

Research on legislation of special protection of children's privacy data

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Abstract: *In the era of big data, children's privacy data needs special protection. First of all, the concept is defined. "Children" refers to minors under the age of 14, and "children's privacy data" refers to children's private and sensitive data. Secondly, it discusses that the protection of children's privacy data has a certain theoretical basis and practical basis, including the theory of reasonable expectation of privacy and the theory of child protection, and the practical basis includes the legislative status quo of children's privacy data protection and the deficiency of judicial protection. Finally, it puts forward the ways of special legislative protection for children's privacy data, including the establishment of a certain regulatory system, Internet compliance and accountability mechanism.*

Keywords: *children's privacy data; Special protection; legislation*

1. Introduction

In the era of big data, data has become an important resource. At present, in the world, including China, children have become one of the important producers of Internet data. However, in the process of the vigorous development of data resources, problems are gradually revealed, Internet service providers continue to collect, analyze and use children's data on the Internet, which may lead to children's digital identity loss of control, increased privacy risks and other crises, resulting in more serious and lasting adverse effects than adults. As a person with limited capacity, children need far more protection than adults, and there should be special provisions for the protection of children's privacy data. At present, the European Union's General Data Protection Regulation (GDPR) has special provisions for the protection of children's data; In China, although the Provisions on the Online Protection of Children's Personal Information came into effect in October 2019, and another piece of legislation related to the protection of children's data, the Regulations on the Online Protection of Minors (Draft), was deliberated and passed in September 2023, the content of these legislation is very simple and cannot effectively protect children's data rights. Therefore, China needs to establish a sound data protection system for children's privacy.

2. Concept definition

First, the definition of the concept of "children". According to many factors, such as the law of physiological and psychological development and social development of adolescents, Chinese lawmakers set the age standard of children as 14 years old when formulating the Regulations on the Protection of Children's Personal Information on the Internet. The definition of children in this paper also adopts the classification standard of minors under 14 years old.

Secondly, the concept of "children's private data" is defined. Children's data can also become children's personal information, and its important feature is identifiability, that is, specific individuals can be identified through data analysis. Some Chinese scholars have proposed that personal information has three characteristics: individual identification, information relationship establishment and economic value.^[1] It is unrealistic to include all children's data in the scope of special protection of the law, and only the more private or sensitive part of children's data needs special protection of the law, that is, children's privacy data needs special protection of the law. The consequence of violating the right to privacy is to disclose or know the privacy secrets of others and thus cause others to suffer physically or mentally. For example, the geographical location information of children is leaked, and the children themselves are tracked and monitored, thus causing the physical and mental health of children to be damaged, which can be regarded as the violation of children's privacy. In addition, the

connotations of "sensitive" and "privacy" are different. Private data refers to a very wide range of content, mainly referring to the collection of data that carries information that natural persons are not willing to disclose, while sensitive data focuses more on special types of privacy except basic personal privacy. For example, as stipulated in Article 9 of the GDPR, data that reveals special types such as race or ethnic background, political views, religious beliefs, natural person health, sexual life and orientation falls under the category of personal sensitive data.

3. The need for special protection of children's privacy data by legislation

3.1. Theoretical basis

The legislative special protection of children's privacy data is based on the theory of reasonable expectation of privacy and the theory of child protection. The reasonable expectation of privacy is obtained through the method of constitutional interpretation, which expands the extension of the right of privacy and further strengthens the rationality of the right of privacy protected by the Constitution. The original purpose of the theory of reasonable expectation of privacy is to limit the government's invasion of citizens' privacy, but the era of big data has given this theory a new connotation and has become a new standard of privacy protection. For their part, teenagers experience greater mood swings than younger children or adults, are more inclined to act impulsively, and often don't think about the consequences before taking action. At this time, the law needs to give children special protection to protect their privacy, such as directly making protective provisions on children's private data, or stipulating that guardians guide or exercise data rights on behalf of children, such special provisions given to children by the law are actually a form of special protection. This can be regarded as one of the theoretical bases for the establishment of special protection of children's privacy data.

The second theoretical basis for the establishment of special protection of children's privacy data is the theory of child protection. Specifically, the significance of special protection for children has the following three points: First, children need special protection because of their psychological, intellectual and physiological particularities. Second, protecting the healthy growth of children plays a very important role in developing human resources, improving the quality of the people and strengthening the economic benefits of the society. Third, the rights of children facing special difficulties require more special protection. In the era of big data, protecting children's privacy data has become an important part of protecting children's healthy growth, and whether children can grow healthily is closely related to the significance of the above three aspects. In terms of the basic principles of child protection, China's child protection theory has also made corresponding elaboration on the basic principles of child protection. Specifically, the basic principles of child protection in China include the principle of child priority, the principle of the best interests of the child, the principle of suitable for the physical and mental development of children, the principle of fairness and equality, the principle of adult obligation and the principle of comprehensive protection. These six basic principles not only have positive guiding significance for the practice of child protection in China, but also have positive guiding significance. And it can also play a guiding role for the protection of children's privacy data in our country. Based on the analysis of the content of these six basic principles, the connotation of these principles mostly includes the key content of special protection for children. For example, the principle of adult obligation mainly refers to the obligation of adults to protect children, and such special protection from adults can still be applied in the protection of children's privacy data. Therefore, this principle can provide some theoretical guidance for the special protection legislation of children's privacy data in our country. For example, the principle of the best interests of the child requires that all actions concerning children need to be based on the protection of the best interests of the child, and this priority view of the interests of the child also reflects the special protection of children. At the same time, the principle of the best interests of children can also be applied to the special protection legislation of children's privacy data in China, providing a theoretical basis for the special protection of children's privacy data.

3.2. Practical basis

3.2.1. Children's right to privacy data needs to be confirmed by legislation

Should children's right to privacy data be a right, an interest or an interest? For this issue, many Chinese scholars have discussed the legal nature of personal information rights and interests, for example, some scholars believe that the basis of legal protection of personal information is civil rights

and interests.^[2] Some scholars also emphasize that the right to personal information should be elevated to the level of basic rights.^[3] Understanding a child's right to private data as an interest is clearly inadequate and fails to show what the special protection legislation for children's private data is intended to protect. If the right to children's privacy data is regarded as a right to protect, then the complex social relations in the protection of children's privacy data will cause harm to children's privacy data rights and interests at any time, because rights and interests are a collection of legitimate interests, so everyone has certain rights and interests, but when there is a contradiction and conflict between different rights and interests, there must be one party's interests to be damaged. Is it reasonable to protect children's right to private data as a right? Rights can correspond to a variety of interests, and behind the right to children's privacy data can include children's physical and mental interests, privacy interests, family interests, social interests and other interests, so it is more in line with the fundamental purpose of children's privacy data protection legislation. From the perspective of legislative reality, China has introduced special legislation on privacy data protection such as "Provisions on the Protection of Children's Personal Information Online" and "Personal Information Protection Law", so China adopts special legislative protection method for children's privacy data. The provision of children's privacy data right through special legislation will make the content and boundary of children's privacy data right more clear. Therefore, the provision of children's privacy data right through legislation is more conducive to the relief of rights to achieve the expected goal.

3.2.2. The judicial effect of children's privacy data protection is not good

For a long time, the protection of the right to privacy has been faced with the problem of poor effect in judicial practice. Children's right to privacy is a kind of individual right that stays in theory, and it is almost difficult to see cases related to children's right to privacy in judicial practice. An important reason for this phenomenon is the lack of specific provisions on the right to privacy of children in our existing legislation. Before the era of big data, physical barriers in real life can play a positive role in protecting children's privacy. At the same time, children's personal privacy information is also expressed in the form of physical carriers, so the amount of information carried in the carriers is limited and the fluidity of information is relatively weak. Therefore, the invasion of children's privacy generally will not bring fatal harm to children. Even if children's privacy rights are violated, children and their guardians can find evidence of infringement and protect their rights relatively easily in the real world. For this reason, before the era of big data, the lack of legislative provisions on the protection of children's privacy did not cause serious damage to social relations, and the existing privacy protection provisions in the legislation were sufficient to meet the needs of the protection of children's privacy, so there was no need to conduct special legislative activities on the protection of children's privacy. However, with the advent of the big data era, children's privacy data protection has become an important part of children's privacy rights. Based on the "scale", "value", "high-speed", "diversity" and other characteristics of big data, children's privacy data rights also show characteristics different from traditional children's privacy rights. These new characteristics make the judicial application of the traditional privacy protection provisions face difficulties, which leads to the poor effect of the judicial practice of children's privacy data protection.

4. Legislative suggestions on the special protection system for children's privacy data

4.1. Regulatory system

The supervisory body plays an important role in the supervision system of children's privacy data and is the main responsible body for the protection of children's privacy data within the scope of the law. Different legislation in China provides for different regulatory bodies for children's privacy data, such as Internet and information technology departments at all levels, relevant responsible agencies in governments at all levels, market supervision departments, and industry and information technology departments at all levels can supervise children's privacy data from different aspects. Although the situation that multiple departments can act as the regulatory body expands the scope of protection of children's privacy data, the diversification of regulatory bodies will lead to the decentralization of regulatory authority, and different regulatory departments are easy to act independently, so it is difficult to form a regulatory force, and ultimately affect the regulatory effect. Therefore, children's privacy data regulatory bodies need to be further refined and determined.

The national network information Department is the main responsible agency for personal data protection, and therefore the main regulatory body for children's privacy data, responsible for the protection of children's privacy data in most matters. Market supervision departments, relevant

responsible departments in governments at all levels, national industry and information technology departments and other regulatory bodies are responsible for the protection of children's privacy data in their respective areas of competence. In this case, it is more appropriate to set the network information department at all levels as the main supervisory department of children's privacy data. The reason is that, on the one hand, if the responsibility is considered, the management of Internet information content and the protection of personal privacy data is one of the responsibilities of the national Internet information department, so the Internet information department has a natural source of rights in the supervision of children's privacy data. On the contrary, the main function of market supervision, industry and information technology departments, relevant government departments and other agencies is not the protection and supervision of children's privacy data, and only when the matters under their supervision involve children's privacy data can they exercise their regulatory power. On the other hand, from the perspective of management ability, since data governance is one of the main responsibilities of the national network information agency, compared with other regulatory departments, the network information department will have more professional governance talents, more advanced governance technology and more perfect governance means, and thus can achieve better practical results in the special protection of children's privacy data. Therefore, it is suggested to set the national Internet and information technology department as the regulatory body of children's privacy data by means of legislation, so as to form a regulatory model dominated by Internet and information technology departments at all levels and coordinated by relevant departments at all levels.

4.2. Compliance and accountability mechanisms for the Internet

4.2.1. Strengthen the compliance mechanism of Internet enterprises

Network operators are the direct practitioners of special protection legislation for children's privacy data.^[4] "No matter how perfect data protection legislation is, its implementation should also be implemented into the data compliance practice of enterprises".^[5] Although compliance obligations can be found in the special protection legislation of children's privacy data in China, such as the special child user agreement and the special child data protection officer stipulated in Article 8 of the Provisions on the Protection of Children's Personal Information Online, the number of such provisions is not large, and the provisions on the compliance obligations of enterprises are slightly weak compared with other types of provisions. The direct result is that the operability of enterprise compliance obligations is not high. Therefore, the enterprise compliance mechanism in the special protection legislation of children's privacy data in our country is faced with the legal dilemma of fewer provisions and less detailed content.

First of all, it is suggested to make a distinction between the children's privacy data protection obligations of large Internet enterprises and small and micro Internet enterprises. Considering the large differences in the scale and strength of different Internet enterprises, it is necessary to fully consider the scale and compliance practice ability of Internet enterprises when setting compliance obligations for Internet enterprises. In this regard, an ideal choice is to make compliance obligations in line with the strength of enterprises according to their own conditions. For large network operators, they can be required to assign special personnel to be responsible for the special protection of children's privacy data, and they can also require special protection of children's privacy data as a standard for company performance evaluation. For small and micro enterprises, due to the high cost of fulfilling the special protection responsibility for children's privacy data, it can be stipulated that enterprises that meet the compliance standards,^[6] at the same time, the number of small and micro enterprises is small, it is not mandatory to assign special personnel to be responsible for the special protection of children's privacy data, and it can be adapted to stipulate that key personnel need to grasp the legal provisions and promote their implementation.

In addition, it is recommended to clearly specify the standards for compliance certification of Internet enterprises. The proof standard of enterprise compliance is also an important part of enterprise compliance mechanism. How to prove the implementation of special protection compliance activities for children's privacy data by Internet enterprises needs further clear regulations. Because different enterprises will take different measures to implement the legislative provisions on the special protection of children's privacy data, the compliance activities of Internet enterprises will be complicated and diverse. If there is no clear proof standard, the relevant competent departments will face the problem of lack of basis in the supervision and inspection of the implementation of the compliance mechanism of enterprises. Therefore, it is necessary to clearly define the standards of proof of compliance behavior of Internet enterprises to reduce unnecessary troubles that may occur in the later stage.

4.2.2. Improve the supervision and accountability mechanism for network operators

The accountability and supervision mechanism plays an important role in the implementation of the legislation on the special protection of children's privacy data. At present, there are still many shortcomings in the accountability and supervision mechanism in the special protection legislation of children's privacy data in our country, the most important shortcoming is that there is no special protection for children in the supervision and accountability mechanism. Therefore, it is necessary to improve the corporate accountability and supervision mechanism in the special protection system of children's privacy data in China. In general, with regard to the problems in the monitoring and accountability mechanism, it is recommended to clarify the relevant provisions on supervision penalties and to provide special protection for children in this regard.

First of all, it is proposed to clearly stipulate the legal responsibility for violating the special protection system for children's privacy data, "according to the type and circumstances of the obligation violation, the main body of responsibility for administrative penalties, types, punishment methods and procedures are set respectively."^[7] As a departmental regulation, the Regulation on the Network Protection of Children's Personal Information has limited authority to set administrative penalties, so it is suggested to clarify the legal liability provisions as far as possible within the scope of legislative authority. For example, the provision of a clear amount of fines, warnings, revocation of business licenses, business rectification and administrative detention and other administrative penalties. For acts with serious circumstances, criminal responsibility may be investigated according to the crime of infringing on citizens' personal information. Secondly, it is proposed to add special protection provisions for children in the legal responsibility part, that is, to stipulate that violations of children's data privacy should be severely punished in accordance with the law. Finally, it is suggested to add some procedural provisions. As citizen complaints, handling of reports and administrative interviews provided for in Article 24 of the Provisions on the Protection of Children's Personal Information Online are not general administrative penalties, there is a lack of clear procedural provisions. Therefore, it is necessary to appropriately increase the procedural provisions that regulatory bodies need to follow when handling complaints about children's privacy data and interviewing network operators, such as the initial defense of network operators and the evaluation procedures of accepting authorities.

5. Conclusions

Dealing with the special protection of children's privacy data by legislation is not only the realistic demand of children's privacy data governance, but also the necessary condition to improve China's data protection legal system. Strengthening the special protection of children's private data by improving the supervision system and the compliance and accountability mechanism of the Internet will be of great significance to the healthy development of children and the orderly progress of society.

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