

Legal Problems and Solutions of the Protection of Personal Information of Minors in Our Country

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Abstract: In the Internet era, the protection of minors' personal information is faced with the problem of coordination and effectiveness in practice, so it is urgent to strengthen the protection of minors' personal information. This paper mainly introduces the connotation of personal information and minors' personal information and the necessity of protecting minors' personal information, and points out the problems in the protection of minors' personal information in China, namely, the unclear limits of the exercise scope of minors' age and self-determining ability, the unclear application of the guardian consent system and the defects of legal regulation of network operators. In order to protect the basic civil rights of minors and promote their healthy development, corresponding strategies are proposed, that is, to clarify the limits of the exercise scope of minors' age and self-determination, improve the system of guardian consent and the regulation of network operators.

1. Introduction

On August 28, 2023, the China Internet Network Information Center released the 52nd Statistical Report on the Development of the Internet in China. According to the report, as of June 2023, the number of Internet users in China reached 1.079 billion, an increase of 11.09 million compared with December 2022, and the Internet penetration rate reached 76.4%. At present, China's underage Internet users have reached 191 million, accounting for 17.7% of the total number of Internet users, and the problem of personal information leakage of minors has become increasingly serious. [The 52nd Statistical Report on China's Internet Development - Internet Development Research (cnnic.net.cn)] Due to the transferability of information, illegal acts of infringing personal information are not uncommon, especially the infringement of personal information of minors is more widespread. The body and mind of minors are still in the immature stage, and it is easy to leak personal information content when carrying out online activities, such as Posting emails, social media or registering website accounts. Once minors' personal information is leaked or abused, it is easy to cause serious damage to minors' physical and mental health, and the protection of their personal information is imminent.

2. Overview of minors' personal information

2.1. The connotation of personal information and minors' personal information

Article 4 of the Personal Information Protection Law stipulates that personal information is all kinds of information relating to identified or identifiable natural persons recorded electronically or by other means, excluding information that has been anonymized. Article 76 of the Cybersecurity Law stipulates that personal information refers to all kinds of information recorded electronically or in other ways that can identify the personal identity of a natural person individually or in combination with other information, including but not limited to the natural person's name, date of birth, ID card number, personal biometric information, address, telephone number, etc. Scholar Lu Qing believes that with the development of science and technology, the identification methods of personal information are becoming more and more diversified. In addition to the inherent personality traits such as name and portrait, natural person's genetic sequence, fingerprint, palm print, eye iris, skin color, voice, walking posture and other physical characteristics can also become symbols to identify a specific person. Even public institutions or government agencies based on the needs of management to give natural persons a specific number (such as ID number, driver's license number, social security card number, passport number, etc.), the network browsing track, location information can be used for the identification and verification of natural persons.^[1] The Personal Information Protection Law, the Network Security Law and scholars Lu Qing all emphasize the identifiability of personal information and regard it as the main feature of the definition.

Minors' personal information is constantly updated and changed in its growth, and is not static. The personal information of minors before receiving compulsory education is mainly related information such as name, gender, ID number, home address and biometric information. After receiving compulsory education, personal information is mainly related to education experience, mobile phone number, social accounts, school routes and so on. Feng Mengyu believes that minors' personal information refers to the identifiable and relevant personal information recorded in various ways and constantly changing during minors' online and offline learning or life.^[2] Minors' personal information is a dynamic and changing personal information. Including but not limited to the minor's name, gender, age, native place, nationality, contact information, home address and other information.

2.2. The necessity of protecting minors' personal information

2.2.1. Sensitivity of minors' personal information

Article 28 of the Personal Information Protection Law stipulates that the personal information of minors under the age of 14 is sensitive personal information. Sensitive personal information refers to personal information that, once leaked or illegally used, may easily lead to the violation of the human dignity of natural persons or the harm to personal and property safety, including biometric identification, religious beliefs, specific identities, medical and health care, financial accounts, whereabouts and tracks. As minors are young, both physically and mentally in a state of growth, immature mental development, lack of social experience, and low self-protection ability, their personal information once illegally abused or leaked will cause irreparable harm to minors, therefore, the personal information of minors should be treated as sensitive information for special protection.

2.2.2. The sense of autonomy of minors is not sound

Compared with adults, the biggest characteristic of minors is that their autonomy is not perfect.

According to the Civil Code, anyone under the age of 18 is a minor. At the same time, according to the different civil capacity of natural persons, it can be divided into full capacity for civil conduct, limited capacity for civil conduct, no capacity for civil conduct. The physical and mental development of minors is not mature, the movement track is usually school and family, and they are not sensitive to the development and change of external things, and they do not have full autonomy. In this case, minors have weak ability to control their personal information, and they usually leak their personal information without knowing it, and they do not know what the consequences of leaking their personal information are.

2.2.3. Mobility of minors' personal information data

In the age when the Internet was not developed, personal information was mainly transmitted by paper media and news media, and the speed of personal information transmission was slow and the coverage was narrow. When a minor's personal information is illegally obtained by a data processor, it can be quickly disseminated to a third-party processor through the Internet. Therefore, the rapid development of the Internet makes it easier to obtain minors' personal information, and also makes the transmission and leakage of minors' personal information faster, and the infringement of minors' personal information rights and interests is more serious.

3. The protection of personal information of minors in our country

3.1. The age of minors and the scope of exercise of self-determination are unclear

3.1.1. The age standard of minors is not clear

Different countries have different age limits in the field of protection of minors' personal information. To define the age standard of minors, it is necessary to integrate the legislative design of protection of minors in China and the relevant provisions of civil capacity. It is necessary to find a proper balance between protecting minors' personality rights and protecting their social ability development. According to the provisions of the Civil Code of China, the natural person under the age of 18 is a minor; With eight years of age as the limit, minors over the age of eight shall be persons with limited capacity for civil conduct, and minors under the age of eight shall be persons without capacity for civil conduct; A minor over the age of 16 whose main source of income is his own labor shall be regarded as a person with full capacity for civil conduct. The author believes that the special protection of minors' personal information should be limited to the age of 16. First of all, minors under the age of 16 are in the stage of compulsory education and guardianship, with weak social cognitive ability and immature mental development, and lack of rational judgment on the processing of their personal information. Secondly, minors under the age of 16 cannot participate in social work, and strict protection of their personal information will not limit minors' right to social participation and labor rights.^[3] Finally, it is common for minors over the age of 16 to use the Internet, and guardians cannot supervise their network behavior in every aspect, and it is difficult for information providers to identify the identity of minor information subjects.

3.1.2. The scope of exercise of minors' self-determining capacity is not clear

Wang Zejian pointed out that the German Constitutional Court has put forward the concept of "information self-determination", recognizing that individuals have the right to personal disposition and self-determination in their personal information.^[4] The capacity of self-determination of minors refers to the capacity of self-determination of minors for their affairs. Minors, in accordance with their age, have the right to decide the content, manner and scope of disclosure of their personal

information. At present, due to age restrictions, the scope of the exercise of the self-determining ability of minors is not clear. The scope of self-determination of minors under the age of 14 is often the relatively regular scope of academic performance, social platforms, family life, and so on. Over the age of 14 years, minors have a relative degree of physical, mental and intellectual improvement, and their sphere of self-determination has been greatly expanded, such as personal information about their emotional status, recreational activities and social circles. However, after the disclosure of minors' related personal information, everyone may disseminate, collect and use it, and there is no guarantee that everyone's collection and use are legal. Due to the limitation of minors' capacity for civil conduct and the sensitivity of minors' personal information, the scope of the exercise of their capacity for self-determination is still unclear.

3.2. The application of the guardian consent system is not clear

3.2.1. Ignoring the principle of maximizing the interests of minors

The conflict over parents sharing minors' personal information online is new in the legal arena. Current laws protecting the privacy of minors reflect the tradition of parents' right to control and shape their children's lives. Privacy scholars Benjamin Shmueli and Ayelet Blecher Prigat believe that "minors should have a right to personal privacy against their parents," but that this right "should be determined according to the age and developmental ability of the child."^[5] The international community has recognized the right of minors to privacy, and Article 3, paragraph 1, of the United Nations Convention on the Rights of Minors provides that all actions concerning minors, whether carried out by public or private social welfare institutions, courts, administrative authorities or legislative bodies, shall have the best interests of minors as a primary consideration. Article 5 of China's Law on the Protection of Minors stipulates that the work of protecting minors should follow the principle of respecting the human dignity of minors and the principle of adapting the rules and characteristics of the physical and mental development of minors.^[6] It can be considered that this is a refinement of the principle centered on the maximum protection of the interests of minors. The principle of taking the maximum protection of minors' interests as the center is a kind of ideological guidance, which is not only a guiding principle for legal framework to protect minors' personal information rights, but also a basic principle to be followed when online platforms collect and process minors' personal information and when guardians share minors' personal information. However, in daily life, guardians tend to ignore the principle of maximizing the interests of minors, and take it for granted that what I do is beneficial to minors, without taking into account the wishes of minors.

3.2.2. Lack of ways of guardian consent

After the introduction of the Regulations on the Protection of Children's Personal Information Online, major video platforms have issued their latest privacy policies. For example, Baidu and other websites clearly stipulate that minors' personal information can only be obtained with the informed consent of the guardian, but like most websites and video platforms, there are no detailed regulations on how to inform and authorize them.^[7] At the same time, it is necessary to learn from the EU GDPR to give guardian prior consent mechanism, in the context of the digital age, although the network operator deleted, there are other digital traces, which is not conducive to the protection of minors' personal information.

3.3. There are defects in the legal regulation of network operators

3.3.1. Difficulties in the application of the principle of clarity of purpose

In the era of big data, information has become an important public resource, which requires that the development and utilization of information and data must be strengthened from a strategic height to enhance national competitiveness. In this context, the private property of personal information is weakened, and more attention is paid to the social property. This also causes problems in the application of the principle of clarity of purpose.^[8] With the improvement of the rule of law, in practice, most network operators will take the initiative to inform the purpose of processing personal information before processing information, and the content of the notification will also change from vague description to detailed notification. However, after the network operators inform the information subject of the purpose for the first time, whether the purpose of the subsequent processing behavior exceeds or contradicts the initial purpose cannot be guaranteed. In addition, the uncertainty of the Internet also makes it impossible for network operators to exhaust subsequent information processing behaviors when they first inform the purpose, which leads to the inability of minors and their guardians to make effective judgments on the purpose of collection of network operators when the network operators first collect information for consent, which not only affects the rights and interests of information subjects to enjoy network services.^[9] It is also not conducive to the information subject's mastery of personal information. If network operators want to continue to use minors' personal information in subsequent processing, they must obtain consent again, which not only increases the risk and burden of information disclosure, but even hinders technological innovation and digital economic development to a certain extent. It can be seen that the principle of clear purpose in the protection of minors' personal information can only be applied in ideal situations.

3.3.2. Questions about privacy policy

The original intention of the privacy policy is to balance the unequal status between network operators and information subjects, break the advantages and privileges of network operators, and protect the information security of minors and guardians. At the same time, this also puts forward certain requirements for the privacy policy. Only the privacy policy has sufficient transparency can ensure the implementation of the privacy policy. On the one hand, the influence on the transparency of privacy policy comes from the user control of minors and their guardians, on the other hand, it comes from the obligation of network operators to fulfill the notification. Users control the understanding and reasonable expectations of minors and guardians of the privacy policy, and on the premise that network operators strictly implement the obligation to inform, only by fully interpreting the privacy policy, information subjects can have more freedom to choose and achieve accurate control of personal information.^[10] A high level of transparency in the privacy policy helps to build the trust of minors and their guardians and increases the value of information by helping them to realize the value of information provided by network operators. However, in the actual implementation of the privacy policy, the terms of the agreement are long and complicated, and few users can patiently read them, or simply cannot understand the obscure professional words and phrases, especially for minors, which gradually makes the privacy policy fall into the pattern of formalism. Moreover, if the privacy policy is not operable, the rights and interests of minors' personal information will be difficult to realize.

4. The solution to the problem of the protection of personal information of minors in China

4.1. Clarify the limits of the age of minors and the scope of exercise of their capacity for self-determination

4.1.1. Reasonably determine the age limit of minors

The author believes that the personal information of minors under the age of 16 should be protected by law.

First of all, the personality of minors under the age of 16 is still in the process of development, and is the focus of the protection of minors law. At this stage, minors have unstable expectations for privacy, lack rational judgment on the disposition of personal information, and are difficult to realize the sensitivity of personal information. Once their personal information is improperly collected and used, it will cause irreparable damage, and they should be strictly protected as a special group. Minors under the age of 16 are in the stage of guardianship and compulsory education, and their main living space is family and school. Guardians and educators can supervise and control minors' Internet use behavior, and effectively guide and protect their use of personal information in family, school and Internet environment. Secondly, since minors under the age of 16 cannot participate in social work, strict protection of their personal information does not constitute a restriction on the social participation and labor rights of minors. Minors over the age of 16 have the right to participate in social work according to law and may be regarded as persons with full capacity for civil conduct.^[11] At this stage, the protection of minors' personal information in the limited living space gradually gives way to the growth and development of minors' personality. Legislation on information protection should regard minors over the age of 16 and under the age of 18 as persons with full capacity for civil conduct, respect their independent information subject status, and cultivate and guide their perfect awareness of personal information rights and disposition. Finally, the use of the Internet by minors over the age of 16 is common, and their online behaviors tend to become adults. Guardians cannot supervise the behaviors of minors in cyberspace item by item, and it is difficult for information providers to identify the identity of information subjects.

4.1.2. Reasonably divide the scope of exercise of minors' self-determining capacity

On the basis of balancing the relationship between minors' personal information and self-personality development, respect for minors' freedom of personality, and give minors as much self-determination of personal information as possible under the premise of fully considering the interests of all parties. The generalization and simplification of the rules cannot correctly reflect the changes in the environment of social life, and may even increase the burden on the owners of personal information. In the protection of minors' personal information, we should not insist on an either-or judgment, but should make specific classification for different scenarios based on the comprehensive consideration made by the personal information processor on the collection and use of minors' personal information, limiting the scope and content of processing.^[12] In addition, according to different types of personal information, the protection of personal information with different degrees of privacy can be detailed through the age limit of high age.

First, for minors under the age of 14, with slow personality development and immature physical and mental development, that is, at the age of low age, strict protection is implemented, only with the consent of the guardian. Second, for minors over the age of 14 to under the age of 18, the physical and mental development is more mature, that is, the aging stage, should be detailed according to different degrees of privacy, for personal information is not very private, the age limit of minors' personal information self-determination ability can be set at 14 years old, minors can

make their own decisions. Ensure that minors in this age group study and socialize normally, and promote independent personality development. For example, personal information such as name and mobile phone number required for the registration of virtual accounts such as online classes and social platforms is only collected and will not be disclosed. For more private personal information, the age limit of minors' self-determination ability can be set at 18 years old, and the guardian's consent can be collected and used to protect minors' personal information. For example, in the now widely used "Kuaishou" and "Douyin" short video apps, portraits of minors or other personal information will be disclosed.

4.2. Improve the guardian consent system

4.2.1. Adhere to the principle of maximizing the interests of minors

The Law on the Protection of Minors and the Regulations on the Internet Protection of Minors all provide for the principle of maximizing the interests of minors. The guardian has the right to know and consent to the personal information of minors based on the guardian system. Due to the above-mentioned conflicts between minors and guardians, the guardian's exercise of power should be restricted. In the face of the above two kinds of conflicts, on the premise of respecting the rights and interests of minors' personal information, we must adhere to the principle of maximizing the interests of minors and choose the best possible principle to protect minors' personal information, so as to avoid the abuse of the guardian's consent. So far, there have been a number of incidents of parents' sharing of children leading to family tension, and even minors' personal information has been illegally collected and used, resulting in property losses and personal damage. When conflicts occur, there are many scholars' discussions about which interests to maximize. Mainstream scholars believe that the principle of maximizing the interests of minors should be followed to avoid the abuse of guardianship.

4.2.2. Enrich the ways of guardian consent

According to the different age limits of minors, the validity of the guardian consent system can be flexibly set. Under the age of 14 can only be used with the consent of the guardian. The guardianship system for minors over the age of 14 coexists with the assistance of minors in making decisions. For example, unlike the above platforms, Tencent Video has made flexible provisions for the age of 14, stipulating that parents and minors can exercise different authorization consent modes. In addition, drawing on the experience of COPPA in the United States, iQiyi video stipulates the collection and use rules of "parental control" functions, mostly in terms of guardian obligations, but also authorized by parents. In practice, there are no specific provisions on the way of guardian consent, and minors may imitate guardians to make authorization decisions. Therefore, we can learn from the principle of "verifiable parental consent" of COPPA in the United States, and specify specific laws on the protection of minors' personal information to provide more strict ways of guardian verification. For example, Use video calls, emails and other ways to verify the identity of the guardian to make the decision to authorize consent.

4.3. Improve the regulation of network operators

4.3.1. The application dilemma of risk limitation to resolve the principle of clear purpose

The principle of clear purpose is an important prerequisite for the information subject to authorize the network operator to conduct information processing. Only by knowing the scope of information processing, the way of personal information storage and transmission, and the

corresponding security protection measures can we trust each other. However, the security of the processing of personal information, especially the processing behavior after the first collection, is not only related to whether the original purpose of the collection is met, but the key is whether the new purpose of the subsequent processing behavior of the network operator will lead to other unreasonable risks. By referring to the US Consumer Privacy Bill of Rights, the old version of the clear purpose principle is updated to give a new connotation of reasonable purpose, and stipulates that enterprises should reasonably control privacy risks, but there is no clear and reasonable standard, and the law does not play a guiding role for enterprises, and even leads to uncertain compliance risks.

4.3.2. Scenario differentiation improves the practicality of the privacy policy

As for how network operators should fulfill their obligation to inform the privacy policy, on the one hand, the Regulations make strict requirements on the obligations of network operators, requiring network operators to obtain the consent of minors and their guardians for all acts of processing minors' personal information. Although the lengthy and complex content of notification greatly increases the burden of network operators and guardians in practice, But it does help protect information; On the other hand, the provision of privacy policy is also adopted a one-size-fits-all approach, and to a certain extent, it has gradually become a formal requirement for network operators to comply with the regulations, which is also not conducive to the realization of specific effects of privacy policy. In this regard, we should establish specific information use scenarios and assess the risk of improper use of information, so as to improve the practicality of privacy policy and truly play the expected effect. By distinguishing different scenarios according to risk, network operators perform targeted notification obligations to minors and guardians, forming a virtuous circle of mutual trust between network operators and users, effectively improving the operability of privacy policies, and truly exerting its substantive effect.

5. Conclusions

Personal information belongs to civil rights, and its protection is urgent. As a special subject, minors' rights and interests are developmental, so it is necessary to give special protection to minors' personal information, which is different from general personal information. The author expounds the basic legal principles of civil law protection of minors' personal information, starts with the existing problems of minors' personal information protection, and puts forward countermeasures to clarify the limits of the exercise scope of minors' age and self-determination, improve the guardian consent system and the regulation of network operators. The author also expects to test the rationality of the design of relevant rules under the continuous improvement of relevant legislation and judicature in our country.

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