Thinking about the Forgotten Right in Network Society

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Abstract

In recent years, with the accelerating pace of legislation on the protection of personal information on the Internet in China, the determination of the right to be forgotten is also one of the hot topics in academic circles. As for the relevant issues concerning the localization of the forgotten right in China, the author has made relevant reflections and discussions on the possible realistic problems.

Keywords

The right to be forgotten, Internet, Rights.

1. Introduction

With the continuous development of Internet technology, the increasingly rich network life has opened up a wider range of activities for the people. However, the expansion of the scope of activities is bound to require legal control, and legal rights based on the network society need to be restricted and guaranteed to be realized. The right to be forgotten in the Internet field began in Europe and the United States and has been perfected with the continuous development of practice. In this article, the author from the forgotten right origin and the right foundation and so on, regarding the forgotten right introduction Chinese law related question, expresses own view.

2. Sources of rights

2.1 Google v. Spanish Data Agency

The historic symbol of establishing the right to be forgotten was Google v Spain data bureau case in 2004.The case arose from a protest by Spanish citizen Mario Costeja Gonzále. As early as 1988, a forced auction was held somewhere in Spain, and the Spanish newspaper Vanguard involved was one of the news media that published the announcement of the forced auction. In the report, Vanguard mentioned that one of the properties of the forced auction belonged to Spanish citizen Mario Costega Gonzalez. In November 2009, Gonzalez complained to Vanguard that the name published in the announcement was included by Google search engine and asked to delete the information related to him online. According to Gonzalez's report, the auction ended several years ago and the information in the announcement has become invalid. If the online information about the auction continues to exist, it will affect his reputation.

Vanguard said that the relevant contents of the announcement were authorized by the Spanish Ministry of Labor and Social Affairs and the newspaper had no right to delete, so personal data about Gonzalez could not be deleted. Gonzalez then contacted Google Spain and asked the company to delete the link to the announcement. Google Spain forwarded the request to the company's U.S. headquarters. As the problem was not solved, Gonzalez turned to the Spanish Data Protection Agency (AEPD) for help: Spain's Herald was asked to delete the data information about the announcement, and Google Company deleted the data connection.

In July 2010, the Spanish Data Protection Agency rejected Gonzalez's appeal to Vanguard, but supported his appeal to Google, asking Google to delete the link and ensuring that the relevant information could not be opened through Google's search engine. Subsequently, Google Spain and

Google Headquarters filed separate lawsuits with the Spanish National High Court, which merged the two lawsuits and referred them to the European Court.

On May 13, 2014, the European Court announced its final ruling that Google, as a search engine, should be regarded as a data controller and should be responsible for deleting data pages with personal information. According to this, the EU court sentenced Google Spain and Google headquarters to lose respectively, requiring them to delete relevant links related to Gonzalez according to Gonzalez's request.

2.2 European Union Judgement Establishing Rights and Relevant European Provisions

The EU Court's handling of Google v. Spanish Data Agency is a milestone in the legal form of personal data information, which establishes the right to forget personal data information.

Before handling the lawsuit, the European Court of Justice made a preliminary ruling on the issues involved in the case in accordance with the existing European Data Protection Directive, including one on whether the right to be forgotten "needs to be formulated. As to whether the "forgotten right" needs to be formulated, the EU court made an evaluation after listening to the opinions of the society: the "bad, irrelevant and excessive" information about the data subject should be deleted from the results of the search engine.

It can be seen from this that in the definition of the scope of personal data information that should be deleted, the European Court of Justice has added the connotation of "bad, irrelevant and excessive" personal information to the scope of "personal information" specified in the European Data Protection Directive. In Europe, this judgment of the European Court of Justice also established the right to be forgotten and made it a civil right of the information subject.

With the rise of Internet technology in the 20th century, European countries have long realized the importance of data regulation. As early as 1995, the European Union issued the European Data Protection Directive to protect personal information of Internet data. As early as 1995, before the European Union's Personal Data Protection Directive was issued, France, Germany, the Netherlands, the United Kingdom and others successively promulgated data protection laws, many of which are related to the right to be forgotten. For example, article 26 of Germany's 1977 Data Protection Law and article 36 of France's 1978 Data Protection Law are very similar to the right to be forgotten. In addition, the right to amend and delete article 24 of Britain's 1984 Data Protection Act and the right to delete article 33 of Holland's 1989 Data Protection Act form the institutional basis of the right to be forgotten.

2.3 U.S. Eraser Act

In October 2013, California Governor Jerry Brown signed California Senator 568, which is called the "Eraser" Bill. The bill requires major social media giants, including Facebook and Twitter, to allow minors to erase their traces of internet access, that is, to delete personal information about themselves posted on major social platforms. The purpose of the bill is to avoid the troubles brought about by minors' ignorant social behaviors on the internet to their future life and work. The "Eraser" Act is the world's first law in related fields.

The law was formally implemented on January 1, 2015. It provides an opportunity for minors to tolerate immature social behaviors on the Internet in advance. The law requires relevant Internet enterprises to delete relevant data and information from their websites, in order to give minors with immature minds a chance to prevent them from using the Internet and promote them to form a correct awareness of Internet use.

Although the law is only implemented in California, and its content is only limited to images, videos and other information released by minors themselves, and the exercise of rights is limited to minors in California, its content is still an important embodiment of "forgotten rights" in American law. The difference between the U.S. "eraser" bill and the EU legislation is that the EU data protection law stipulates the right subject of forgetting right to all natural persons, while the U.S. bill only restricts minors to exercise the right of forgetting.

3. Property and content of rights

3.1 The Dispute between Privacy Right and Personal Information Right

From the perspective of domestic scholars' research on the right to be forgotten, the most important issue is to explore the nature of the right. At present, there is no clear legislation on the right to be forgotten in our country, and the issue of the attribute of the right to be forgotten is also a place where academic circles are constantly disputing. In this regard, the academic point of view is mainly divided in whether the forgotten right belongs to the category of privacy or personal information right.

Some scholars believe that the right to be forgotten should be defined as the scope of protection of the right to privacy, that is, the right to privacy. Before the implementation of the General Provisions of Civil Law, cases involving the right to be forgotten were mostly based on the theory of privacy protection. Therefore, scholars who hold the right to privacy theory believe that it is more appropriate to include the right to be forgotten into the protection scope of the Tort Liability Law.

However, regarding the concept of privacy right, we need to make it clear that the main content of privacy right is personal information that has not been made public to the public, so as to protect such information and prevent disclosure, thus achieving the purpose of protecting rights. As for the right to forget, the content it aims at is more personal information on the Internet that has been made public to the public. Therefore, judging from the content of rights, the right to privacy is to protect undisclosed information for the purpose of prevention. However, what the forgotten right wants to protect is the information that has already been disclosed, and the main realization is the protection afterwards. Therefore, the nature of the forgotten right does not seem to be in conformity with the right to privacy.

The other view, which is recognized by more scholars, is that the right to be forgotten is included in the category of personal information right. This requires starting from the nature of the right object of the forgotten right: the information that has been made public and needs to be protected involves the relevant contents of individual individuals, and the information subject has the right to use and preserve these information contents. The right object of the right to be forgotten is the relevant information concerning the subject, such as the trace of the user on the internet, the media information sent by the user on the internet, etc.

Compared with the right to privacy, the nature of the right to be forgotten and the right to personal information seems to be more consistent.

3.2 Subject: Rights Subject + Obligation Subject

The right to be forgotten involves two subjects: the right subject and the obligation subject. In the research, scholars call the right subject of the forgotten right the information subject and the obligation subject the information controller.

The subject of information can be analyzed from the object of forgotten right, which refers to individuals involved in personal information. These individuals mainly refer to the publishers of personal information on the internet or the publishers of personal information. in common terms, they are the "individuals" pointed to by personal information. In practice, this kind of information subject mainly refers to natural persons, excluding legal persons and other organizations. The information of these natural persons can be used to identify the natural persons independently or in combination with other information, i.e. natural persons that can be identified directly or indirectly according to name, identification number, address data, network identifier or one or more special information combinations (e.g. information related to physiological, genetic, psychological, economic, cultural and social identities).

The duty subject of forgotten right is called information controller in EU legislation. Whether it is all kinds of search engine operators, social networking sites or data analysis platforms and other information controllers who may master the personal information of the information subject, they are all duty subjects of forgotten rights. That is to say, as long as the subjects who can access and keep

the relevant personal information in the process of network information circulation, they may become the duty subjects of forgotten rights.

With the complexity of the form of network utilization, the extension of information controllers is increasing. The early information controllers may only be limited to the owners of search engines. However, with the development of science and technology, the convenience of information collection and preservation is gradually improving, and it is not difficult to become the subject capable of "controlling information". Therefore, the identification of information controllers is a work that keeps pace with the times. Academics need to constantly improve and supplement the connotation of the subject of forgotten rights and obligations.

3.3 Content of rights

The EU data protection rules revised in 2016 clearly define the application scope of forgotten rights in the field of network information, and the information involved mainly includes three types: first, personal information that has lost its necessity relative to the purpose of collection; Second, when there is no other legal basis for information processing, the consent of the information subject can be revoked; Third, personal information used for Direct marketing or information collected by minors under the age of 16 as information subjects in information society services.

For these types of information, EU legislation states that the right subject enjoys is the right to require the information controller to delete these related personal information. That is, the way to exercise the right to be forgotten is that the information subject requires the information controller to delete the network information concerning the natural person that is held by their platform and has been published to the public. By deleting the information, the personal information of the information subject can be erased from the internet, so that they can be "forgotten".

However, EU data protection does not specify the extent of deletion, that is, the search engine that should be deleted to the relevant platform cannot find personal information, or delete personal information completely from the information controller's storage system, or reach other deletion levels.

Information search systems of related platforms on the Internet are divided into internal systems and external systems. Deleting personal information from the platform's external search system only ensures that the information subject or other users using the platform cannot search for relevant personal information. However, for information controllers, the internal system is their important database for storing user information. As long as the data is not stripped from the database, it means that the information has not been completely deleted. The so-called "deleted" personal information can only be seen by users on external search engines. The information is still stored in the database in the form of data.

How should the right of deletion stipulated in the right to be forgotten be defined? The relevant legislation has not clearly stated to what extent the "deletion" should be carried out by the information controller. If the purpose of forgetting the information subject by the Internet is satisfied by executing the forgetting right, only deleting the external system is required. However, the purpose of not releasing personal information once again cannot be fully realized if personal information is saved. If the risk of information that has already been disclosed being released to the public again is to be prevented, personal information needs to be completely deleted from the database of the internal system. How to operate it needs to be clarified by legislation and practice, and an appropriate standard should be given.

4. The Realistic Problem of China's Localization of Forgotten Right

4.1 Practical Difficulties: Inevitable Data Replication

With the rapid development of Internet technology, this data network does not only cover users in a region or a country, but also extends to more groups, wider platforms and more infinite space. The timeliness of Internet information far exceeds that of traditional media such as paper media. The rapid transmission of information enables relevant content to reach an unpredictable audience within a few

seconds. In addition, the development of science and technology also makes the preservation of information easy. People no longer rely on information storage methods such as heavy hard disk storage or portable mobile hard disk, and can save the maximum capacity of data information in an efficient and convenient way only through cloud platform.

Such high speed of information dissemination and convenient information storage provide a path for multi-party interception of network information. Information controllers are no longer limited to traditional search engines, data analysis companies and other Internet companies. More organizations, groups and even individuals can have their own information storage database, even a micro database. From this perspective, that is, the data subject requires Internet companies to delete the relevant search content from the search engine, but other users may have copied or downloaded the data in the previous browsing process, and it is difficult to predict what will happen afterwards. The European Network Information Security Bureau has said that the right to be forgotten may be reasonable in theory, but its implementation is full of technical difficulties, and the most central problem is that it is impossible to prevent network users from copying data without authorization.

The scope of the exercise of the right to be forgotten also fundamentally determines the limitation of its exercise: in the Internet era, once data is online, it will never be deleted. The nature of Internet information dissemination fundamentally determines that the exercise of the right to be forgotten is at most a soothing measure. It cannot achieve the possibility of being completely deleted from the scope of Internet influence. It cannot truly and completely delete these data that have already been disclosed to realize the purpose of "being forgotten".

4.2 The Forgotten Right of Special Information Subject

The academic circles of the right subject of the forgotten right have relatively unified views. Most of them think that the right subject is limited to natural persons and does not include legal persons and other organizations. However, how to define the scope of natural person, especially how to define the forgotten right of public figures, is a controversial issue.

Some scholars have suggested that public figures should not be given the right to be forgotten for the sake of safeguarding public interests, satisfying public interests and protecting the public's right to know. I think this is very inappropriate.

Forgotten right is a right content of personal information right. It is necessary to make special provisions for it in our country's laws. The main reason is that confirming and protecting forgotten right is conducive to safeguarding human dignity and promoting equality of personality. If the right to be forgotten is set up to realize the protection of equal human rights, why are the equal human rights of public figures excluded from the scope of protection? In this view, it is illogical to refuse to recognize the right of public figures to be forgotten.

The objecting scholars gathered the contradictions on the detachment of the public figures' social status, believing that the public figures would use their exposure to maintain a certain topic, thus ensuring their continuous awareness and attention. But this view is not comprehensive.

It is precisely because of the particularity of the identity of public figures that they have more personal information exposed on the network than ordinary people. These personal information will more easily affect their social evaluation and meet the requirement that the scope of protection of forgotten rights is to "reduce the social evaluation of information subjects". In addition, public figures may gain popularity through their own exposure, but in more cases, the information that public figures are exposed on the Internet is spread on the Internet by others, and they have no way to control it. This information is more negative and has a negative impact on their personal and social evaluation. From this perspective, public figures face more negative personal information on the Internet than the general public, and thus need more protection of the right to be forgotten.

Therefore, it is unfair to simply deny the forgotten right of public figures. It is impossible to achieve the goal of protecting equal human rights when the forgotten right is set up. Due to the particularity

of the identity of public figures, we need to treat their rights specially and implement special regulations.

4.3 Legal basis

Ms. Redding once said: "The right to forget will be based on the existing rules in order to better deal with the risks of network privacy." The right to be forgotten is not a brand-new right, but a content based on the existing rights. When we study the right to be forgotten, we should look at it together with EU data protection rules. To be sure, the right to be forgotten is a product of European and American laws, and there is no legal provision in China's current legislative system. There are indeed many voices of opposition that we do not have to follow the specific practice of the right to be forgotten. China has not yet had an environment to practice the right to be forgotten.

However, this alone is not enough to explain that China cannot introduce the right to be forgotten and apply it. With the rapid development of the Internet in China, there is an increasing demand for the perfection of the regulations on the protection of personal information on the Internet. The large number of Chinese netizens and the high popularity of the Internet to some extent illustrate the importance of the introduction of the right to be forgotten.

On December 20, 2019, a spokesman for the NPC Standing Committee's Law Committee disclosed that the legislative work on the personal information protection law would be included in the plan next year. The promotion of the personal information protection law also provides the cultivation soil for the forgotten right. However, what we need to pay attention to is that although we draw closer the nature of the right to be forgotten to the nature of personal information, and some laws and regulations in our existing legislation have adjusted and regulated the relevant fields, we still need to clearly identify and explain the legal concept of the right to be forgotten. The existing relevant laws may provide opinions for the formulation of the right to be forgotten, but by no means can they completely replace it. Similarities are not equivalent. Before the concept of the right to be forgotten has been fully explained in the international community, China's legislation should carefully define and regulate it.

5. Conclusions

With the continuous development of Internet technology and the continuous expansion of Internet popularity, the degree of social communication through the Internet is becoming more and more frequent. Under the condition of increasing dependence on the Internet, the security environment of the Internet calls for legislation to protect personal information. The establishment of the right to be forgotten is an important way to better realize the protection of network personal information. Since the right to be forgotten is a product of European and American laws, there is no clear law to regulate it. On the way to continuously improve the protection of personal information in China, I hope the right to be forgotten can better help realize this goal.

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