

Research on Legal Risk Prevention and Control Mechanism of Personal Data in China's Shared Economy Model

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Abstract—In recent years, shared economy model has emerged in the world. However, for its development is not perfect and the law is lagging behind, there are still a lot of legal risks and problems existing in the risk regulation on personal privacy and information data security under such market innovation. By analyzing the shared economy and the risks faced by the personal data, this paper reveals the realistic problems faced by the personal data privacy protection in China's shared economy model, and proposes pointed basic ideas for legislation reform to protect personal data and information in shared economy. Meanwhile, it also designs feasible operational guidelines for the practice of operation.

Keywords—shared economy; personal data; legal risk; prevention and control mechanism

I. INTRODUCTION

The concept of shared economy was first proposed by Marcus Felson, a professor of sociology at the University of Texas, and Joe L. Spaeth, a professor of sociology at the University of Illinois. They use the idea of "Collaborative Consumption" to describe a new way of living consumption which features point-to-point direct goods and services transactions by individuals through a third-party market platform.[1]In recent years, shared economy companies represented by Didi, Uber, Mobike, Airbnb, etc. emerged suddenly and rose rapidly to defeat traditional enterprises and occupied market. In short, shared economy is a new economic model features the shared platform as the core, excess capacity digestion and idle resources revitalization for everyone to enjoy as the support, and the sustainable development of economic society as the ultimate goal. [2]

The development of shared economy is inseparable from the big data support that is structured on the Internet, especially the exchange and use of personal data. Personal information,

from a broad perspective, refers to the sum of all information related to individual citizens. In the big data age, the so called personal information mainly includes identity information such as name, gender, age, contact information, and occupation etc., subjective behavior information such as consumer tendencies, buying habits, and personal preferences etc., and privacy information such as income, marriage, family, and health status etc.[3]The range of personal data described in this paper is smaller than that of big data. The personal information data discussed in this paper only refers to the collection and use of personal data in shared economy, and personal data and information involved in QQ space, microblog and other social tools will not be included. The former includes the latter. Therefore, general characteristics of personal information in the context of big data are also applicable to the personal information data discussed herein.

As a new business model, there are still a lot of blank areas in legal supervision on shared economy, which will lead to a lot of legal issues. The protection of personal data is one of the important aspects.

II. LEGAL RISK ANALYSIS OF PERSONAL DATA IN SHARED ECONOMY MODEL

The shared economy is based on the Internet platform. A large number of consumer names, home addresses, contact information, hobbies, work routes and other personal preferences and privacy data are stored in the cloud.

A. The risk of external invasion

The rise of the tide of information has also brought the proliferation of computer viruses. With the growing popularity of network, it is also very likely for the ever evolving computer viruses to invade the computer system of shared enterprises, which will pose a huge threat to the large number of users'

personal data stored in shared enterprises and the cloud. Some hackers use high level of hacking technology to attack the cloud which stores personal data and steals private data of shared companies and users for profiteering through reselling of data, and some will swindle or steal personal belongings through technical means by taking the advantage that some users are not familiar with the network. According to the data released by Report on Protection of the Rights and Interests of Chinese Internet Users 2016, China's Internet users suffered a total economic loss of 91.5 billion yuan and per capita economic loss of 133 yuan due to personal information disclosure and fraud information etc. from July 2015 to June 2016, and of which, over 60 million Internet users lost more than a thousand yuan and a number of victims committed suicide or died due to excessive pressure thereafter.[4]

B. Improper collection and use of personal data by shared enterprises

Under the shared economy model, the Internet platform will ask consumers to provide as much personal information as possible in order to match more quality shared services for consumers. Such personal information includes name, contact, home address, company address, preferences, SMS content, location information, ID card information, bank card information, Alipay information and so on. However, there are also shared economy platforms which collect the personal information of users without authorization in the process of using. For example, the 3.15 party has exposed the case of shared charger collecting photos and other information of users without authorization. This Internet platform collects large number of business-irrelevant person information without authorization to obtain profits by using such data for the second time. Some have even formed a gray industry chain.

C. The risk of privacy infringement

Privacy is one of the most basic contents of citizens' personality rights. Its core lies in the exclusion of personal privacy information. The extension of legal protection of privacy in shared economy is the protection of personal data. That means, in shared economy, personal data should also be protected by law from being illegally invaded, known, collected, used and publicized by other people. Shared enterprise has a confidential legal obligation for individuals after their personal information is disclosed to them. Some shared economy platforms or shared economy enterprises violate the obligation of confidentiality and morals, and sell or leak a large number of personal data to others business for company benefits. Relevant survey shows that the scale of gray industry chain of China's Internet personal information security has reached nearly 10 billion.[5] Shared company should bear the risk of assuming tort liability for deliberately leaking the privacy of others.

At the same time, a large number of disorder information has become users' disaster. On the one hand, shared economy enterprises will continuously send marketing messages to the mobile phones of the consumer side; on the other hand, personal data leaks, and a large number of spam messages and harassing phone calls are constantly invading people's lives. According to the Report on Protection of the Rights and

Interests of Chinese Internet Users 2016, China's Internet users received an average of 21.3 phone calls and 20.6 spam messages per week.[6]

D. Risk of choosing the application of law

The risk is manifested in that there is no regulation that can be used to solve the problems of shared economy companies as well as the relationship between the parties in many aspects of current shared economy. Although the state has introduced a number of laws, regulations and related industry autonomy regulations, there is still a lack of highly operational norms as to how and to what extent should those laws and regulations be applied. In such situation, it is highly possible that individual users, shared economy companies, regulators and the judiciary authorities cannot convince each other nor solve problems in the event of disputes. Besides, participants in a shared economy may also suffer losses due to lack of legal protection.

Thus, with the rapid development of shared economy, personal data and information will bring more and more market value, and its ability to create wealth will be stronger. However, this can trigger a series of social problems due to personal data leakage. Therefore, it is very necessary and urgent to regulate the shared economy.

III. DILEMMA OF PERSONAL DATA PROTECTION UNDER CHINA'S SHARED ECONOMY MODEL

A. Status of regulation protection of personal data under China's shared economy model

Define abbreviations and acronyms the first time they are used in the text, even after they have been defined in the abstract. Abbreviations such as IEEE, SI, MKS, CGS, sc, dc, and rms do not have to be defined. Do not use abbreviations in the title or heads unless they are unavoidable.

1) Norms of industry autonomy

In order to regulate the handling of personal information by Internet companies and to protect the personal data security, China Law Association on Science and Technology formulated the Internet Enterprise Personal Information Protection Evaluation Standard together with the Internet Law Center of Peking University in 2014. By stipulating specific provisions of Internet companies' obligations, it tries to establish an effective protection practice mechanism for users' personal information, so as to protect the information and data security of Internet users.

2) Norms of penal law protection

With the advent of big data age, abuse of personal data and information has become phenomenal, and there has been rapid increase of behaviors using personal data and information for criminal activities. The shared economy model is no exception. The Criminal Law Amendment (9) promulgated in 2015 has made some regulations in this regard, which is mainly reflected in the following two aspects: first, to strengthen punishment on behaviors of personal information infringement, such as illegal sale, provision, and access to personal information, etc. For instance, paragraph 1 of article 253, provides that: "whoever violates relevant state provisions to sell or provide personal information to others will be punished; if the circumstances are

serious, they shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and/or they shall be fined; if the circumstances are particularly serious, they shall be sentenced to fixed-term imprisonment of not less than three year and not more than seven years, and they shall also be fined". Paragraph 3 provides that: "whoever steal or otherwise illegally obtain personal information of citizens shall be punished in accordance with the provisions of the first paragraph"; second, to strengthen the information management obligations of information managers. For instance, paragraph 2 of article 253 stipulates that: "whoever violates relevant state provisions to sell or provide personal information of citizens to others in the process of performing duties or providing services will receive heavier punishment in accordance with the provisions of the preceding paragraph."

3) *Norms of civil law protection*

The protection of personal data is embodied in the era of civil law, which mainly protects personal data and information as the right of personality. The Tort Liability Law (2014) establishes the legal liability for privacy infringement and network infringement; Article 29 of the Consumer Protection Law of the People's Republic of China (2014) regulates to protect personal data of consumers and increases the obligations of business operators in the use and storage of personal information. First, business operators must comply with the statutory obligations in the collection or use of consumer personal information, and must explain the purpose, manner and scope of personal information collection and obtain their consent to do so, and can not violate the statutory or agreed collection requirements. Second, they have the obligations to ensure the integrity and security of personal information.

Regulations to protect personal information in China also include the Regulations on Personal Information Protection for Telecommunications and Internet Users, and the Network Security Law published in 2016. The former is sector regulations formulated by National Ministry of Industry and Information to regulate the problem of frequent disclosure of consumer personal information; the latter was approved on the twenty-fourth session of the Standing Committee of the National People's Congress aiming at regulating the behaviors of network operators in illegally collecting, using and disclosing personal information.

B. *Dilemma of personal data protection under shared economy model*

Currently, the regulatory protection of personal data under the shared economy model is still far from sound, and there are great deficiencies in both legislation and industry autonomy.

1) *The industrial autonomy system needs to be improved*

At present, the only existing industry autonomy norm is formulated and published by the China Law Association on Science and Technology and the Internet Law Center of Peking University. On the one hand, for the industry autonomy norm of personal data under the shared economy model, there is no specialized and unified industry association to provide unified coordination and protection for personal data. The China Law Association on Science and Technology and the Internet Law

Center of Peking University cannot regulate or restrict shared economy enterprises; On the other hand, the Internet Enterprise Personal Information Protection Evaluation Standard is only an evaluation standard for personal data protection of Internet companies. There is no clear rule on how Internet companies and shared economy enterprises should protect personal data, how to collect and use personal data, who will implement this standard and how to monitor shared economy enterprises. Therefore, the current industrial autonomy system is not complete, and cannot play its due role of industry autonomy.

2) *The legal system needs to be improved*

At present, there is no systematic legislation on the protection of personal data under the shared economy model, and the safety of personal data is not fully and adequately guaranteed. Currently, regulations on protection of personal data are mentioned respectively in Civil Law, Criminal Law and some separate legislation, and there is no unified legislative norm. Meanwhile, different departments only made general regulations on personal data, and there is no related provisions as to operational problems of how to protect, who will protect, and how to monitor. The blank of legislation has brought great difficulties for judicial practice and executive authorities to enforce law, and consequently the rights of data owners cannot be protected timely and effectively.

Thus, under the background that legal system and industry autonomy system is not sound enough to effectively protect the safety of personal data, and in face of rampant crime and security risks of personal data under the shared economy model, it is imperative to accelerate the development of industry autonomy protection and legislation protection for personal data and information under the shared economy model.

IV. PREVENTION STRATEGY OF PERSONAL DATA RISK IN THE SHARED ECONOMY MODEL

In the tide of the big data age, each of us is both the creator and user of big data, and more often, the direct beneficiary of big data. Shared economy is a new economic model, and therefore it faces risks in personal data and many aspects. In order to prevent the risks in personal data under the shared economy model, the following measures should be adopted.

A. *To make industry self-regulatory norms for personal data and information*

Shared economy develops rapidly with the advent of the Internet, and the market value and economic value of personal data therein is seen by more enterprises. However, the regulatory system of personal data under the shared economy model is not yet formed in China, so there is large number of personal data disclosure caused by improper behavior of many companies in the process of using and collecting personal data. As a result, it will bring serious risks to the privacy, property and personal safety of citizens. Therefore, it is imperative to have regulation on the use and collection of personal data and to protect the personal data and information of citizens under the shared economy model.

The traditional social governance model is divided into two kinds: one is to adjust spontaneously by the market transaction itself, and the behavior of the subjects of transactions is

regulated and restricted among them. The other is to adjust by national laws, regulations and policies. In the field of personal data and information, there are three kinds of regulation models of information abuse: the first two are the extension of the traditional social governance model in the field of personal information, that is, the spontaneous adjustment of information transaction market and regulation of national laws and regulations as well as national policies on information transactions. The third is to regulate information through the power of industry autonomy. In modern society, there are a large number of multivariate social organizations such as enterprise-level management and network platform organization. In particular, the Fourth Plenary Session of the Eighth Central Committee put forward the idea of social autonomy, and the network autonomy is also an important part of social autonomy.[7] The management of personal data and information abuse under the shared economy should also follow this trend, pay attention to the function of industry autonomy, and implement the following:

1) To establish industry autonomy and association

For the industry autonomy of information security under the shared economy model, first, industry autonomous organizations and associations should be established to protect information owners and standardize information managers and user behaviors, so as to provide platform and bridge for safeguarding information owners and protecting their personal data and information. Second, the existing industry autonomy organizations should be taken into good use and play their role in protecting personal data and related rights and interests under the shared economy model. For example, there is Consumer Association established to protect the rights and interests of consumers and regulate the code of conduct of enterprises; and there is also Lawyers Association set up to regulate the practice of lawyers and protect the rights and interests of the parties.

2) To establish industry rules for the use of information

The traditional business ethics and the rules of personal data protection in the Internet age and shared economy model should be internalized into the self-discipline rules of industry autonomy and associations. It should establish the code of conduct in the process of collecting, processing and using data and information by shared economy enterprises, establish the rules of personal data and privacy protection under the shared economy model, respect the rights of data and information owners, and maintain the independent personality of data and information owners. For example, industry autonomy organizations can regulate the format terms provided by shared economy companies, set up and preview relevant content related to personal information and privacy, and then incorporate them into the service agreement provided by the shared economy company, so as to effectively avoid the embarrassment of consent to form and ensure the control of data and information rights over personal data.

3) To strictly implement industry rules

From the implementation subjects of industry rules, information industry rules can be divided into two categories: first, the shared economy companies should strictly abide by the self-regulatory rules made by information autonomy organizations and industry associations, safeguard the right to

know of data and information owners, and follow the rules. Second, information autonomy organizations and industry associations should standardize and supervise shared economy companies in collecting, using and storing personal data and information. Besides, when personal data and information is abused, information autonomy organizations and industry associations should provide relief mechanisms for data and information owners.

B. To develop a unified and specialized Personal Information Protection Law

On the question of formulating a unified Personal Information Protection Law, there have been some research made by professors and scholars in China. Professor Qi Aimin believes that with the transformation of human social form from agricultural society, industrial society, to information society, the core law of the society should also be changed from land law, chattel law, to information law.[8] Professor Feng Xiuqin holds that a unified information protection law features systematic, authoritative and compulsive law, which cannot be compared by the decentralized legislative model. Its systematicness is helpful in clarifying the fundamental questions in personal information protection and use.[9] The author thinks that in formulating the Personal Information Protection Law, it should be noticed that personal data and information should be identified as general personality under the shared economy model. There is a big difference between the right of personal data and the traditional right of privacy in terms of connotation and denotation, and it is very different in identifying and recognizing the two. Therefore, the formulation of Personal Information Protection in China should consider on the basis of protecting personal data information as independent from the privacy rights, so as to better adapt to the development of shared economy.

V. CONCLUSION

In the case of a new economic model such as shared economy, we are still in the process of exploration in understanding its law of operation and the right and obligation relations among different parties involved. In particular, personal data will face a lot of problems and challenges in transaction safety, industry autonomy, supervision, personal rights protection and the perfection of legal system. It is believed that with the consensus gradually reached on the value of shared economy, and the development of regulatory and supervising system, the shared economy will have better development in the future.

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