

Empirical Study on Civil Law Protection of the Right to Be Forgotten in the Era of Big Data

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Abstract

Under the background of big data, the legal protection of the right to be forgotten is of great significance in safeguarding people's interests and dignity. On the basis of clarifying the concept, legal characteristics and significance of the right to be forgotten, this paper analyzes the protection status of the right to be forgotten in the current judicial practice and the problems such as fuzzy content, nature orientation, difficult to guarantee the technical basis and lack of relief paths, and finally provides legal basis and rule guidance for establishing and improving the protection of the right to be forgotten in civil law. This research will effectively improve the data subject's awareness of personal information protection and use and strengthen the legal protection of the right to personality.

Keywords

Right to Be Forgotten; Big Data; Personality Right; Personal Information Right.

1. The Definition and Legal Characteristics of the Right to Be Forgotten in the Era of Big Data

1.1. Connotation of the Right to Be Forgotten

1.1.1. Opinions of Relevant Scholars

In the era of big data, the rapid development of digital economy, the development of artificial intelligence technology, robotic production, the gradual popularization of 5G network and other technologies not only represent the progress of science and technology, but also provide great material support for the storage and dissemination of people's personal information. The unique characteristics of the era of big data are like a double-edged sword. While bringing great convenience, it also pushes people's protection of their own private information and related rights to a wave. In this era of rapid and convenient efficiency and low cost in obtaining and disseminating a large amount of information, personal information protection has also been challenged.

Recently, the "right to be forgotten", which has been discussed more frequently by the academic circle, is related to the protection of the rights and interests of personal information. Some scholars believe that the concept of the "right to be forgotten" first came from an Austrian data scientist named Schonberg in the early 21st century. In fact, the "right to be forgotten" was proposed in France before that. Originally, the right to be forgotten was applied to those who had been sentenced and released after serving their sentences, so that they could erase their previous bad information records and re-enter society.

Some scholars believe that "the 'right to be forgotten' refers to the right of the information subject to request the information controller to delete the information link if the information in his personal information is inaccurate, inadequate, irrelevant or beyond the purpose of information processing." Some scholars believe that the first paragraph of Article 47 of China's Personal Information Protection Law has stipulated the right to be forgotten with local characteristics -- the right to delete. From this point of view, the right to be forgotten is more

inclined to be a kind of personality right request right, which means to request to stop the infringement of personal rights and interests. From this point of view, the clarification of the concept of the right to be forgotten will contribute to the perfection of the legislative system of the right of personality.

This paper argues that the right to be forgotten cannot simply be summarized as the right to delete. The right to be forgotten is not only the right to require information controllers and users to delete inappropriate personal information that has been disclosed. Deletion should only be a way to realize the right to be forgotten, and cannot include all the contents contained in the right to be forgotten.

The right to be forgotten is closely related to the right to personal information. The Civil Code determines the right to personal information after the debate between "rights and interests" and "rights" of personal information, so that it can be distinguished from the right to privacy. Professor Wang Liming believes that the right of personal information should not be classified as the general right of personality, but should be protected alongside the right of privacy as a new type of specific right of personality [16]. In the construction of personal information rights and interests, Professor Zhang Xinbao clarified that the connotation of personal information rights and interests mainly includes personal dignity, personal property rights and so on [12]. The right of personal information is the right to control and protect the right of personal information and prevent others from harming it. It has the characteristics of specific personality right. The right to be forgotten is manifested as the right of the information subject to control and process the information with identifiable links on the Internet, which also reflects the protection of the dignity and interests of the personality, and has a strong ideological connotation in line with the right to personal information. Professor Yang Lixin believes that the right to be forgotten should be regarded as the theoretical right of personality, attached to the right of personal information, and should be confirmed in the Personal Information Protection Law [17].

To sum up, this paper believes that the right to be forgotten should be regarded as a specific right of personality independent of the right to delete, privacy and other rights, attached to the right to personal information.

1.1.2. The Relationship between the Right to Be Forgotten and Other Rights

The right to be forgotten is different from the right to delete. The tangled concepts of the right to be forgotten and the right to be forgotten are enough to reflect the close relationship between the two. However, "delete" can realize the forgotten information, and concealment processing and cancellation can also achieve the purpose of being forgotten with the same effect as deleting. In addition, the right to be forgotten and the right to delete are different in many aspects. Professor Wang Liming holds that the two have different application circumstances, and the exercise of the right to delete only needs to satisfy the objective conditions stipulated by the right to delete. For the right to be forgotten, it only needs to satisfy the objective conditions, and also needs to satisfy the subjective conditions such as the information subject's subjective willingness to process its information. Different subjects have the right to exercise, the subject of the right to delete is limited to the information processor itself, but the subject of the right to be forgotten involves other information users in many aspects. The consideration of interest balance is different. For the consideration of the right to be forgotten, the legislative, judicial and law enforcement organs should consider the interests of the state, the information industry and the information subject to achieve a relative balance. However, as for the right to delete, there is no clear limit on the subject and scope of consideration in the protection laws of our country.

The right to be forgotten is different from the right to privacy, which is mainly manifested in three aspects: the difference of the subject, the object and the way of protection. In terms of the

subject, the right to be forgotten is expressed as an unrestricted natural person, while the right to be forgotten, because its background is in the era of big data and its existence also relies on the material support of big data on the Internet, is expressed as only when the information subject's personal information has been stored on the Internet and has some identifiable correlation with it, the information subject is likely to enjoy the right to be forgotten. Only the information subject can process the personal information on the Internet. In terms of object, privacy is defined by the Civil Code as the private information that a natural person does not want to be known to the outside world. Once this private information is leaked, it also loses its privacy. For the right to be forgotten, it includes not only the personal information that has been collected but also the personal information that has been made public. The remedies of the two are also different. The right to privacy is more inclined to pre-remedy, and the information is protected in advance before it is infringed, with the characteristics of pre-defense. According to many relevant cases in the field of privacy, the infringement of privacy is mainly manifested as compensation for mental damage. The right remedy of the right to be forgotten, however, is more inclined to the remedy after the event. The information subject has the right to deal with the personal information that has been collected on the Internet, and also has the right to request the relevant subject to perform the relevant obligations. The remedy for this right is not only the remedy for damages. It also has the right to request relevant information processing and other obligatory subjects to continue to perform relevant obligations. The right to privacy focuses on "concealment", while the right to be forgotten focuses on returning public information to an undisclosed state.

1.2. Legal Characteristics of the Right to Be Forgotten

1.2.1. Personality Right Attribute

In the era of big data, individuals as people in the society, through the constant contact with the network, data actually has a "digital portrait" for each of us. Based on our personal information, the digital portrait has certain identifiable characteristics and personal personality characteristics. Once the rights and interests of personal information are infringed, the dignity and interests of personality will certainly be damaged.

1.2.2. Property Attributes

The right to be forgotten has certain property attributes. It is common for personal information to be used commercially. In the information society, big data will record our consumption habits, personal preferences and other information all the time. There is the flow of our personal information among different enterprises and in major consumption apps. It can be seen that the right to be forgotten under the right of personal information contains property attributes. But according to Zhang's analysis of Facebook's "book value" versus its "market value", the two trillion pieces of "profitable" personal information, when distributed among individuals, create a "thin effect" of data, with each piece of information worth only about four cents [12]. And only when the information reaches a large amount, it can produce economic benefits. Therefore, the economic benefits contained in big data cannot deduce that an individual has property interests in his personal information.

2. Judicial Cases of the Right to Be Forgotten: Current Situation of Civil Law Protection and Legal Application Issues

2.1. Current Situation of Judicial Cases

In the 2016 case of Xu Yuyu being swindled, Du Tianyu was sentenced to six years in prison for illegally obtaining citizens' personal information [18]. The crime was carried out by a gang and had serious consequences. The suspect Du Tianyu invaded the recruitment information website of ordinary colleges and universities through illegal hacking technology, stole more than 50,000

pieces of candidates' personal information, and sold to the suspect Chen Wenhui, Chen Wenhui then transferred to Zheng Jinfeng, and then Zheng Xianzhong carried out telecom fraud, defrauding the prospective college student Xu Yuyu 9900 yuan of college tuition, Leading to the victim's death from cardiac arrest. In addition, there are many cases such as the Tsinghua University professor being cheated, all because of personal information leakage led to the victim suffered. These cases have inevitably raised public concerns about the protection of personal information.

China's first right-to-be forgotten case was *Ren xx v. Baidu Inc* [19]. In the case, Ren, the plaintiff, worked in a human resources position at an education company in Wuxi City in 2014. Ren has since left the company. In addition, the company's reputation began to suffer, which had a negative impact on the industry. Ren filed a lawsuit against Baidu in 2015 after finding that his personal information was linked to the company he worked for a year ago, claiming that Baidu had violated his right to reputation, right to name and right to be forgotten, which includes his personal interests. The court's handling of the case, this paper believes that there are some reasonable. The judicial authorities did not reject Ren's appeal because there is no clear legal provision on the "right to be forgotten". Instead, they fully considered and reasoned.

In the process of consideration, the court referred to the applicable conditions of the "right to be forgotten" of the European Union, and carried out a detailed analysis. As for Ren's right to name and reputation, according to Chinese laws and regulations, Baidu search terms are automatically and dynamically generated by the system based on a comprehensive analysis of various factors such as early heat and time. Baidu has not insulted, defamed or damaged its reputation, nor has it misappropriated or counterfeited Ren's name, which naturally does not constitute a violation of the right to name. For Ren's claim of the right to be forgotten, the court held that a series of objective conditions should be met before it could be considered. In this case, Ren's claims mainly include: the education company in Wuxi has bad business reputation, and concealing her work experience from future educational partners, customers and other specific groups. Goodwill is caused by various factors such as economic development and market dynamics, and cannot be controlled; Specific public groups have the right to know information related to Ren's employment, and Ren's appeal is not fully justified and reasonable. As for the presentation of this information, Ren does not have sufficient evidence to verify the damage of her own interests, so it is not necessary to carry out legal protection. Moreover, the content presented by Baidu's search engine is not irrelevant and outdated information. Therefore, in consideration of the public interest, the court ruled against the plaintiff.

Through the judicial practice of the first Chinese case of "the right to be forgotten", we can know that the protection of citizens' right to personal information is serious. Based on the reference to the relevant data regulations and judicial practices of the European Union, we can see that China also has an attitude towards the "right to be forgotten" which includes the interests of personality.

2.2. Legal Application of the Right to Be Forgotten

In addition to the analysis and investigation of the first case of the "right to be forgotten", this study also retrieved 161,322 cases related to the protection of personal information and the right to be forgotten through the website of judgment documents, and then carried out detailed analysis and practical investigation. Understand the judicial practice for the right to be forgotten to protect the development of the status quo, summed up some of the right to be forgotten to protect the status quo and existing problems. The main condensation is divided into the following four aspects:

First, the content of the right to be forgotten is constructed ambiguously. For the right to be forgotten, there are different contents and systems outside the region, which are not unified yet, and how to construct and implement this right after localization is relatively vague. The

first is the subject of this right. Whether there should be different subject status distinctions for different social groups such as minors, public figures and criminal suspects. Secondly, when the right to be forgotten is exercised, how should the information industry and judicial authorities define the extension of irrelevant, unnecessary and outdated information? When it comes to the web content of many information subjects, how to balance the interests of individual information subjects and the interests of other information subjects. All of these are related to the right to be forgotten.

Second, the nature of the right to be forgotten is difficult to locate. The right to be forgotten was first put forward and put into judicial practice in the European Union. In our country, the clear and applicable legislation and judicial practice of the right to be forgotten are not sufficient, and the connotation and extension of many scholars are still not unified. In this paper, the right to be forgotten should be a specific personality right attached to the right of personal information. In fact, even the "right to personal information" in the "personal Information Law" there is a "right" and "rights" dispute. Professor Zhang Xinbao believes that the protection of personal information rights and interests is "non-dominant" and "non-direct", so it should be defined as rights and interests rather than rights [12]. As an object, information cannot be controlled by individuals alone. In the digital economy, large amounts of data and information bring economic dividends. If personal information is granted strong exclusivity, it will inevitably affect the economic development of the whole society, which is contrary to the basic system of human development. Although the right to be forgotten carries many benefits such as personal dignity and personal interests, information is the product of interpersonal communication. When personal information is not transmitted through communication, it will lose its own value and significance. Preventing others from obtaining information will bear a higher cost than the circulation of information, which determines the public attribute of personal information. There should be a reasonable limit to the protection of the right to be forgotten to strike a balance between the interests of all parties.

Third, civil law protection of the right to be forgotten lacks technical support. The right to be forgotten, based on the era of big data, is an individual's right to self-determination of identifiable personal information on the Internet. The popularization of the Internet makes the Internet access rate of each individual extremely high. It is through the acquisition and analysis of all kinds of personal information that the major Internet industries continuously tap the potential of economic development. However, the self-determination of personal information required by the right to be forgotten is in line with the purpose of Internet operators to obtain operational information, which requires the Internet industry to be prepared for the high cost of implementing the right to be forgotten. Many factors, such as the huge volume of Internet data and the dispersion and complexity of personal information subjects, have posed challenges to the Internet industry, which is bound to affect profits. Not only to the Internet and other tertiary industry put forward difficulties, but also to the supervision agencies, courts and other national public institutions also put forward higher requirements. The obligation of non-information subjects and the implementation of the right to be forgotten all lack clear advice and guidance.

Fourthly, the protection and relief of the right to be forgotten in civil law are lacking. This paper thinks that the right to be forgotten attached to the right of personal information is a new right in our country has not yet found its position. In China's first case of "right to be forgotten" Ren XX v. Baidu, because there is no clear legal provisions, the court can only refer to the practice of the European Union, and combine legal interpretation and reasoning to make a reasonable interpretation of the appeal for the protection of Ren XX's personality rights. On the surface of many judicial practices, guiding ideology and legal basis need to be established for the protection of the right to be forgotten in practice, so as to establish its right type. Only in this way can we provide corresponding legal support for the protection of its rights in tort liability

law. However, our traditional legal culture maintains a cautious and conservative attitude towards the emerging rights, so the judicial remedy path of the right to be forgotten is quite lacking.

In conclusion, it is difficult to define the content and legal nature of the right to be forgotten, the lack of technical support for implementation and the lack of relief paths of the right to be forgotten all put forward obstacles for the protection of the right to be forgotten in civil law. The four aspects of the problem are all common problems in judicial practice. The following will solve the above problems from four aspects, to provide guidance for civil law protection of judicial practice.

3. The Legislative Protection Mode of the Right to Be Forgotten Extraterritorial

3.1. The Legislative Protection Practice of the Right to Be Forgotten in the EU

The EU attaches great importance to the protection of personal information, as well as the content establishment of the right to be forgotten, the technical support for the implementation of the right and the remedy path are all worthy of our reference.

The EU has a long history of protecting personal information related to the right to be forgotten, which of course shows the importance of the EU to the protection of personal information. The case of *Gonzales v. Google* in 2014 attracted wide attention. The case probably came about because Gonzalez, a Spanish citizen, was put up for auction because of debt and was listed in the relevant notice. When the debt was paid and the matter was settled, Gonzalez's information remained in Google's search database, still available more than a decade later. As a result, Gonzalez is suing Google. The court took a careful look at Google's obligation to protect personal information on its search engine.

The European Court of Justice ruled in favour of data subjects, supporting Mr Gonzalez's claim, recognising that data subjects have a right to be forgotten and that processors such as Google have an obligation to delete or hide irrelevant, outdated and inappropriate personal information from data subjects, as well as inaccurate and incomplete information. The exercise of the right to be forgotten does not require the data subject to bear the obligation to provide proof of the relevant exercise of the right or to prove that they have been infringed. And the personal interest is placed before the economic interest of the web page operator and the general interest of the public. Although admitting that the right to be forgotten is not an absolute right, of course, the right to be forgotten is placed in the absolute priority position. It balances the interests of data subject, information processor and state, and strengthens the legal construction of personal information protection.

3.2. The Legislative Protection Practice of the Right to Be Forgotten in the United States

Compared with the European Union, which pays more attention to the protection of personal information rights, the United States pays more attention to "freedom". This has something to do with America's history. What the United States has done in terms of personal information protection is to disperse the special laws and regulations related to personal information protection to different industries and fields. Although it is relatively operational, it is rather cumbersome and complex, and has not formed a comprehensive and complete rights protection system. In a number of judicial practices related to the right to be forgotten, the authorities always hold a negative attitude towards this right. In 2015, California's Bill 568, also known as the eye-catching "Eraser Act", satisfies minors' right to be forgotten by clarifying their right to delete or request the deletion of personal information on the Internet because minors cannot protect their personal information in an objective and prudent manner due to their own

characteristics. Although the subject of the right is limited to the minor group. However, it has achieved a victory in the game of American liberalism, indicating that the official attitude of the United States towards the right to be forgotten has changed.

The change in American attitude towards the right to be forgotten is enough to prove that the protection of personal information has been paid more and more attention, and the construction of the right to be forgotten system is more in line with the trend of legal development.

4. Suggestions on Improving the Protection of the Right to Be Forgotten by Civil Law

4.1. The Construction of the Protection System of the Right to Be Forgotten in the Civil Code, to Clarify the Content and Nature of the Right to Be Forgotten and to Provide Remedies

China has promulgated and implemented the Personal Information Protection Law in 2021 in addition to scattered laws on the protection of personal information and the right to be forgotten, such as the Constitution and the Cyber Security Law. In spite of this, in the context that the Internet has penetrated into every aspect of civil society life, there is no clear legal basis for the protection of the right to be forgotten in the individual protection Law, the operational rules of personal information protection in the era of big data are not strong enough, and the legal protection system of personality rights in this aspect is not perfect.

Therefore, this paper believes that the right to be forgotten should be established in the Civil Code, and relevant contents of the right to be forgotten should be supplemented and improved in the corresponding "Personality Rights" and "Tort Liability", so as to establish the right to be forgotten systematically, clarify the content and legal nature of the right, and provide legal support for judicial practice.

First of all, although there are "rights" and "rights" for the "right to personal information", but all provide the feasibility for the establishment of the right to be forgotten. Since the difference between the right to be forgotten and the right to be deleted has been elaborated in the previous article, this paper suggests that the right to be forgotten should be corrected into the right to be forgotten with richer connotation and extension in the personal right compilation of the Civil Code. In the tort liability compilation, in order to correspond with the legislation of the right to be forgotten established in the personal right Compilation, we should provide the path of tort relief for this civil right, and also add "infringement of the citizen's right to be forgotten" to the content of "network tort liability" in Article 1194. The tort of the right to be forgotten is established as a special tort liability, the principle of presumption of fault is implemented, the balance of burden of proof is tilted to the information subject, so that the information industry with natural advantages can bear more burden of proof to prove that its data processing is reasonable and legal, and the dilemma of natural person's difficulty in proving and relieving is changed.

Secondly, Article 1182 has relevant compensation rules for damage to personality interests, and specific provisions should also be made for tort compensation for the right to be forgotten. For example, the period of tort compensation for information industry should be limited, and the case of failure to stop the damage and eliminate the nuisance beyond the period should be considered and regulated.

Finally, in the "Individual Protection Law", the deletion means of 47 articles should be appropriately expanded, including but not limited to the deletion, concealment, de-identification of the public citizen's irrelevant, outdated, inappropriate information. To a

certain extent, such treatment strengthens the protection of citizens' personal dignity and personal interests.

4.2. The Establishment of Data Supervision Institutions of Individual People's Congresses to Provide Technical Support for the Implementation of the Right to Be Forgotten

According to Article 60 of the Personal Information Protection Law, The State Council and Internet and information technology departments shall coordinate the work, and government departments above the county level shall actively implement the work, and jointly do a good job in the supervision and management of personal information. Different countries have different personal information supervision systems based on different national institutional culture, economic development, judicial system characteristics, etc. The European Union has a special data protection bureau, and France has a National Information and Freedom Commission. In the United States, which is a "free market", there is no special supervisory body. This paper believes that our country should learn from the European Union. The State Council and the people's governments at and above the county level shall set up special and independent departments for supervision and administration of personal information. Corresponding functions and powers shall be granted to such departments: first, the power of supervision and management. To provide specific instructions and evaluation standards for information collection, information operators' personal privacy protection compliance, and the performance of the right to be forgotten obligations; Second, the right of investigation and evidence collection and administrative punishment. The data supervision and administration departments are authorized to investigate the compliance of the behavior of data processors through various means and methods, handle the complaints and requests of personal information subjects, and punish and supervise the subjects who fail to fulfill the protection obligation of the right to be forgotten according to law.

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