

# The Principle and Legal Regulation for "Big Data Swindle Acquaintances"

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**Abstract**—Big Data Swindle Acquaintances refers to an behavior that network platform operator may do to partial stable consumers by analyzing and generating specific users' image after mastering users' personal information and consumption data. This behavior violates the principle of honesty and credit in the civil law, and the consumer protection law, and seriously damages the rights and interests of consumers.

**Keywords**—Big Data Swindle Acquaintances; the right to know; fraud; honesty and credit principle; network platform

## I. INTRODUCTION

The Social Survey Center of China Youth Daily made an online questionnaire survey in March 2018. According to the survey results from 2008 respondents, 51.3% of them had suffered from "Big Data Swindle Acquaintances" by Internet enterprises, and 63.4% of them believed that nowadays it had been a common thing that Internet enterprises took advantage of the big data to swindle acquaintances. Not long ago on Weibo, many passengers disclosed their experience of being swindled by drivers providing online car-hailing service, opened up the prelude to crusade against such behavior of "Big Data Swindle Acquaintances" and also brought the originally unknown term "Big Data Swindle Acquaintances" to vision of the public. Gradually, some users find that they are charged at different rates from the same origin to the same destination; even when consumers are booking hotel room on the network platform of a travel service company, the same room is priced differently on different mobile phones. For those Internet operation platforms, considering that their stable consumers have not that high perception and sensitivity to the prices shown, they often take this advantage to damage consumers' rights and seek for improper benefits.

At present, mobile phone, computer and network have become inseparable from people's daily life. Even without exception, all applications are suspected of trying to collecting users' personal information, including but not limited to users' mobile phone number, head portrait, common nicknames and positioning. After acquiring, analyzing and processing such information, it is not a problem for those applications to swindle acquaintances. For example, a movie ticket purchased on the movie purchase application of VIP members is even more expensive than that purchased in the theater; the same type of video software

purchased via IOS system is more expensive than that purchased via Android system for more than ten Yuan; if you buy travel ticket via a travel APP, you may found that the price increases with the increase of search frequency so that you may purchase it quickly for fear of continuous price increase. When you finish it, you may found that the price is reset to the beginning data. All the signs show that the environment people live in is a transparent environment. Many common applications are attempting to define consumers so as to set patterns for consumers and further swindle them.

## II. THE PRINCIPLE AND TECHNOLOGY OF BIG DATA SWINDLE ACQUAINTANCES

### A. Price Discrimination Theory in Economics

Price discrimination is a proper term in economics. In general, it is to price differently for different people groups. For example, when those driving a globally limited luxury car come to a street stall to eat noodle, they may be charged 50 Yuan a bowl of noodle; however, if they are management personnel from a company carrying a bag of famous brand and having exquisite makeup, they may be charged 30 Yuan of noodle; and if they are students and ordinary workers, they may be charged 10 Yuan a bowl of noodle. This is they way of pricing differently for different people, and hence the price discrimination.

Although it is theoretically simple and easy to operate, no or very few noodle restaurant bosses would have behavior of "price discrimination" in real life. Why? It is mainly due to the constriction posed by objective laws and market competition. On the one hand, nowadays in the operation of physical store, it is required to give clear price tagging; on the other hand, consumers are very sensitive to blatant price discrimination. Even rich people cannot accept a commodity priced far higher than the market price.

### B. Technical Analysis of the "Big Data Swindle Acquaintances"

To try to analyze the phenomenon of "Big Data Swindle Acquaintances", the first necessary step is to make clear the characteristics of the era of big data and the era of digital economy. Science and technology are the primary productive forces. With the continuous development of science and technology, people have undoubtedly entered the digital

economy era. In the G20 meeting held in Hangzhou in 2018, the paper "G20 Digital Economic Development and Cooperation Initiative" defines the digital economy in this way; namely, the digital economy refers to a series of economic activities using digitalized knowledge and information as the key production factor, taking modern information network as the important carrier and taking the effective use of information communication technology as the important force for improving efficiency and optimizing economic structure. Hence, it can be seen that the three major factors of the digital economy are: data factor, network carrier, and technology power.

In the context of traditional economy, asymmetric information appears between merchants and consumers due to lacking information. However, in the context of digital economy, every consumer busies with generating data like bees. The data produced by consumers is gathered on a platform. There is information asymmetry between the platform and consumers in the context of data blowout. A large amount of data makes the network platform possible to make accurate prediction. The information asymmetry makes the blind trust of consumers, and the unceasingly optimized algorithm improves the precision of marketing. Consumers having a little online shopping experience may find that when they log in a shopping platform again after they search for a product on the platform, they may receive many similar commodities as recommended by the platform, and even the picture of product you want to buy may be shown on the homepage of the website. This is mainly the so-called precise marketing towards consumers after making big data analysis. The Internet platform can also judge users' consumption power, consumption habits and consumption preferences, and give them differentiated pricing by collecting, analyzing and processing various data information of consumers.

The tens of thousands of users' profile information and data as collected by the platform when user register on and use the platform, including users' device, personal account number, nicknamed avatar, geographic location information, search history, and consumption preferences and so on are the cornerstone of "Big Data Swindle Acquaintances". Without big data, there is nothing to talk about such online price discrimination. Mr. Wang Wei, the director of the Department of Information Security of Beijing Jiaotong University, said that, every participant of online life has at least hundreds of keywords. Based on those keywords, it is available to finally portray the participant and form a vivid and live image of the participant. Generally, the big data analysis on individual user can be divided into four levels: social network analysis, text analysis (for example, the dynamic state issued by users, the words most frequently used by users, and users' comment on the service), behavior analysis (such as users' social network usage habits, usual work and rest schedules, online consumption habits, etc.), and time-space sequence analysis (such as the hotel or shopping plaza that users often locate, the location of the home set by user, the location of user's work unit, etc.). Through the four levels of analysis, all aspects of user can become relatively transparent and clear. In this sense, people in the era of big data are transparent and naked. It becomes

easy for online seller to analyze individual user based on those big data and select the person that is possible to become the object of "Big Data Swindle Acquaintances".

### III. ANALYSIS ON THE ILLEGALITY OF "BIG DATA SWINDLE ACQUAINTANCES"

#### A. "Big Data Swindle Acquaintances" Is Suspected of Infringing on the Legitimate Rights and Interests of Consumers

The Consumer Protection Act stipulates that "consumers have the right to know the true state of the goods they purchase or use, or the services they receive, the right to independently choose goods or services, and the right to enjoy fair trade". "Big Data Swindle Acquaintances" violates consumers' right to know, right to select independently, right to enjoy fair trade. Unlike a bottle of cola, which sells only 3 Yuan in a supermarket but 20 Yuan in a star-rated hotel, the normal market price of cola is transparent, so the premium in a star-rated hotel is disclosed. In the phenomenon of "Big Data Swindle Acquaintances", stable users of various network platforms are provided with quotation higher than other users of the same period for the same service; users can neither know the pricing principle nor enjoy the fair trade right; the platform may show different optional commodities for different users. This is caused for reason that the platform controls the visibility of products so that users lose the right to independently select product and service as demanded. In addition, "Big Data Swindle Acquaintances" is also suspected of posing price fraud. According to the "Provisions for Prohibiting Price Fraud Behavior", it can be known that fraud behavior means that operator uses false or misleading price tagging forms or price means to deceive or induce consumers or other operators to transact with him/her. For those users getting VIP qualification at cost under the induction of online taxi software and movie ticket sales platform, they should be like regular customers in real life, and able to enjoy more conveniences and benefits, but in fact, they are charged higher than ordinary users. This behavior is clearly consistent with the characteristics of price fraud and thus belongs to price fraud.

#### B. It Is Also Suspected of Abusing Users' Information

In the phenomenon of "Big Data Swindle Acquaintances", an online travel service improvement platform provides different customers with different optional flight schedules, ticket fares, room types and prices, mostly based on those users' previous historical travel data. The reason behind this is mostly because the data of users on different websites is shared by ads Union. A large amount of information is used, analyzed and intensively explored by many companies without the permission or authorization of users, forming accurate user portraits to facilitate the companies to charge higher prices to users with basic demand or low price sensitivity. "Big Data Swindle Acquaintances" also reflects that Internet enterprises have large problems in aspects of data collection, user privacy protection and data circulation.

#### IV. COUNTERMEASURES FOR COPING WITH "BIG DATA SWINDLE ACQUAINTANCES"

##### A. Establishing Applicable Sound Laws and Regulations

It is necessary to improve relevant laws and regulations and complement the blank part as soon as possible, and formulate strict provisions for the collection, use and protection of big data. The purpose is on the one hand to adapt to the new environment brought by the emerging big data industry, and better match with the business needs based on big data analysis, on the other hand, to provide legal support to crack down the "Big Data Swindle Acquaintances" behavior and enhance the legal awareness of online platform merchants.

First, it is needed to increase the popularity of e-commerce and pricing related regulations in relevant laws such as the Price Law and the Anti-Monopoly Law, so that consumers can understand China's regulations on the operation of commercial activities and use law to protect their rights. Second, it is needed to carry out clear legal characterization and regulation on "Big Data Swindle Acquaintances" behavior, increase the cost of violating law, and stipulate that the network platform should publicize its platform service agreement and payment rules. Third, in the Consumer Protection Law, the duty of proofing on "Big Data Swindle Acquaintances" should be reversed, and in turn, the merchants should be responsible for proofing that they do not implement price discrimination. Fourth, citizens should be given the rights to be forgotten, timely notified, etc., so that citizens can more effectively protect their interests.

##### B. Strengthening Supervision by Authorities

First, it is needed to build up a big data monitoring platform to monitor the phenomenon of "Big Data Swindle Acquaintances". That is to use the data analysis function of big data to judge whether an enterprise is suspected of having "Big Data Swindle Acquaintances" behavior, and then feedback the analysis result to user. Second, it is needed to establish a national big data information development department that integrates review, supervision and governance to strengthen the management and control of big data development, improve management and control efficiency, strengthen pertinence and overall planning, shorten the problem processing cycle, and provide citizens with reporting channels. Third, it is needed to newly set up a blacklist system against the "Big Data Swindle Acquaintances" behavior online. The national network supervision department should network with the media, and circulate throughout the Internet a notice about the merchants who have "Big Data Swindle Acquaintances" behavior twice or more by reference to the action executed on the person against who a judgment or order is being executed for his/her untrustworthy behavior, and the media should announce to the public to warn the platform merchants.

To reform the market supervision system, the regulatory authorities should improve the supervision methods and conduct fair investigations and discover the truth. In the context of the constant emergence of new problems, it is necessary to formulate new supervision methods and conduct

unified and orderly market supervision. Further, it is needed to realize a full cooperation between the national regulatory authorities and the network management departments, to not only guide the merchants to operate in good faith, but also resolutely crack down and rectify the illegal behaviors and create a good network environment.

##### C. Improving the Awareness of Right Protection

While purchasing products and services online, consumers should improve their sensitivity to price, do not rely too much on a certain platform, but pay attention to shop around and try to compare and experience the same product or service on different platforms. At the same time, consumers should also pay attention to the price fluctuations, pay attention to safeguarding rights and interests and protecting privacy. Consumers should make good use of reporting manner to announce any case violating consumers' legal rights and interests via TV news, online media and other ways of communication. Moreover, it is also necessary to resolutely establish a sense of rights protection to put to any merchants' illegal behaviors to an end.

#### V. CONCLUSION

As Dickens written in *A Tale of Two Cities*, "It was the best of times, it was the worst of times; It was the age of wisdom, it was the age of foolishness; It was the epoch of belief, it was the epoch of incredulity; It was the season of light, it was the season of darkness; It was the spring of hope, it was the winter of despair; We had everything before us, we had nothing before us..." The era of big data is such an era. Along with the east wind of the scientific and technological revolution, social life has undergone earth-shaking changes. On the way of regulating the Internet business behaviors and protecting consumer rights, national regulatory authorities, Internet companies, and consumers still have a long way to go.

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