

Personal Information Preservation and Balance of Interests

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Abstract: On the one hand, emerging information technologies such as data and information in modern society not only bring a lot of benefits to the development of human society but also lead to the ubiquitous risk of personal message infringement. Therefore, information subjects have the interest expectations and claims to limit the processing and use of their information by others, to protect personal information from illegal collection, processing, dissemination, and intrusion by others. Conversely, the free flow and rational use of individual data have greatly improved the quality of People's Daily social life and have also become an important strategic resource and driving force to promote the enhancement of government governance capabilities and the social development of the future digital economy. Therefore, it can be said that the balance of interests between the preservation and Use of personal messages has become the foundation of the rule of law development of privacy preservation for personal data in contemporary society. Given this, based on previous studies, this paper will further study and discuss the interest balance between the preservation and application of private data in the advancement of contemporary civilization by using the methods of value analysis, legal hermeneutics analysis, and comparative analysis, and propose that within limits permitted by law and with the interests of the information subject as the bottom line, The legal foundation for information users' usage of personal data can be suitably increased to strike a balance between the needs of usage and security of personal messages.

Keywords: Personal information preservation, Use of personal information, Balance of interests, Conflict of interest

1. Introduction

In modern society, the development of emerging technologies not only provides more convenience for human society but also brings great impact to the security of information subjects due to improper use of information technology, especially Information leaks and the unlawful gathering and exploitation of personal data are major and widespread issues. It may be argued that in the information age, the requirements of the parties' interest distribution are no longer met by the conventional personal messages preservation paradigm. The author believes that balancing the conflict of interests between personal message preservation and personal message utilization may be the key to building a legal system for personal information preservation in modern society. This article will study the conflicts of interest arising from personal messages preservation and how to construct a balance mechanism between personal information preservation and utilization, thus

providing new solutions for the balance of interests in the preservation and utilization of personal information in the development of modern society, and I hope these solutions can further protect and safeguard the legitimate rights and interests of Chinese citizens' personal information. Coordinate and properly handle conflicts of interest between personal information preservation and use, and strive to strike a balance between protecting personal information and promoting information utilization as much as possible.

2. Theoretical basis of personal information preservation

2.1. Definition of the concept of personal information preservation

Article 1034 of the Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code") stipulates that "the personal information of natural persons is protected by law", and clarifies the concept and scope of personal information preservation [1]; The subsequent promulgation and implementation of the Personal Information preservation Law of the People's Republic of China (hereinafter referred to as the Personal Information preservation Law) further refined the concept of personal information in Article 4, Paragraph 1[2]. Overall, the legal preservation of personal information in China has shown systematic and professional characteristics, and the principles and systems for personal information preservation have been established.

However, there are three views in academic and practical circles on how and to what extent the "legal preservation" of personal information as stipulated in Article 1034 (1) of the Civil Code should be carried out: The first is that such legal preservation should be absolute; The second view holds that the personal information subject has the right of absolute control and domination over his information. The third view is also the current mainstream view that personal information has certain social publicity [3], In other words, the legal preservation of personal information should be a "balanced preservation" of personal information interests [4]", especially the balance of interests in personal information processing activities. This paper adopts the third "balance of interests" view. The author believes that personal information preservation should refer to the preservation of citizens' personal information rights and interests by the state, the core of regulating the processing activities of personal information and promoting the reasonable flow and utilization of personal information lies in balancing the interests of protecting personal information.

2.2. Balance of interests in the preservation of personal information

Interest balance, from the perspective of civil law, mainly refers to the mutual influence and resulting interest conflicts that people may have in the process of pursuing interests. At this time, a balance mechanism is needed to resolve the contradictions and conflicts, so that the interests of all parties are in a state of mutual restriction and balance [5]. Taking Germany as an example, German lawmakers built the civil law basis for personal data preservation based on the theory of personality rights and took the preservation mode of personality rights and the value of personal dignity as the tradition, balancing the value of freedom of information, adapted to the development needs of The Times and changes in theory and practice, and formulated and improved the preservation mode of "information self-determination" based on protecting general personality rights. To achieve a balance of interests.

The author believes that the balance of interests should have the following connotations: Firstly, the balance of interests in personal information preservation could refer to the mutual restriction, balance, and preservation of the interests of different subjects, to achieve and maintain the balanced development of various interests and even maximize the ultimate goal. Secondly, the balance of interests is a "golden method" of legal research, It runs through the entire legal process of personal information preservation, and the legal order in which states achieve a balance of interests by

measuring multiple conflicts of interest. Finally, in the era of information technology, taking into account the diversity, complexity, and conflict of the interests and contradictions of various parties, the balance of interests should maintain a dynamic development trend in the process of resolving conflicts and balancing interests.

3. Conflicts of interest arising from the preservation of personal information

3.1. The manifestation of the conflict of interest between the parties in the preservation of personal information

There are two main types of subjects in the preservation of personal information: utilization subject and information subject. For example, consumers and network users belong to the information subject. Because this private information carries the personal interests of the information subject, the information subject usually requires the law to protect such interests to a certain extent, and cannot treat personal information in a purely materialistic way [6]. In other words, due to the high-speed and convenient information technology and network communication in modern society, information subjects' demands for personal information preservation are more intense and universal, and their demands for personal information preservation are more urgent. The subject of information utilization includes the second, the third party, the fourth, the fifth party, and the non-specific subject in addition to the information subject. The second party and the third party are usually the dominant forces in the information utilization subject, and also the practitioners to maximize the value of personal information. Given the limited space, this paper only discusses the second part of the information utilization subject [7], which refers to the subject that directly generates the personal information resource exchange relationship with the information subject, and is also the core personal information controller. These subjects include various organizations or individuals such as governments and enterprises. The private information collected by the second party after investing a great deal of material and financial resources, as well as the value-added information formed after secondary processing, analysis, and mining of such personal information, have certain expectations, and they are eager to obtain certain economic benefits through such information and expect such economic benefits to be obtained under the premise of legal compliance. Therefore, in modern society, how to balance the interest relationship between the preservation and utilization of personal information, and then coordinate the preservation and commercial utilization of such private information, has become an urgent problem that needs to be solved in the academic and practical fields.

3.1.1. Information subjects have higher requirements for the preservation of personal information

With the rapid development of emerging network technologies, the inherent commercial value of personal information is also constantly increasing, and infringement of this information is becoming increasingly common. Similar infringement cases are common, such as leaking celebrity privacy and selling "facial information" of online users, all of which cause great harm to the rights and interests of information owners. Therefore, compared with this traditional demand for "individualized privacy preservation", information subjects have a particularly strong demand for their personal information preservation, and this demand is gradually rising to a universal social problem.

3.1.2. The use of personal information by information users

Although state agencies are the biggest institutions to collect, process, and use personal confidential data, this does not mean that the government can collect or use personal information without restrictions. On the contrary, governments should take necessary measures to actively promote the preservation and utilization of this confidential data, and explore the maximum value and limit of its use.

In addition, the second-party information users will collect scattered and original personal information through analysis, mining, sorting, and other ways to achieve the "value-added" of data, to achieve the ultimate goal of generating higher interest. At this point, simply prohibiting the use of this confidential information will cause great obstacles to the development of the social economy. Therefore, reasonable use behavior can not only improve the competitiveness of information users in modern society but also facilitate information users to a certain extent. Similarly, the user of information should not only pursue the maximum utilization of this confidential information but also neglect the preservation of that information. Reasonable and appropriate use of this confidential information is more in line with the interests of all parties. This indicates that the preservation and reasonable use of this confidential personal information have equally important legislative value and legal significance.

3.2. Reasons for the conflict of interest between the parties in terms of safeguarding personal messages

3.2.1. The information subject lacks control over personal messages.

The convenience and universality of information technology in the development of modern society make personal information produce huge economic value. As the owner of personal messages, the message's main body appears to have complete control and dominance over their personal information, but, With the progress of science and technology, information owners unconsciously lose control of personal information, For example, a large number of "apps" in mobile phones obtain authorization by bundling functions and "forcibly" collect users' personal information. If users refuse authorization, they cannot normally use the program, and users are forced to authorize the operators behind these programs, which makes users' right to consent to personal information practically empty. The illegal collection, leakage, and sale of illegal elements cannot be effectively stopped.

3.2.2. "Excessive" use of personal information by information users

According to the "purpose-specific principle" established by the OECD Council in the 1980 Guidelines on the Preservation of Privacy and the Cross-border Movement of Personal Data, information owners shall explain the purpose of collection to the information provider before collecting personal information and strictly abide by the agreed aim in the subsequent employ of such private messages. However, starting from the current practice, the purpose-specific principle has long existed in name, and the purpose promised by the user of information has long been unable to meet its intention of employing these private messages. The greatest value of Personal details is often rooted in its secondary "processing" project. When personal details are initially gathered, can the information user inform the information subject of all the purposes of employing these private messages? Therefore, the employ of these private messages by some information users may not only be "excessive", but also may have violated the lawful rights and interests of the information owners.

Through the analysis of the above personal information preservation subjects and interests, it is not difficult to find that the subjects and rights involved in the process of personal information preservation and utilization are increasingly complex and diverse, which also represents the needs of the whole society for the preservation and utilization of these private messages are constantly changing and developing. Different from the traditional right to privacy, which "provides individuals with a single degree of right preservation from individuals [8]" the preservation and use of these private messages should be considered comprehensively from the perspective of balanced development. Only when personal information can be properly protected, in this way, it is possible to win the trust of information owners, so that information owners can provide their private messages to users with confidence, thus, the collection and utilization of this kind of secret information by users is legitimate, and the development of the whole social economy can be further promoted.

4. Establish a balanced mechanism for the preservation and use of personal information

4.1. Adhere to the principle of balancing interests in the preservation and use of private messages

The balance between the preservation and utilization of private details could be committed to the pursuit of a just social control order of personal information. Scientific and technological innovation, social changes, and advances in governing the country according to law all promote the emergence and continuous improvement of private messages rights and interests, and the development and progress of these rights will also promote the development of social practice and legal system. It can be said that the balance of interests is not only a legal justice order but also a process of realizing legal justice. The legal system for the preservation of personal information could be such a social system [9], In other words, the claims and requirements required for the survival and development of modern society are met at the lowest possible cost, and the interests based on personal information are recognized and guaranteed in a more inclusive and effective institutional way, while the interest confrontation and conflict between the two are gradually eliminated and resolved. In other words, while the law emphasizes the preservation of these private messages, it should also pay attention to its rational use, so there is a large interest balance space in the choice arrangement of the rights and obligations of the parties.

The balance between the preservation and utilization of personal information is mainly carried out among civil subjects. To better implement the theory of balance of interests, the following principles should be followed: First, the principle of equal treatment should be adhered to, and the same interests of similar interest subjects should be protected equally; The second is to implement the principle of non-abuse of rights. When empowering information subjects and information users, it should be carried out by laws and regulations, should not exceed the limits prescribed by law, and should not harm public interests or hinder the exercise of legitimate interests of others. Third, in cases involving personal information flow, entrusted processing, or contract performance, the principle of fairness and justice of "equal exchange" should be adhered to [10].

In addition, the balance between the preservation and utilization of private details should concern the problem of balancing the interest relationship between the government and the information subject [11]. Generally speaking, the establishment of civil rights should follow the right presumption principle of "freedom without the prohibition of law", while the establishment of power should follow the principle of "invalidation of power without authorization of law". Therefore, when balancing the interesting relationship between the government and information subjects, on the one hand, personal information preservation should emphasize the balanced mode of "power serves right"; on the other hand, to prevent the government from abusing its power, in the

interest balance of private details preservation, The legislator not only stipulates the powers enjoyed by the government departments but also entrusts different government departments with different powers to regulate and restrict, such as setting up the public interest litigation system and appointing the main supervisor of private messages preservation, to achieve the ultimate goal of balancing the preservation and use of personal information.

4.2. Improve the regulation of the preservation and use of private messages

4.2.1. Emphasize the implementation of the information subject's right to informed consent

China's laws and regulations on the preservation of private messages all emphasize the information subject's right to informed consent. For example, in the provisions of Article 1035, paragraph 1, of the Civil Code, information processors are required to disclose the rules of information processing and convey the aim, approach, and range of information processing, which affirms that message processors should perform the duty of notification openly and transparently. Although this duty of disclosure does not necessarily inform the subject, however, the information processor should still fulfill the corresponding obligation to inform according to law and minimize the problem of asymmetric information control among the subjects, to greatly preserve the due rights and interests of the messages owners and ensure their right to know.

Although there are still major obstacles in the application of informed consent in practice, this right essentially protects the rights and interests of private messages. Informed consent is the concrete manifestation of information transparency under the rapid development of the Internet economy in modern society, and it is also a proper meaning of respecting the personality rights and interests of information subjects. If the right of informed consent can be truly implemented, it will greatly improve the information subject's trust in the information user and boost the further development of the social economy [12].

4.2.2. Establish and strengthen the supervision mechanism of information utilization subjects

Due to space constraints, only the party second-party information users other than the government are discussed here [13]. Specifically, although the law has the power of enforcement, the inevitable lag of the law also makes some enterprises or individuals explore the so-called "gray zone" [14]. At the same time, the industry self-discipline mechanism established by the self-negotiation and self-organization of the information users can effectively fill the gap caused by the legal lag. Industries involved in personal information are required to strictly comply with industry norms when obtaining and using personal information, and the standards are more stringent than the legal provisions.

Take Internet enterprises as an example [15]. When conducting network activities, Internet enterprises should establish and strengthen industry supervision mechanisms, jointly manage and promote comprehensive governance, supervise and control all behaviors of collecting and using personal information, start from themselves, strengthen industry self-discipline, establish corporate responsibility, actively protect users' privacy, and purify users' network space. Where necessary, it should also seek the cooperation of government departments to fight against the illegal infringement of private messages at the source.

5. Conclusion

The use of personal information has increased significantly with the quick development of Internet technology, but improper use of personal information is likely to lead to conflicts of interest between subjects in the lack of strong institutional constraints. In light of the current economic

developments, striking a balance between the needs for personal information preservation and use has become crucial. While the Personal Information Preservation Law offers a framework for the use and preservation of personal data, it does not offer any practical normative recommendations for encouraging the responsible use of personal data. The author thinks that understanding the concept of "degree"[16] is crucial to using personal information. The legal basis for the information user's use of personal data can be suitably expanded, and the precise use of personal data can be made clear, provided that the principles of legality, legitimacy, and necessity are adhered to within the bounds set by law and the interests of the information subject are not jeopardized. Refine the set of guidelines governing how information users may use personal data. A comprehensive and standardized system for the use of personal information can be developed to strike a balance between the interests of information preservation and utilization. Additionally, legitimate uses of information can be permitted through collaboration between the government and information users, provided that information security is maintained.

References

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