



The Dilemma and Breakthrough of the Right Conflict of the Right to Be Forgotten in the Background of Big Data

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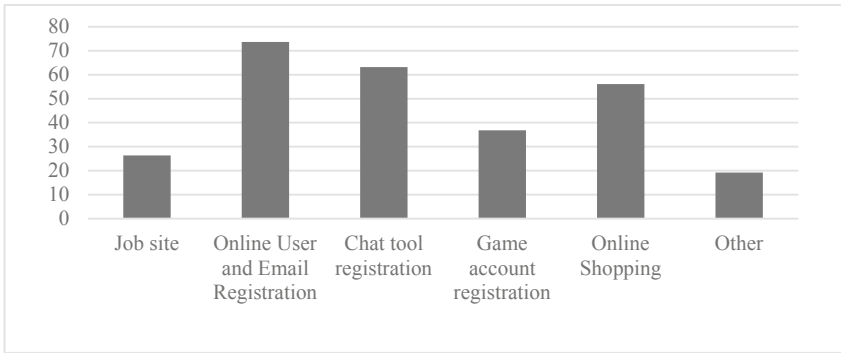
Abstract. “Right to be forgotten” (right to be forgotten), also known as “right to be forgotten”, refers to the fact that the information subject’s objective and continued retention of information related to his own rights and interests that have been posted on the Internet will lead to his social evaluation. Reduced information requires the information controller to take necessary measures such as deletion, blocking, and elimination of influence in a timely manner. The purpose of the right to be forgotten is to eliminate the negative effects of the indefinite retention of personal information on the Internet to the subject of the right. In my country, the right to be forgotten has not yet entered into law, and the construction of the right to be forgotten system faces the dilemma of various conflicts of interest. The key to breaking through the dilemma of conflict of rights lies in clarifying the inherent connection and restrictive relationship between the right to be forgotten and the public’s right to know, public interests, and freedom of speech, and to find a suitable balance by setting the applicable conditions for the right to be forgotten in different situations.

Keywords: right to be forgotten · public interest · public right to know · freedom of speech

1 Introduction

With the continuous development and maturity of technical means, the storage and interaction of data has become the norm, and forgetting has gradually become an exception. Personal information is increasingly exposed to the public eye, and people seem to live in a transparent high wall, which is difficult to hide.

Because of their geographical advantages, foreign scholars have more opportunities to contact the judicial practice related to the right to be forgotten, and it is easy to obtain first-hand information, and their research on the right to be forgotten is naturally much more profound. However, the right to be forgotten, which belongs to the emerging rights, has been controversial since its inception, and its legitimacy and legitimacy have not completely escaped doubts. Therefore, its concept, nature, conflict of rights and other aspects are still the focus of controversy in academia.

Table 1. Online personal information usage (%)

Our country's current legal system does not explicitly stipulate the right to be forgotten, and the relevant theoretical research is still in its infancy. Although in recent years, due to the international upsurge of theoretical research on the right to be forgotten, some scholars have joined the ranks of theoretical research on the right to be forgotten one after another, and have produced valuable research results, but the theoretical depth still needs to be further improved. At present, the research focus of domestic researchers on the right to be forgotten mainly focuses on the concept, attributes and localization path selection of the right to be forgotten.

2 Research Background and Overview of the Right to Be Forgotten

2.1 Research Background: The Impact of Big Data on Personal Information Security

In order to further confirm the actual needs of people for the right to be forgotten in the era of big data, the author adopted an electronic questionnaire survey to collect information on unspecified groups of people between the ages of 18 and 40. A total of 400 questionnaires were distributed, and 342 valid questionnaires were obtained.

1) Use of personal information online (Table 1).

2) Investigation of personal information leakage causing harassment and loss to individuals (Table 2)

3) Regarding your rights when providing personal information (Table 3).

It is not difficult to see from the above chart data that people generally need to use personal information for registration when using the Internet on a daily basis, and personal information has a high risk of leakage. With the support of big data technology, the collection, use and acquisition of personal information has become easier. In addition, the improper use of personal information is widespread, which has a negative impact on the daily life of individuals, and even brings economic or spiritual losses. Faced with the widespread "network tentacles", people's awareness of personal information protection is gradually awakening, and it is indeed necessary to protect information subjects through the "right to be forgotten" legislation [1].

Table 2. Investigation of personal information leakage causing harassment and loss to individuals (%)

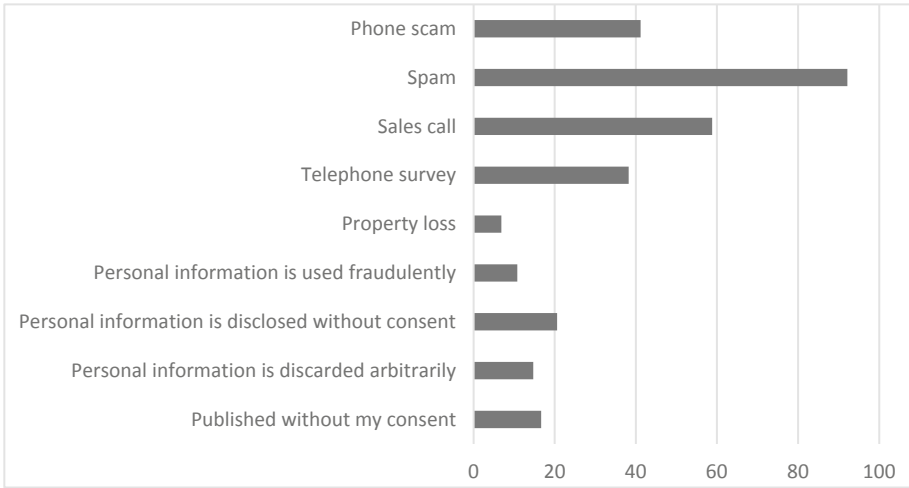
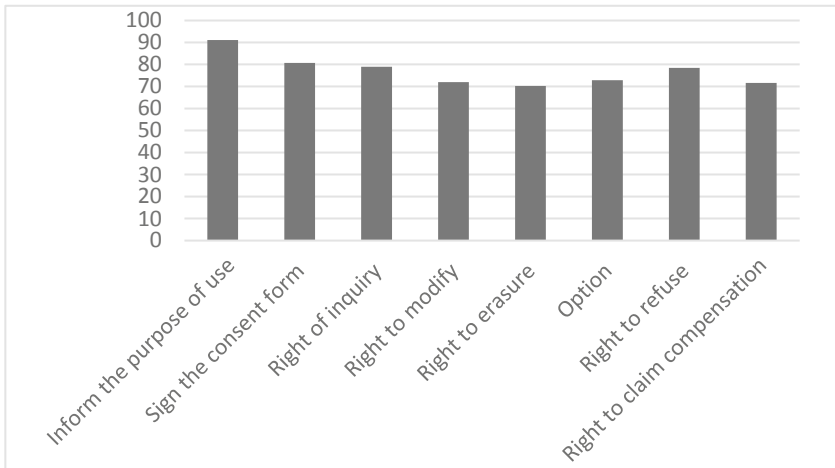


Table 3. Your rights when providing personal information (%)



2.2 Overview of the Right to Be Forgotten

1) The name recognition of the right to be forgotten

The right to be forgotten rarely expresses the right in a passive form, and itself has the active nature of the right to request [2]. This contradiction has caused controversy about its name in the academic circles.

Tracing its origins, the embryonic form of the right to be forgotten first appeared in the French criminal law, giving convicted criminals the right to object to the disclosure of their crimes and imprisonment after they are released from prison. In 1995, the EU first made a legislative attempt on the right to be forgotten, in the “European Data Protection Directive”, which stipulates that “related citizens can request deletion when their personal data is no longer needed to protect personal data information”. The General Data Protection Regulation (GDPR) promulgated in November 2012 formally added “Right to be forgotten and to erasure” in Article 17, stipulating that “the information subject has the right to require the information controller to delete the personal data information, Especially when the subject of the information is a minor under the age of 18” [3]. In March 2014, the General Data Protection Regulation was amended again, reducing the original Article 17 “Right to be forgotten and erasure” to “Right to erasure”, and removed the special “when the information subject is a minor”. The stipulation clarifies that “the information subject has the right to ask any known third party to delete all copies and links to the above-mentioned information”.

In the development process of the right to be forgotten, there are many related English expressions, such as “right to be forgotten”, “right to oblivion”, “right to delete” and “right to erasure”, etc. Chinese expressions also include the right to be forgotten, The right to erasure, the right to erasure, the right to erasure, etc. Among them, the two names of “right to be forgotten” and “right to erasure” are the most discussed by scholars.

Some scholars believe that the right to be forgotten is the right to erasure. For example, scholar Liu Wenjie [4] believes that from the perspective of the provisions in the European General Data Protection Regulation, the content of the right to be forgotten and the right to erasure completely overlap. Some scholars believe that the right to be forgotten and the right to erasure cannot be equal, and there are obvious differences between the two. These scholars also hold different attitudes towards the relationship between the right to be forgotten and the right to erasure. For example, scholar Duan Weili believes that the right to be forgotten and the right to erasure belong to different levels of rights, and the content of the right to be forgotten covers a wider range than the right to erasure. Scholar Xue Li believes that the right of deletion in a narrow sense is a means of exercising the right to be forgotten, and the right of deletion in a broad sense can cover the content of the right to be forgotten.

The author believes that, from a literal point of view, the “right to be forgotten” emphasizes legal effects, and the ultimate purpose of exercising the right is to protect the subject of the right from being affected by negative information in the future, thereby protecting the subject’s personality right; “The “right to delete” emphasizes the content of the right, in order to achieve a state in which specific information is no longer retained, and does not reflect the legal effect that the subject of the right is no longer negatively affected by the deleted information. Claiming rights only by the flat expression of “deletion” cannot accurately cover the complete connotation of the right to be forgotten, and is easily confused with the right to deletion in the field of personal information protection in my country’s existing legal system. Therefore, based on the background of civil law protection, the use of the name “right to be forgotten” can better reflect the legislative purpose of my country’s civil law to protect basic human rights.

2) The basic connotation of the right to be forgotten.

In our country, there are different views on the basic connotation of the right to be forgotten. Some scholars believe that the right to forget should be divided into broad and narrow senses. The right to be forgotten in a narrow sense only refers to the right to be forgotten in the digital or Internet age, which is the right of the data subject to ask the data controller to delete his personal information in order to prevent its further dissemination. In a narrow sense, Yang Lixin [5], Wu Fei, Liu Wenjie and other scholars are represented. They are affected by the EU's 2012 General Data Protection Regulation and believe that the right to be forgotten is also called the right to delete, which means that the data subject has the right to ask the data controller to permanently delete the relevant data. Personal data of the data subject, unless there is a legitimate reason for the retention of the data. In a broad sense, scholars such as Zheng Wenming believe that the right to forget is not limited to cyberspace, including the traditional right to forget and the narrow digital right to forget. Considering that the traditional paper transmission channels generally do not have the characteristics of long-term preservation, and the transmission range is very limited, it is not practical to centralize the processing of information carriers after they are circulated in the market. Therefore, in a narrow sense, it is more reasonable to limit the applicable space of the right to be forgotten on the Internet.

In a narrow sense, there are many studies on the localization of the right to be forgotten in China and the application of laws, and a relatively unified consensus has been formed on the definition of the right to be forgotten, outdated, and continue to retain information that will lead to a lower social evaluation, and the right to request the information controller to delete it. Specifically, "improper" means that the information existing on the Internet does not describe the status of the information subject correctly, and such incorrect information descriptions are generated either at the beginning of information collection and publication, or at the beginning of the information The process of dissemination and circulation; "outdated" means that the information in the Internet can no longer truly reflect the state of the information subject due to the passage of time; "resulting in a decrease in its social evaluation" means that the information has a negative impact on the social evaluation of the information subject influences. In addition, "deletion" should refer to eliminating the negative effects of specific personal information on the information subject, rather than a single method. It can be achieved through various technical means such as deletion and shielding.

3 The Dilemma of the Conflict of Rights of the Right to Be Forgotten

3.1 A. Forgetting and Memory: The Right to Be Forgotten and the Public's Right to Know

The basic stability of the individual personal life of every natural person should be guaranteed. Based on this consideration, the law does not deny the qualification of every natural person to be the subject of the right to be forgotten. When the subjects of personal information are public figures such as entertainment artists, business giants, and political officials, the professional characteristics determine that such subjects generally have a

high degree of attention. The high attention of society has made their personal information more transparent, and its exercise of the right to be forgotten will undoubtedly impact the public's right to know.

“For social subjects who voluntarily enter public affairs and use media publicity to gain popularity for the public to influence the formation of social opinions, the words and deeds of social members, and profit from it, the general public has the right to know about their origins, backgrounds, and behind-the-scenes situations.”¹ Public figures often have certain social responsibilities. Taking the entertainment industry as an example, entertainment works have played an active role in meeting the diverse cultural needs of the people and promoting economic growth. The moral principles and values conveyed by entertainment artists through film and television cultural works affect more and more people. The output of film and television culture is an important way of social education, and the words and deeds of artists are often imitated by the trend. With the rapid development of the entertainment industry, problems such as sky-high remuneration, “yin-yang contracts”, and tax evasion have frequently occurred. Traffic first, deformed aesthetics, “rice circle” chaos, and “delayed reform” trends have emerged one after another. Some practitioners have political literacy. It is not high, the legal awareness is weak, the moral concept is declining, and the violation of the law and the wrong words and deeds occur from time to time, which has a negative impact on the society, especially the young people, and seriously pollutes the social atmosphere. The people have a strong reaction. If the protection of the right to be forgotten indiscriminately is implemented for such special subjects, it will affect the public's right to know and play a supervisory role. After eliminating the negative personal information on the Internet, it has the opportunity to enter the public eye again, waiting for an opportunity to become popular, that resulting in an imbalance of power and responsibilities.

3.2 Retention and Erasure: Public and Individual Interests of Personal Information

When personal information enters the Internet space, it has both personal attributes and public attributes. How to balance the personal interests and public interests of data information is one of the prominent problems in effectively protecting the right to be forgotten. Throughout the history of our country, under the influence of Confucian culture, there has been a collectivist spirit of putting the country before the family since ancient times. As a socialist country, China in modern history has also experienced a period of collective ownership reform. In the traditional concept of the Chinese people, the concept of the supremacy of the collective occupies an important position. In civil law, the principle of public order and good customs is an important legal principle, which means that all civil activities should abide by public order and good customs. In the modern market economy society, it has an important function of safeguarding the general interests of the state and society and general moral concepts.

The rapid development of network technology has made Internet companies such as Baidu, Google, and Tencent prosperous, and they have mastered a large amount of user

¹ Civil Judgment of Second Instance for Disputes over Reputation between Beijing News and World Luxury Club (Beijing) International Business Management Co., Ltd., Beijing Third Intermediate People's Court (2014) San Zhong Min Zhong Zi No. 6013.

data, which is also the password of their wealth. In the right to be forgotten, Internet companies play the role of information controllers, representing a group that believes that the public interest will be impacted. For information controllers, the exercise of the right to be forgotten will greatly increase the workload of online information review, requiring a lot of human, material and financial resources. As the public's awareness of rights gradually awakens, more and more people will advocate for rights protection. When exercising the right to be forgotten, the right holder can not only request to delete the information dissemination source on each network platform, but also require the information controller to block the information in the retrieval results. By cutting off others' access to this information, organize the continued spread of personal information to achieve the goal of forgetting as soon as possible. [6] As the actual executor of network data processing, the data controller faces an unimaginably huge workload.

Not only that, but personal data itself has extremely high economic value. As far as the market is concerned, user data has become the core weapon for operators to attract customers and do what they like. The more detailed the customer data the operator has, the more accurate the customer portrait, and the higher the success rate of product targeted promotion. It can be said that data utilization has become an important starting point for new e-commerce groups to sell goods, and it is a significant feature of the development of the Internet economy. The exclusive protection of personal information by the right to be forgotten gives consumers the right to hinder others from using personal information. From the perspective of social economy, it will undoubtedly limit the development of the Internet economy.

3.3 Silence and Expression: The Right to Be Forgotten and Freedom of Speech

American scholar Bert-Jaap Koops believes that there are three different ideas for protecting the right to be forgotten. One is to delete data. This line of thinking believes that the content of the right to be forgotten is the "right to delete data", which occurs after the data is used, it is no longer relevant to the purpose of collecting the data, the data storage period expires, or other rights of deletion outweigh the harm of retaining the data. The individual should be given the right to delete that data. The second is personal innocence records. This line of thinking aims to give individuals new opportunities to protect themselves in the future from negative information from the past and from being trapped in the "cage" of old mistakes. The third is unfettered personal expression. This line of thinking tends to protect freedom of speech and avoid being afraid to speak out because of fears that personal speech will have a negative impact on oneself in the future, resulting in a "chilling effect".²

The contradiction between the right to be forgotten and freedom of speech is that the process of realizing freedom of speech is inevitably accompanied by the publication and dissemination of other people's information. The establishment of the right to be forgotten may lead to increased Internet censorship, requiring people to remain silent on specific information and narrow the scope of free expression, hindering the realization

² Bert-Jaap Koops. Forgetting Footprints, Shunning Shadows: A Critical Analysis of the Right to Be Forgotten in Big Data Practice [J]. *A Journal of Law, Technology and Society*, 2011(3): 229-256.

of freedom of speech. The establishment of the “right to be forgotten” means that users can directly request the online platform to fulfill the obligations and responsibilities of deleting personal data. The responsibility for deleting content is placed directly on the online platform, and search engines are one of the main responsibilities.

A search engine is a website platform that performs web searches and provides information. As far as its specific functions are concerned, one is to distribute information, and the other is to provide information services to provide users with the information they need. In the process of information distribution, the search engine will inevitably involve information screening, but its core function is to provide users with information services. The implementation of the right to be forgotten may lead to the change and transfer of search engines in their core functions. The function of search engines is no longer to present information in a neutral and comprehensive manner. When search engines conduct excessive censorship and check on information, many data it will definitely be filtered out because of some standards, which may lead to the information gap in the new era, and it is more likely to harm people’s freedom of speech.

4 Breakthroughs in the Conflicting Dilemma of the Right to Be Forgotten

4.1 The Balance Between the Right to Be Forgotten and the Public’s Right to Know

The subject of personal information protected by the right to be forgotten is a specific and identifiable natural person. According to the specific identity and special status of the subject of personal information, there should be corresponding differentiation standards in the process of protection of the right to be forgotten to facilitate individualized protection for different individuals.

Also taking the entertainment industry as an example, in September 2021, the Central Propaganda Department issued the “Notice on Carrying out Comprehensive Governance Work in the Cultural and Entertainment Field” (hereinafter referred to as the “Notice”), targeting traffic first, chaos in the “rice circle”, illegal and immoral behavior, etc. Comprehensive management of outstanding problems in the field of entertainment is deployed. The “Notice” puts forward specific requirements and work measures from seven aspects, including regulating market order, consolidating platform responsibilities, strict content supervision, strengthening industry management, strengthening education and training, improving institutional guarantees, and strengthening public opinion propaganda.

Most of the income of entertainment artists is paid by the public, and high income must be accompanied by high requirements. The public’s pursuit of artists is essentially people’s pursuit and yearning for excellence in certain fields. The public’s minimum requirements for an artist should not stop at being legal, but also be ethical. The “Notice” stipulates in further strengthening the content of industry management: “Increase the punishment of illegal and unethical artists, and prohibit bad artists from relocating and returning.” For artists who do not match morality, they should be restricted from exercising the right to be forgotten, give priority to protecting the public’s right to know, give full play to the role of social supervision, and prohibit such artists from

re-entering the entertainment industry, so as to avoid the contradiction between the right to be forgotten and the public's right to know.

In short, the realization of the right to be forgotten is by no means a simple "one size fits all". For general subjects, they can request the information controller to delete, block, necessary measures to eliminate the impact. For special subjects (such as minors) who need strict information protection, the threshold for exercising the right to be forgotten should be appropriately lowered, such as giving guardians the right to request deletion, so as to protect the interests of the subjects. For special subjects that need to be supervised by the public, the threshold for exercising the right to be forgotten should be appropriately raised, such as adding restrictions on the object of rights, narrowing the scope of application, etc., to balance rights and responsibilities. Especially when the person requesting deletion has considerable social status or influence, and the information requested for deletion continues to have important educational significance for the rule of law or the role of public supervision, stricter restrictions are required, and a limited amount of "forgetfulness" is used to ensure public right to know.

4.2 The Balance Between the Right to Be Forgotten and the Public Interest

Internet products use personal data more and more widely. For example, all kinds of short video software that have become popular on the Internet in recent years will analyze according to information such as the length of time users watch different types of videos, the types of videos they collect, and the types of video publishers they follow. Push more similar short videos to users and provide personalized experience for users of different ages, genders and hobbies. Similarly, in Taobao, Jingdong and other shopping platforms, there is also a "guess what you like" function, which captures the user's preferences based on the types of goods in the user's shopping cart, search records, and browsing records, and recommends the same or similar products. Entice" users to make purchases. This type of function not only provides users with certain convenience, but also causes users' concerns. When personal preferences are accurately interpreted, this "surveillance" state makes people feel extremely insecure [7]. The development of the Internet economy cannot be at the expense of personal interests.

The proposal of the right to be forgotten emphasizes the information subject's right to control personal information, and correspondingly weakens the information controller's right to process known information. It can be said that the right to be forgotten is the last "remote security lock" of the information subject, which can cut off the path for others to obtain their own personal information. The protection of the right to be forgotten can neither be in vain nor overcorrect. In practice, in contrast to the original purpose of the personal information held by the information controller, if the personal information requested to be deleted or blocked has lost the need for continued dissemination, or the objective information that has been publicly reported has lost its value over time. The purpose of protecting the personal interests of the right to be forgotten should be fully considered, and the realization of the purpose of protection should be the criterion for determining whether to delete relevant information. When the request to delete or block relevant information is closely related to social and economic value, it should fully consider factors such as the clarity of the damage and the difficulty of excluding or recovering the damage and other factors to weigh the personal interests and social public

interests, and follow the principle of necessity and balance. According to the principle of sexuality, adopt a method that has the least impact on other rights, and compare and consider the benefit protected by deleting personal information in the protection of the right to be forgotten and the cost value of sacrifice, the benefit of protection should not be less than the cost of sacrifice.

4.3 The Balance Between the Right to Be Forgotten and Freedom of Speech

Freedom of speech can be divided into two categories: the freedom of speech of the subject of the right to be forgotten and the freedom of speech of others. There is no conflict of legal interests between the freedom of speech of the subject of the right to be forgotten and the protection of the right to be forgotten. It has a certain role in promoting the realization of freedom of speech. The balance that needs to be discussed mainly exists between the information subject's right to be forgotten and the freedom of speech of others.

Freedom of speech is one of the basic political rights of Chinese citizens, and it is also an external manifestation of the fundamental interests of citizens. However, freedom of speech is not without boundaries. According to Article 51 of the "Constitution of the People's Republic of China", citizens of the People's Republic of China shall not harm the interests of the state, society and collectives or the interests of other citizens when exercising their freedoms and rights. Legal liberties and rights. In terms of its essence, the right to be forgotten protects the information subject's right to remain silent, freedom of speech protects the individual's right to express, and the legal interests protected by both are individual freedom. Whether it affects the freedom of speech of others should be a limiting factor in the exercise of rights. At the same time, for the foreseeable continued retention of information that will cause damage to the right holder, it should be deleted as a restriction on freedom of speech, so as to realize the important role of the right to be forgotten in the pre-protection of the right holder. The relationship between the right to be forgotten and freedom of speech is not a purely antagonistic relationship, but a dynamic relationship of checks and balances.

The essence of the "right to be forgotten" is to take the standpoint of protecting personal interests and correct the phenomenon that the dissemination of personal information damages the personal interests of the information subject. In addition to providing information circulation services, the Internet also plays an important role in protecting the public's right to know and freedom of speech. However, according to the actual situation in China, the serious social problems caused by the lack of legislation on the right to be forgotten need to be solved urgently. Strengthening the protection of personal information through civil legislation is the most urgent task in China at this stage. There is no complete contradiction between the right to be forgotten and other rights, and it is necessary to pass perfect legal application standards to achieve a balance of legal interests and create a harmonious legal application environment.

5 Conclusion

The continuous development of the information society will inevitably lead to the protection of personal information, and the right to be forgotten can be the balance between

the development of the information society and the protection of personal information. The right to be forgotten is not an absolute right, but the result of the multi-interest measurement, which is restricted by factors such as social economy, the public's right to know, and freedom of speech. As an important part of the personality rights of Chinese citizens [8], the right to be forgotten must not be imitated when it is implemented. A system of the right to be forgotten that is in line with my country's national conditions should be formulated under the premise of clear influence, and it should be balanced in compatibility and adaptation.

References

1. Ding Yuxiang: "The Chinese Context and Judicial Development of the Right to be Forgotten: From the First Case of "Right to Be Forgotten" in China", in "Research on the Rule of Law", No. 4, 2018.
2. Man Hongjie: "Analysis and Construction of the Right to Be Forgotten: A Study as a Correction Mechanism for Information Value in the Internet Age", in *Legal and Social Development*, No. 2, 2018, pp. 199–217.
3. Jingdong Law Research Institute. *EU Data Charter: GDPR Commentary and Practical Guidelines for the General Data Protection Regulation* [M]. Beijing: Law Press, 2018.
4. Liu Wenjie. The Right to be Forgotten: Traditional Elements, New Context and Interest Measurement [J]. *Legal Research*, 2018, 40(02): 24–41.
5. Yang Lixin, Han Xu. The Chinese localization of the right to be forgotten and the application of law [J]. *Application of law*, 2015 (2).
6. [British] Victor Schönberger. *Deletion: The Choice of Big Data* [M]. Yuan Jie, translated. Hangzhou: Zhejiang People's Publishing House, 2013.
7. Wang Liming. On the legal protection of personal information rights—focusing on the division of personal information rights and privacy rights [J]. *Modern Law*, 2013 (4).
8. Wang Liming. On the Status of Personal Information Right in Personality Rights Law [J]. *Journal of Soochow University: Philosophy and Social Sciences Edition*, 2012 (6).

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