

The personal information protection law and the criminal protection of personal information

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Abstract: In the era of digital economy, the Personal Information Protection Law enforcement not only rigorously defines the semantics of personal information terms and contextual background, but also reasonably regulates and envisages the relevant ownership. It's embodying the Law's protection of natural persons' trust in digital technology, and of achieving technological development and individual security. The personal information right has the dual attributes of personality and property rights, and personal information has multiple legal interests in its own right. When exercising its specific rights, it also involves the handling of multiple value balances. With regard to the protection of personal information and the comprehensive management of related crimes, the following aspects should be highlighted. Firstly, the relevant object criteria for legal protection should be clarified according to the scope of application of personal information laws in the Personal Information Protection Law. Secondly, the Personal Information Protection Law is implemented earnestly to legally guarantee the prerequisite law to be well connected. Thirdly, it is important to improve the standard for identifying personal information, distinguish fake or compound information and count the number of information objectively. Fourthly, the law-enforcing departments should strengthen the review of the reasonable scope of personal information collected by websites, improve the monitoring of websites that use personal information in violation of the law, as well as carry out reasonable supervision in the process of collecting and transmitting personal information. Finally, at the social responsibility level, the subjects associated with the use of personal information should understand and fulfill their legal obligations in the Personal Information Protection Law, promoting the integration of social prevention and control.

Keywords: Cybercrime, the Personal Information Protection Law, Criminal law protection, China

1. Introduction

In the era of digital economy, data is the key factor of social production, and its ownership protection and access management need to be further regulated [1]. However, many lawbreakers steal natural person's information through data techniques to carry out criminal activities. Their unique criminal behaviors pose a significant threat to the China's social order and traditional legal system. Therefore, combined with the Personal Information Protection Law promulgated in 2021, this paper aims to study the criminal protection of personal information, and improve the criminal protection policies in the analysis of the connection of branches of laws, criminal interpretation refinement and the hidden problems in judicial practices. It is of great significance for preventing and attacking related crimes, and protecting personal information security.

1.1. Definition of personal information

In the 1940s, Edwin Hardin Sutherland proposed that criminologists should focused on the crimes with new technologies instead of traditional crimes. Nowadays, the proposal has been confirmed. With the widespread popularization of Internet technology, there are increasing personal information crimes and new changes in the means of crime. Their unique criminal behaviors make it difficult to supervise and attack the related criminals. Actually, information crime is not strictly a specific offence of criminal law, but rather a collective term for the illegal activities that violate criminal law and constitute a crime. Using electronic data or other media, personal information, either alone or in combination with other information, can be identified as a specific natural person or the sum of various types of information reflecting the activities of a specific natural person.

Personal information is defined differently in the legislative context of different department laws.

Thus, to provide more professional protection and prevent violations of the law for personal information, based on the Cyber Security Law and the EU's General Data Protection Regulation [2], China has published the Personal Information Protection Law in 2021 to further regulate the legal definition of personal information. For example, it defines the semantics and scope of application of personal information and sensitive information, and affirms the legal effect of extraterritorial application. Compared to the Civil Code, current judicial interpretations of criminal laws clarify more clearly the scope of personal information of citizens. The identification of personal information crime needs to meet a certain level, i.e. alone or in combination with other identifiable natural persons.

1.2. Jurisprudential analysis of the attributes of the right to personal information protection

Personal information is attached to natural persons. So, there is a question that personal information is what kind of rights of natural persons to be regulated and protected. According to the dominant academic point of view, the right property for the personal information can be summarized into three categories: personality right, property right and privacy right.

In usual, people prefer to share their daily activities using the Internet. To respect and protect the information's owner, the personal information right should be included as a member of personal rights, rather than protecting property rights only for the dissemination of information. Moreover, personal information, in combination with electronic payment means, also shows property interests to a certain extent. If personal information is treated as an extension of the personality right, relevant laws and regulations can be enacted to protect and regulate it as a personality right. Such a behavior is beneficial to the future development of personal information rights.

Besides, some researchers believe that the personal information right should be the privacy right. It is argued that the protection of personal information not only embodies the protection needs of natural law and moral rules, but also is the jurisprudential basis of the privacy right, i.e. the importance of human dignity and rights enjoyed. Although, according to domestic general doctrine, the privacy right is different to personal information in its connotations, scopes and values. However, it is important to note that the personal information right in the forthcoming Civil Code is closely related to the privacy right, except that it focuses more on the protection social control than individual control. With the increasing dependence of personal information to the social media, the personal information reign tends to be related to the public order. As a result, the legal constraints cannot cover all the bases under a single public or private law.

Finally, some people, who judge the personal information right as property rights, point out that the development of the personal information right is under the background of macro-control of the market economy and self-regulation of industry associations. The economic value of personal information is interconnected with the social management and the social public service. Personal information is not only used to delivery message, but also an intangible property and a highly potential productivity.

In summary, the personal information right is closely related to natural persons. It has economic values and the dual attribute of both the personality right and the property right, so it should be protected by law as a civil right [3]. However, Article 111 of the Civil Code currently takes the personal information as a personality right and the personal data as a property right [4]. Considering the jurisprudence of the right attributes, more concern should be given to the essence and legal interests of personal information. It warned us to focus on the economic attribute, as well as to have an insightful understanding of people-oriented personality interest attributes of personal information. That is to say, we should perceive and respect the rights of subjects, the social order and the benign development of the social economy based on the development of the personality right or the emerging right.

1.3. Status of legislation on the protection of personal information in China

Legislation is evolved with the development of the digital economy and technological progress. From the draft of the personal information protection law in the "Legislative Plan of the Standing Committee of the 13th National People's Congress" in 2018 to the enforcement of the Personal Information Protection Law in 2021, as well as other relevant provisions in other sectoral laws such as the Civil Law and Criminal Law, these legislations attach great importance to the protection of personal information. In the Civil Code of the People's Republic of China 2021, there are laws in place designed to explicitly state the privacy right in Civil Law, the definition of citizens' personal information protection and their differences, giving more stringent protection in private laws [5]. In order to strengthen the personal information protection, China's criminal law is also being updated and improved continuously. From the

crime of illegally obtaining citizens' personal information in 2009 under Amendment (VII) to Amendment (IX) of the Criminal Law in 2015, which is the Article 253 of the Criminal Law for the crime of infringing on citizens' personal information, it further supplements other similar illegal act prohibited by the criminal law for this crime, and imposes heavy punishments on those people who access the legal regulation of personal information through official acts or provision of services [6]. At present, the enforcement and implementation of the Personal Information Protection Law can legally regulate the personal information protection in the preceding law, which is beneficial to the transition of department laws and the restraining Criminal Law, as well as effectively prevent and strictly combat personal information crimes.

2. Reflections on the dilemma of the protection of personal information Criminal law protection

2.1. The definition of personal information varies from different law, and the scope of the relevant definition of criminal law is limited.

Natural person are communicating with the outside world, and at the meantime, personal information is also being transmitted. With the development of data technology, the hidden danger of keeping relevant information cannot be underestimated. In response to the social need to protect the legal interests of personal information, relevant authoritative and mandatory laws have also emerged. However, the inconsistent definition of personal information protected by different department laws has to some extent hindered better protection of the legal interests of personal information. To this problem, the definition of personal information in the Civil Code, which is less restrictive than that in criminal law, it does not require a degree of identification to the extent that it can identify a specific natural person, either alone or in combination with other categories. The rationale behind this may be due to the different standards of proof between Civil Law and Criminal Law, but the characterisation of criminal law offences still has other elements of crime for reference and degree of convergence of department law. The definition of personal information varies from different law have made it more difficult for the criminal justice practice to identify personal information that does not comply with the criminal law, and in terms of legal regulation, it has also hindered the better prevention and protection of the legal interests of personal information and crime deterrence. However, the implementation of the Personal Information Protection Law belongs to the provisions of the special law. According to the legal rank problem, it reduce the original relevant confusion and contributes to the prevention of criminal law.

2.2. The Personal Information Protection Law alleviates the contradiction of the modesty of criminal law

The era of digital economy is the era of information. People using the network communication, electronic payment and other details often associated with personal information transmission, personal information relating to the public property rights legal interests, such as the lack of special laws to protect personal information, not to reveal personal information integrated protection scheme of civil law, administrative, criminal law. It is not conducive to promoting the protection of personal information as the general public cognition of "common sense, common knowledge and common feeling", The lack of legislative protection related to administrative law reduces the deterrence of criminal law in this type of criminal activity. Therefore, the Civil Code sets up the legal consequences of relevant violations, which is actually the preemptive protection of personal information and alleviates the contradiction of the modesty of criminal law [7]. From the perspective of the relationship between the laws of different departments, the meaning and value of criminal law is to provide the second protection for the relevant protection in the preceding department laws, such as civil law and administrative law, which determines the last means of criminal law to a certain extent. For those acts not identified as crimes, if there are legal provisions in the administrative law, it will help to curb the criminal evolution process of the illegal behavior of personal information, prevent the illegal behavior from developing into criminality, so as to reduce the original legal protection only in the civil law and criminal law, and also conform to the modesty value of the criminal law.

2.3. The scope of the object of the crime of infringement of citizens' personal information under criminal law is still limited

The change from the crime of illegally obtaining citizens' personal information in Criminal Law Amendment (VII) to the crime of infringing on citizens' personal information in Criminal Law

Amendment (IX) to the Criminal Law reflects that Chinese criminal law is further increasing its efforts to combat the criminal means of citizens' personal information, from "illegally obtaining" to "infringing". This is an advancement in the legal regulation of criminal law, and effectively reduces the difficulty of determining the criminal illegality of this crime in criminal judicial practice. However, the Article 253 of the Criminal Law on the crime of infringing on civil personal information, the subject of the crime of personal information is the citizen, and the object of the crime is the security of the citizen's personal information, and the citizen is a legal concept that he has a certain nationality or has the relevant resident status in a certain region. The object of this charge is limited to the personal information security of Chinese citizens, which narrows the scope of protection of personal information security, and is not in line with the universal jurisdiction principle of protecting the common interests of various countries. At present, Article 2 of the Personal Information Protection Law makes it clear that the scope of application of personal information protection has extraterritorial effect and is defined as the protection of personal information of relevant natural persons, which belongs to the legislative progress of personal information protection. However, the object scope of the crime of infringing on civil personal information is still limited.

2.4. The principle of compatibility between crime and punishment and the penalties for crimes against citizens' personal information

The criminal law reflects the legislative spirit of tempering justice with mercy in order to better punish crimes and protect human rights. According to the judicial interpretation of the Criminal Law on handling cases of the crime of infringing on civil personal information, if a person has committed the crime for the first time, returned all the stolen goods and has shown remorse, he can be considered as not prosecuted or exempted from criminal punishment. This criminal law provision can still be further improved. Because criminal law is punitive and modest, citizens are warned against repeating the same mistakes. If the criminal law is met and there are no deterrents to the offence, the lack of regulation of this area in the original department law, and the fact that it is made punishable without penalty, is to some extent contrary to the modesty of criminal law. The deterrent effect of criminal law does not depend on the availability and application of penalties, but to a large extent on the necessity and fairness of the penalties and the way they are applied, as well as on the human perception of the penalties. Nowadays, the Personal Information Protection Law provides for the legal consequences of relevant violations, which reflects the progress of legal protection. A good connection between the Personal Information Protection Law and the criminal law is the test of criminal justice practice. This is not only the standard of crime and non-crime, but also the embodiment of the principle of matching crime and punishment.

3. Criminal law protection measures for personal information in the digital economy

3.1. Legal system level of personal information protection

3.1.1. Unify the legal protection scope of personal information, and clarify the relevant object standards of legislation

The different legal definitions of personal information in various departments have increased the workload of identifying the information in criminal justice, and is not conducive to the protection of the relevant scope by the law. The freedom of information transmission and the exercise of rights should be legitimate, and the corresponding legal regulations should also set a unified scope of personal information legal protection, so that the law is more clear and consistent with "common knowledge, common sense and normal emotion". Besides, for criminal cases of infringing on citizens' personal information, it is necessary to clarify the relevant legislative standards. In the Personal Information Protection Law, the protection subject is natural persons, so the relevant charges of the Criminal Law should also be revised to "personal information of natural persons", which is conducive to unifying the scope of legal protection of personal information, clarifying the relevant object standards of legislation, It is more in line with the principle of universal jurisdiction and the focus of international protection of personal information as the rights and interests of natural persons.

3.1.2. Clarify the relevant legal regulations in the Personal Information Protection Law, and clarify the boundaries of punishment in criminal law

The Internet has become the mainstream medium of information transmission, and the improper storage and illegal use of personal information are highly prevalent, which is easy to become an illegal means and method that leads to the derivation of more network crimes, such as the theft of personal

information for network fraud, and the criminal cases of picking quarrels and making trouble for Credit Card. Therefore, at present, the separate legislative protection of personal information can effectively improve the vigilance of the public and deter relevant wrongdoers, in addition, the legislative protection of personal information in administrative regulation also makes up for the gap in the relevant aspects of pre-punishment, and the consideration of the perpetrator with a good attitude of returning all illicit income and admitting guilt is transformed into the application of administrative laws for regulation, which not only cracks down on relevant illegal acts, protects personal information security, but also helps to better clarify the boundaries of administrative and criminal law-related punishments, which is in line with the value of criminal law.

3.1.3. Appropriately adjust the sentencing of criminal subjects and behaviors involving the convenience of information services

In recent years, combined with the judgments on crimes of infringing personal information, it is nothing new for cases of taking advantage of positions or services to collect and store personal information to facilitate crimes, they are generally staff of express delivery, medical institutions, telecommunications platforms and even civil servants. From the perspective of information protection, information storage and delivery services should fulfill the obligation to legally protect citizens' personal information, and should not become criminals who leak or infringe the personal information. For the main criminals who have relevant services and convenient positions, It shall, according to the specific circumstances of the crime, offer a sentencing recommendation by comprehensively considering various sentencing circumstances, so as to give a lenient sentence to those who deserve it, be severe when the actual circumstances so require, combine leniency with rigidity, and impose due penalties.

3.2. Integrated governance dimensions of personal information protection

3.2.1. Improve the screening criteria for the identification of personal information in conjunction with judicial practice

The judicial interpretation of China's criminal law further clarifies the quantitative requirements for infringement of personal information in crimes against citizens' personal information, and the seriousness of the consequences of the wrongful act is judged in terms of the quantity, the amount of illegal profits and the degree of personal injury or economic loss, reflecting the gradual increase in the protection of personal information by the state. It is worth noting that in judicial practice, there are still difficulties in identifying the authenticity of personal information, and that false information, the degree of integration and disassembly of information have a significant impact on the determination of the amount of personal information, and should be combined with judicial practice to clarify and improve the criteria for identifying personal information. It is necessary to improve the testing technology for determining the completeness and relevance of personal information or to establish a professional information identification agency to determine the quantity, which will help to screen out false information, verify the quantity, unify the relevant judicial practice determination methods and improve the protection of personal information in a comprehensive manner.

3.2.2. The related subjects of personal information processors shall actively responsible for relevant matters to realize the integration of social prevention and control

The circulation of personal information in the Internet age is connected with society and natural persons, which also means that it is public and social. The protection of personal information reflects the respect for individual freedom and personal rights. Therefore, in order to maintain social order of the circulation of personal information and the practical demand of the protection of personal rights, it is necessary to focus on the protection of personal information rights. Legislative prevention and control of personal information only from the point of view of protecting traditional private rights can no longer achieve good results in the era of electronic data of information. It is very necessary to realize the integration of social prevention and control in personal information protection. Therefore, the Personal Information Protection Law clarified that Personal information processors have the responsibility of personal information protection, and have the responsibility of carrying out risk regulation and audit work on personal information processing. Personal information processors shall conduct an assessment of impact of personal information protection. When using personal information, a platform believes that personal information may be compromised, it has the right to require the personal information processor to notify the individual. For personal information processors engaged in special data services, they should also implement the platform management standard system, which need to be further refined in the industry and the implementation of obligations, so as to truly realize a new height

of personal information from personal attention to the dual attention of individuals and society. Cyberspace is also a reflection of social life, based on the comprehensive management of the digital economy era, relevant law enforcement departments should increase the review of the reasonable scope of personal information collected by websites and increase the intensity of identification and monitoring of websites involving illegal and criminal use for personal information, and conduct reasonable and measured review and supervision in the process of collecting and transmitting personal information, so as to promote the integration of social prevention and control.

4. Conclusion

With the rapid development of the digital economy, the promulgation and implementation of the Personal Information Protection Law not only reflects the improvement of personal information protection, and show the problem of balance between the legitimate transmission of data [8]. It is more effective to protect personal information as a kind of personality rights and information transmission rights. The subject of personal information right is a person rather than a tool, and its object is information. It pays attention to protecting the will and free use of information of natural persons, so as to balance the freedom of information and the freedom of personality interests. The Personal Information Protection Law rigorously defines the semantics and scope of application of personal information, standardizes and reasonably protects the ownership and use of relevant information, reflects the law's active protection of natural persons' trust in digital technology, and escorts the realization of the dual goals of technological development and individual safety. With regard to the protection of personal information and the comprehensive management of related crimes, the following aspects should be highlighted. Firstly, the relevant object criteria for legal protection should be clarified according to the scope of application of personal information laws in the Personal Information Protection Law. Secondly, the Personal Information Protection Law is implemented earnestly to legally guarantee the prerequisite law to be well connected. Thirdly, it is important to improve the standard for identifying personal information, distinguish fake or compound information and count the number of information objectively. Fourthly, the law-enforcing departments should strengthen the review of the reasonable scope of personal information collected by websites, improve the monitoring of websites that use personal information in violation of the law, as well as carry out reasonable supervision in the process of collecting and transmitting personal information. Finally, at the social responsibility level, the subjects associated with the use of personal information should understand and fulfill their legal obligations in the Personal Information Protection Law, promoting the integration of social prevention and control.

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