerce platform is the backbone of participating in the regulation of market economy, and its unique data advantage constantly stimulates the main body of e-commerce platform to have a sense of attachment to it. Therefore, e-commerce platform has gradually become an important choice and basis for the trading body to carry out e-commerce activities. However, at the same time, the virtual platform also has the derivative problems of consumer data privacy protection and related rights abuse. In recent years, with the rapid development of Internet, there are a large number of managers, operators and consumers in e-commerce platform, with a wide range of distribution and strong concealment of illegal acts, which continue to threaten the healthy development of e-commerce industry. With the continuous improvement of the core technology of e-commerce platform, its influence and control on operators and consumers are increasingly strong. The "e-commerce law" promulgated in early 2019 defines e-commerce platform as "operator" and stipulates responsibilities and obligations, which indicates that e-commerce platform has acquired the status of "managed subject" in the legal sense. However, in real life, e-commerce platform as the main body does not always play the role of being managed. Because it also has some functions of economic management, it is difficult to be fully covered by the legal identity of "operator". It can be seen that e-commerce platform is in urgent need of further carding and adjustment at the legal level due to its special subject status.

A. E-commerce law and the status quo of user's personal data privacy protection

1. The subject of registration is not clear

Before the implementation of the "E-commerce Law", business license is not required to engage in

trading activities on the e-commerce platform, and all independent entities can operate on their own according to their needs. Since the promulgation of the "e-commerce law", online operators must register with the designated industrial and commercial departments according to the regulations. This rigid regulation not only standardizes the subject identity of China's online operators, but also provides many offline operators with opportunities for fair competition. However, this requirement does not specify the registration subject of e-commerce platform, which also makes the subject status of many personal business activities such as purchasing agent unclear. Because these operators are not clear about their subject identity, they have to choose to publish relevant product information on Wechat, microblog and other public social networking platforms for online transactions, which greatly increases the risk of infringement on the personal data privacy of platform users. As China's "e-commerce law" does not provide for the registration of this type of business entities, individual business activities do not need to be registered in industry and commerce. With its low price and convenient procedures, this behavior continues to attract a large number of consumers in China. The network fraud, fake and shoddy product transactions, personal data privacy leakage and other phenomena caused by the rise of a large number of e-commerce platform users suffer, but it is difficult to get effective rights protection. With the rapid development of online social media in China, similar e-commerce platforms are widely known and downloaded by the public. If such business entities are not regulated by law, the legitimate rights and interests of China's e-commerce market and e-commerce platform users will be difficult to be effectively protected.

2. There are some oversight in the supervision of unfair competition

With the passage of time, many operators on e-commerce platform have good reputation, high reputation and good product quality. Because they have been operating on e-commerce platform for a long time, they have strong competitiveness. But the Internet environment is complex, such as good business status of users often face the invasion of unscrupulous business unfair competition. After receiving the fees, some "professional evaluators" will make these e-commerce platform users who participate in normal trading behavior suffer from the adverse impact of negative evaluation by means of excessive bad evaluation. At the same time, operators who do not have outstanding business status and effect will choose to employ "professional reviewers" to make false beautification evaluation on their

products, and cheat consumers to trade by deception, which seriously affects the healthy and normal operation of e-commerce platform. Although the E-commerce Law has made rigid provisions to stop the system of false comments, there are still many such unfair competition behaviors that have not been involved and standardized, so it is difficult to effectively supervise such behaviors.

B. The legal system of tort liability and the status quo of the protection of users' personal data privacy

Although e-commerce platform provides people with a faster and more convenient way of transaction, there is no clear provision on the tort liability of Internet platform subject to tort. The relevant provisions in the tort liability section of the civil code have filled this gap, which provides a strong support for whether to bear the tort liability of e-commerce platform. Among them, the division of the relevant standards of tort liability, Chinese scholars will be summarized into the following two provisions, first, prompt provisions or "notice and delete" provisions. If the main body of e-commerce platform wants to avoid taking corresponding responsibilities, it needs to take timely and effective measures after receiving reports or complaints. Second, know the rules. That is to say, if the manager of the e-commerce platform knows that the user of the e-commerce platform divulges other people's data privacy or invades other people's legitimate rights by using his Internet system, and fails to stop the loss in time, and takes effective measures to stop the loss, he shall bear the corresponding joint and several liability with the user. Although these two rules provide the principle guidance for the assumption of Internet tort liability, it is obviously not enough to deal with the complex and changeable Internet environment, and it is still necessary to conduct in-depth discussion.

C. The status quo of the protection of users' personal data privacy in "network security law"

First of all, "Network Security Law" has carried on the detailed stipulation to each link of network security protection. The network operation, information security, supervision and punishment and other aspects are provided with general and special provisions. The responsibilities, obligations and corresponding punishment measures of different subjects are also clarified. Secondly, "Network Security Law" has carried on the concrete elaboration to the basic principle. With the promulgation and implementation of the law, the information governance requirements scattered in various regulations, policies and documents have been clearly

and systematically elaborated, which further affirms the guiding concept of network security from the perspective of legal theory. Finally, the "Network Security Law" has made significant innovations in specific measures. This fills in the defects of unclear responsibility of information security supervision and management of Internet platform for a long time in China, solves the problems of mutual shirking responsibility in the past to a certain extent, and strengthens the supervision and management of network transactions. The law has different types of supervision methods, which reduces the negligence and abuse of power of the staff of the supervision department, and improves the implementation efficiency of the management department. These detailed regulations provide effective legal support for the security protection of users' personal data privacy.

III. The existing problems of the legal guarantee system of the privacy right of big data in e-commerce platform

A. The legislative protection mechanism needs to be improved

From the constitutional perspective, as a basic human right to privacy, has become the basic rights of citizens are clearly defined, which not only reflects that the right of personal privacy can never be infringed illegally, but also shows that the Constitution provides the most direct basis for other departments to improve the legislation on privacy rights at the basic legal level. But the scope of legal protection at macro level can involve and adjust is limited after all. How to further improve and develop it in practice has become an urgent problem. At present, there are two main legislative measures to be taken in China: first, the law on the protection of personal information is formulated to conform to the international legislative trend of personal privacy information protection. The basic goal is to unify standards and have basis for the law; Secondly, the article makes a detailed analysis of the provisions of the protection of the right to privacy in administrative law, aiming at enhancing the practical operability. But at present, this cannot solve the various problems faced by the right of data privacy in real life. How to solve the life problems more pertinently in the legislative level needs further consideration. From the perspective of civil law, we can see that the right of privacy has been clearly defined as a basic right enjoyed by people in the civil code (general provisions). However, the establishment of the concept of privacy is obviously lagging behind social practice, and the establishment of tort liability is not clear. We should further strengthen the definition and extension of privacy in the current civil legislation, so

as to make a classification in practice, so as to facilitate the correct understanding and correct application of the majority of citizens. Finally, from the perspective of criminal law, we should make corresponding legislation perfect: first, the current criminal law only takes the information crime carried out by the unit as the main body, as the main component of the crime of illegally providing personal information for citizens, which is obviously not conducive to the fight against the crime of natural person information. The author thinks that the main body of crime can be expanded into the general crime subject. Secondly, the object of infringement on the crime of illegally stealing computer information is limited to the high-tech field, and the general communication computer information system is still in a neglected stage, which is very unfavorable to the fight against the crime in the field of computer information. Third, according to the current criminal law of our country, the crime of violating the freedom of communication does not meet the trend of social science and technology development within the scope of protection within our ability. Modern communication and communication methods should be included.

B. The law enforcement and protection mechanism needs to be improved

With the advent of big data age, managers and providers providing e-commerce platform services can draw their preferred paths according to user browsing traces. Then, the bad placement of targeted advertising brings more and more threats to the privacy of personal data of e-commerce platform users. Although in some current legal documents, the situation that can be found as "using personal information without user permission" indicates that the use of user personal information and algorithms to direct push information. But in the process of practice, it is difficult to really protect the rights and interests of users. According to the current regulations, in the process of protection, as long as it does not seriously affect the life of the plaintiff, even if the defendant's infringement infringes the plaintiff's legal rights and interests (the right to data privacy), the plaintiff's claim for damages will not be confirmed.

C. The judicial protection system needs to be reformed

The position of the managers, operators and consumers of e-commerce platform is very different, and the single judicial supervision approach cannot achieve the efficient restriction. The occurrence of

large-scale tort has to be reflected. Should the violation of the prohibition be stopped by civil damages? Should administrative punishment be given to serious violators, or even to investigate their criminal responsibility? The author believes that the diversified supervision path can effectively guarantee the healthy development of e-commerce platform and e-commerce industry. In addition, in the era of big data, the public authority department should also be the active controller of user personal information, and should actively fulfill the obligation to protect citizens' personal information rights and interests from direct or indirect infringement. Of course, the characteristics of information technology cannot be ignored. It determines that a single judicial supervision path cannot provide long-term and effective protection for personal information. Therefore, the author thinks that the protection of personal data privacy should build a comprehensive supervision mode of public-private law. The functions of the laws of each department should be fully exerted to realize the judicial supervision mechanism of internal unity and system coordination.

D. Internal governance of e-commerce platform enterprises needs to be strengthened

The problem of short board in e-commerce platform enterprises in China is especially prominent. The problems in practice will often play a great role in promoting the legislation of e-commerce in China. It is necessary to mention that the current e-commerce law does not perfect the regulations on operators in the e-commerce platform. In some clear and visible issues, operators should first abide by the provisions of the current law. If the current law does not, some reasonable judicial interpretation can be applied to specific cases. In this regard, the author also puts forward some personal opinions on the specific situation after the promulgation of the e-commerce law. First, we can clearly stipulate the qualification review obligations of e-commerce platform operators, and improve the registration system and regular verification related provisions according to the current situation. Secondly, it can be an effective way to construct complaint mechanism to facilitate the daily supervision and inspection of specific information in e-commerce platform. In this case, we should perfect the information publicity system of operators and classify and register credit grades. Finally, we can regularly submit the identity information of the merchants and the matters related to tax payment to the relevant departments of the state for further supervision and management.

IV. The way to perfect the legal guarantee system of privacy of personal data of users on e-commerce platform

A. Improve the legislation of privacy protection of platform users' personal data

1. Innovation of personal data privacy protection concept in information data sharing platform

Although the newly issued civil code has made provisions on personal data information being protected by law, compared with the relevant research of EU, the following deficiencies in domestic theoretical research in China need to be further improved: (1) At present, there are unclear boundaries and overlapping of different legal documents in China, The terms and regulations of the same or similar content are not completely unified, which is very unfavorable to the mutual connection and coordination of rights and obligations of all parties within the e-commerce platform. (2) The subject that needs to regulate rights and obligations in e-commerce platform is not comprehensive, and it does not make special emphasis on the behavior subject which is easy to disclose user data information. (3) The provisions on rights and obligations are too principled, not concise and targeted. (4) There is no formal and operational judicial remedy. Therefore, China should further explore the theory and focus on the establishment of a more comprehensive and sound legal system for personal data privacy protection. We can promulgate the special legal documents such as personal information protection law and data security law as soon as possible, and clarify the rights and obligations of users of e-commerce platform to their data information.

2. Combine the national conditions of China with the advanced legislation experience abroad

From the perspective of law to social governance, China should build a dual track protection system of personal information and a system of personal information rights and interests of data sharing by referring to the legislative concept of The EU General Data Protection Regulations (GDPR). At the same time, we should realize that although The EU General Data Protection Regulations (GDPR) regulates and restricts the protection of personal data, the content of privacy protection of personal data shared by EU and China still has great limitations. At present, only anonymous data information can be shared or data information agreed by data subject can be achieved. However, The EU General Data Protection Regulations (GDPR) provides a typical legal framework for the protection of personal data privacy, which is of great reference value for the effective implementation of personal data privacy protection measures for users of e-commerce platform in China.

B. Improve the law enforcement and protection mechanism of privacy of platform users' personal data

At present, it can be clear in legislation that determining the standard of damages is one of the effective regulatory methods in the current law. Some scholars in China think that "the cost of safeguarding rights is higher and the amount of compensation is low" is the most prominent problem in the protection of personal information in civil cases. Because of the lack of strong legal documents as guidance in legislation, the court in practice requires the infringer to apologize for the apology, but in fact, there is little demand for damages. After investigation, there are two ways to compensate for the damage caused by the infringement of data privacy of users on e-commerce platform: one is to compensate according to the amount of loss. Secondly, according to the profit of the infringer, the compensation shall be made in a fixed proportion. In the era of big data, information subject can easily obtain huge property benefits from infringement. However, due to the unequal information and frequent data theft, it is difficult for users of e-commerce platform to find their infringement in time. Therefore, from the effective containment and prevention point of view, for malicious infringement of e-commerce platform user information for profit (especially data privacy), we should learn from foreign countries to pay great attention to the punishment methods in personal information protection, and integrate it into the punitive compensation system to protect the legitimate rights and interests of users in the vulnerable e-commerce platform.

C. Strengthen the judicial protection mechanism of the privacy of user personal data

Judicial organs should attach importance to the trial of infringement disputes on user data rights and interests. When correctly identifying the platform for collecting user information in a case, it is obliged to make clear to users, and also have the obligation of keeping personal information confidential. Personal data often has different definitions in different fields, institutions or scholars' perspectives. Personal data is also called personal information. Personal data right refers to the real rights and interests that the subject can independently decide in the process of collecting and using the data about himself or her. According to some scholars' opinions, the main attribute of personal data right is personality right or property right. At present, the civil code of China has some corresponding provisions on the protection of personal information, but it is rarely studied in the field of criminal law in China. Therefore, the protection basis of personal data privacy in legal

documents is very limited, and we cannot infer the extent of the protection from the existing provisions of criminal law. In the theoretical research, there is still a lot of research space for the research of whether the privacy right of personal data needs to be regulated by criminal law, how to divide the protection boundary and how to determine the punishment. The legal protection of personal data privacy of users of e-commerce platform has become an important part of legislation in the new era. In order to meet the various practical needs, the author thinks that the legal basic framework of the way to protect the privacy of users' personal data on e-commerce platform should be established and perfected as soon as possible, so as to protect the legitimate rights and interests of all users of e-commerce platform more effectively. Objectively speaking, due to the progress of the times and technology, the traditional legal protection method in China is not enough to deal with the problems in the transaction process of e-commerce platform, and the protection of user rights and interests is very easy to appear a vacuum zone. Therefore, legislators should establish a complete legal protection system as soon as possible, further protect the rights and interests of users of e-commerce platform, and protect their legal rights and interests to the greatest extent.

D. Improve the internal governance mechanism of privacy protection of e-commerce platform operators

Under the background that personal information security of users of e-commerce platform has gradually become a global problem, improving the internal governance mechanism of privacy protection of e-commerce platform operators and constructing a secure network environment plays an important role in the protection of consumers' rights and interests. Today, the personal information security of users in e-commerce platform should be solved mainly: first, the problem of data privacy prevention of users in e-commerce platform. The establishment of comprehensive protection system can better filter the bad operation behavior of e-commerce platform operators. Second, the security and confidentiality of user data and information of e-commerce platform. To improve the internal governance mechanism of privacy protection of e-commerce platform operators, we can start from the two aspects of data storage security and information transmission security, and combine them to prevent them together. Third, the security of user data information in e-commerce platform is a problem. It is more beneficial to improve the current situation of e-commerce platform vulnerabilities by setting up prevention mechanisms for different types of vulnerabilities. Fourth, the

problem of data backup and recovery of e-commerce platform users. In order to better protect the privacy of consumers' personal data, the data backup and recovery function of e-commerce platform should be strengthened and improved. When the data privacy infringement problem to be solved, data backup and recovery will become the most direct and efficient auxiliary means. In the future, the author should focus on the above four issues as the main internal governance direction to improve the privacy protection of e-commerce platform operators and study the corresponding governance measures in time.

V. Conclusion

With the development of the times, the world is more closely connected than ever before. The world and China are in a great development, great change and unprecedented change in a century. In view of various problems in the development of e-commerce industry, we should dialectically treat the issued e-commerce law, objectively treat the favorable and negative factors, make necessary adjustments to the problems and loopholes, and help the development of e-commerce. The four departments headed by the central information office of the state network jointly organized special governance actions for illegal use of personal information, and the special action of network market supervision in 2019 jointly carried out by 8 departments such as the State Administration of market supervision and other 8 departments fully reflected that the data privacy governance of e-commerce platform in China is facing many new challenges. It is not necessary to say that the laws and regulations related to the protection of Internet data and privacy governance are not perfect. Therefore, we should actively draw on foreign data protection law or privacy law, formulate the privacy law with Chinese characteristics, and further improve various laws and regulations related to the data privacy governance of users of e-commerce platform, including the personal information protection law (Draft), and finally form open, scientific, transparent support The legal and regulatory system of data protection and privacy management in the healthy network environment.

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