



A Study of Legislation on Private Data Law

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Abstract. This essay examines the uprising social concerns on privacy law, with the current challenges in its legal system and legislation process. It outlines the definition of privacy and data privacy, it further opens an academic discussion on the ethical consideration of Data Privacy with references to Immanuel Kant's schools of thought, hence amplifies the social challenges on morality, human dignity, and human rights. It exemplifies privacy data with an examination of the right to privacy in international law and its legislation; and highlights a discourse into the challenges imposed on the legal system in the protection of Private Data.

Keywords: Legislation, data privacy, human rights, protection

1 Introduction

In the digital age, the development of digital technology has created new forms of information. It has changed human expectations of privacy. And diversified forms of infringement of privacy appear more and more privacy protection is facing challenges. New legal and ethical reviews of data privacy are urgently needed. Traditional privacy protection theory believes that the moral foundation of privacy protection is human autonomy. However, in the practice of data privacy, autonomy-based agreements do not work. The information provided by the data platform is extensive and complex. His research uses Kant's theory of human dignity to regard the right to data privacy as an important part of human rights. Kant believes that everyone is a member of the Kingdom of Purpose and has an inherent value, which is dignity. As the core expression of the concept of human rights, "human dignity" can be combined with the basic different needs of human beings and embodied as various basic rights under the concept of human rights. One of them is the "private need of human dignity", that is, the right to privacy. People's need for privacy stems from the maintenance of human dignity. The violation of personal data privacy violates human rights. In a civilised society governed by the rule of law and a privacy crisis, this need for privacy is inevitably reflected in the structure of the legal system, giving rise to a need for privacy rights. The right to privacy as an independent civil right has been

recognised by law in many countries and by international human rights organizations in the form of legislative instruments, and this is a major step forward in the civilisation of human society. The legal protection and safeguarding of the right to privacy allows people to exercise their own self-determination in their private sphere and to enjoy their freedom to live undisturbed in their private affairs.

2 Research Methodology

This paper expands its research through an accumulation of case studies and a dynamic approach to. There are two general ways in which this approach is used in jurisprudence: one is to use the case as an introduction to the issue to be studied; the other is to use a single case or multiple cases as the main thread of the text. This paper adopts the second approach, using multiple cases to analyse different issues.

2.1 The Relationship Between Privacy, Personal Data And Data

According to the Civil Code of the People's Republic of China (2020), it distinguishes between three concepts^[4]. Privacy, personal information, and data. The Civil Code stipulates that the right to privacy needs to be protected^[4]. The right to privacy focuses on two aspects: on the one hand, the private life of citizens, and on the other hand, the private space, private activities and private information that are not known to others; personal information and data are not elevated to rights in the Civil Code, but are rights that need to be protected. Personal information emphasises "identification", i.e. whether the information can be identified with an individual. The emphasis on data is on 'anonymisation', i.e. information that has been processed in such a way that it cannot be identified with a specific person and cannot be recovered. The Civil Code provides for the protection of the right to privacy and the right to personal information in a separate chapter, under the title of personality rights. However, the Civil Code simply regulates the protection of data in the section on property rights. The right to personal information is considered to be a right of personality, while the right to anonymised data is more of an intangible property right.

2.2 Ethics considerations of Data Privacy

2.2.1 Moral Challenges

In traditional societies, privacy is a concept that is often used to protect individuals from the excesses of the information society. Through the concept of privacy, we search for the exact and logical place of the individual in social life. So, can the concept of privacy today meet the challenges of the digital age?

Regardless of the definition of privacy, it is certain that privacy is a product of social life. There is no such thing as privacy in one's world. It is only in the context of social life

that the right to privacy has meaning. In essence, the right to privacy draws the line between an individual's interaction with others in the context of social life. Without the existence of society, the right to privacy would have no meaning. Thus, the right to privacy is not only a legal right, but also a social value^[1]. Privacy is a set of norms about how each person in society should access each other's lives. Through the right to privacy, people can preserve their personal space and can liberate themselves from society, which is extremely important for the development of their personality and, in particular, privacy allows individuals to learn to respect those who do not share their values. Whatever the right to privacy, the value of the right to privacy is based on human rights.

The definition of the right to privacy comes from the American lawyers Warren and Brandeis and is "the right not to be allowed" (Warren & Brandeis 1890). In this description, the right to privacy is the right of the individual to his or her own domain, with clear boundaries with the public. This interpretation of privacy was well suited to the age of individualism, where the right to control one's own life had to be respected. Further interpretations of privacy are therefore usually associated with autonomy in the Kantian sense: rational individuals can make their own choices based on considerations. In the digital world, we often interpret privacy as autonomy and the associated 'control' when justifying the behaviour of large digital platforms such as Facebook, Amazon, Ali, Baidu and others.

However, there are serious drawbacks to interpreting privacy in terms of autonomy. Conceptually, under data surveillance, the potential observer has no control, but as long as the digital device is not turned on, he has a right to privacy. There is thus a difference between autonomy based on control and privacy based on access to information. A person can have control but no privacy

In data privacy practices, consent based on autonomy does not work. The information provided by data platforms is extensive and complex. In this context, who can read and understand the terms of use carefully? Do people really understand the data? In fact, they are completely unaware of what is happening to their data. It is difficult for people to give informed consent based on that. Since the autonomy theory hardly works, as an alternative to the autonomy rationale, a more fundamental concept, namely dignity, is involved.

2.3 Human Dignity

Autonomy is defined in Wechsler's Dictionary as "the quality or state of being independent, free, and in control of oneself" and includes self-management, self-responsibility, and self-choice^[3].

Kant sees man as a dual being. That is, man is both a part of nature and a rational being. Human behaviour is thus characterised by conformity and purposefulness. Kant's understanding of human society begins and ends with the concept of 'freedom'. He believes that man is free by nature, and he theorises why and how he can be free. He argues that man is free because he is rational or because he is a rational being. But because of man's duality,

reason does not fully specify the will of the individual, which is also influenced by sensibility. For Kant, reason is a spontaneous and dynamic force, and if reason can be free from anything external to itself, such reason is pure, and the meaning of pure reason is freedom. Immediately afterwards Kant further formulates the 'moral imperative' and deduces that man is the end and the self-regulation of the will: "Your action is to regard the human nature in your own life and the human nature in other persons equally, at all times, as ends, and never as means only." "The third practical principle of the will as the highest condition of its conformity to universal practical reason, namely, the idea of the will of all rational beings as the will of universal legislation."^[5]

Kant believed that man has a will, and that the nature of the will is freedom, but that the realisation of this freedom requires a process. He divided human freedom into three kinds: wild freedom, freedom under the law and moral freedom. He believed that law arose on the basis of man's nature, which is freedom, and that law was created to limit man's wild freedom in order to change man's practical unfreedom and thus the need for everyone to be free in practice.

The distinction from autonomy becomes clearer when Kant describes dignity in his theory of virtue as a status that evokes respect from others. Dignity then refers to the manner and style in which people display and deserve to be treated towards one another. Kant is thus referring to an interpretation of a concept that was customary in his time. Traditionally, dignity was associated with a person's position in society. On this basis, someone is entitled to certain treatment. People with higher social status had more 'dignity'. We see this meaning in the English verb "to dignify", which translates as "to upgrade socially". Dignity is directly related to social privilege because of the position of the person in the social hierarchy^[6].

In summary, the relationship between human dignity, the dignity of the whole person and privacy, as a core element of the concept of human rights, (unlike the "human dignity" of the whole person) "human dignity", as the most basic unit of the dignity of the whole person, can be It is one of the fundamental rights included in the concept of human rights, which is the expression of the "private need for human dignity", in this sense the right to privacy. The right to privacy certainly constitutes an important component of human rights, and the need for privacy is fundamentally rooted in the preservation of human dignity - in this sense, the value of the right to privacy can be understood as deriving from human dignity; at the same time, the protection of one's privacy can also better safeguard one's need for private human dignity and one's The protection of the individual's privacy also better preserves the individual's need for intimate human dignity and the individual's overall personal dignity (the combination of the various needs for "human dignity" based on the basic person constitutes the overall personal dignity^[2]).

2.2.3 Human Rights

As intrusions into the realm of personal privacy expose the data needed for data-driven business models, the maintenance of privacy can be seen as a gateway to human rights protection in the data economy. It is important that this privacy gateway logic does not ignore the exploitation of data that is initially voluntarily shared by users and/or later merged in the Big Data ecosystem. Furthermore, even though a user may refuse consent in the first instance, data can still be shared in other ways without consent, or a user may be able to influence non-users by sharing data on their behalf without sending their consent. The interdependence between the use of personal data and users in the data ecosystem suggests that the right to privacy is a cornerstone of digital ethics discussions, as more and more rights are affected by the digital environment^[7].

With the rise of the modern concept of human rights, the right to privacy has become an important element of human rights protection. Article 12 of the United Nations Universal Declaration of Human Rights (UDHR 1948) first articulated the right of the individual to protect his or her private sphere from infringement. Article 12 of the UDHR states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks on his honour and reputation" ^[1].

In the digital information age, where digital technology is deeply integrated into social production and human life, human freedom is greatly expanded in cyberspace. For Habermas, contemporary societies are complex societies because the fundamental feature of contemporary societies is moral pluralism, which derives from the fact of pluralism in terms of beliefs, moral views, race, gender, etc. 1) Under the tide of digitalisation, this 'complexity' will extend to cyberspace, creating a digitally complex society. In a digital complex society, the content and protection of traditional human rights will certainly be challenged by digital technology, and the question of how to pursue universalist human rights principles is a vexing one. In view of this, digital human rights based on the Internet are increasingly coming into view. 2011 saw the United Nations declare the right to Internet access as a fundamental human right; 2016 saw the United Nations also declare Internet-related rights as an important part of human rights; 2017 saw the United Nations Human Rights Council adopt a resolution, "Promotion, Protection and Enjoyment of Human Rights on the Internet", which clearly states that, with the rapid development of technology, people around the world have access to new information and communication technologies. This shows that the issue of digital human rights based on the Internet is receiving increasing attention^[5].

3 Challenges in the protection of data rights

With the development of information technology, mankind has entered the era of big data. In this era, there is a huge amount of data analysis all the time, and data has become the main feature, and data has become the new resource of this era. As the famous British

magazine *The Economist* pointed out in an article, data is of great value in the digital economy and is a major commodity in the digital economy. Both the EU's General Data Protection Regulation and the US California Consumer Privacy Act emphasise the importance of protecting the rights of individuals in relation to their data^[3]. China is also aware of the urgency of protecting data rights, and at present, the protection of data rights in China is mostly based on a private law approach, which provides for the protection of personal data in principle. However, the legal provisions of the industrial and commercial era no longer meet the requirements of data protection in the digital age, making the protection of data rights a difficult task at present.

4 Conclusion

With the development of the Internet, artificial intelligence and big data, mankind has entered the digital age. People's production and life are generating data all the time, and the high-speed flow of data makes it have a huge property value. Data is an important resource, and in order to compete for data resources, there are more and more cases about data unfair competition disputes between major enterprises, and international data order and data competition rules are being established between countries^[5]. Traditional tort law is unable to protect the privacy interests of data. Firstly, traditional privacy protection emphasizes the importance of being identifiable and associated with a particular individual as a prerequisite for privacy protection. However, the anonymisation and de-identification of personal data have both reduced the extent to which data subjects can be associated with data, making traditional privacy rights unable to protect data. The de-identification of data impacts the identifiability of privacy protection. Secondly, unlike traditional objects, the value of data lies in its use rather than in its possession, and data is characterised by openness, the openness of data undermines the reasonable expectation of privacy rights. Finally, data has a pluralistic character in terms of the subject of infringement, which traditionally is often a single subject. At the same time, as the technological divide leads to the data divide, the asymmetry in the possession of information leads to the complexity of proving data infringement damages. In conclusion, we hope to break new ground in the current research on the future of the rule of law, including the protection of personal information and privacy, and to provide a new way forward in resolving disputes over the empowerment of personal information and even our data privacy (personal information protection) legislation.

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