

Research on the Judicial Dilemma and Improvement Path of Private Law Regulation in Data Circulation

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Abstract

Against the backdrop of the rapid development of the digital economy, data, as a new type of production factor, its circulation efficiency is directly related to the high-quality development of the digital industry. Private law, as the core field of data circulation regulation, undertakes the important functions of defining data rights and interests, regulating transaction behaviors, and resolving civil disputes. However, at present, the private law regulation of data circulation in China is facing practical difficulties such as ambiguous rights and interests definition, lack of transaction rules, and inconsistent judicial judgment standards, which leads to the obstruction of data circulation and the difficulty in fully protecting the rights and interests of the subjects. This article, in combination with the guiding cases on the judicial protection of data rights and interests issued by the Supreme People's Court, sorts out the current norms and judicial practice problems of private law regulation of data circulation, and draws on the allocation ideas of residual control rights in the theory of incomplete contracts. From the three dimensions of hierarchical definition of rights and interests, improvement of transaction rules, and unification of judicial judgments, it proposes the improvement path of private law regulation of data circulation, providing legal support for promoting the legal and orderly circulation of data and ensuring the healthy development of the digital economy.

Keywords

Data circulation; Private law regulation; Data rights; Judicial predicament; Residual control rights

1. Introduction

With the in-depth application of digital technology, data has become a core production factor driving economic and social development, and the realization of its value is inseparable from free and secure circulation. The Opinions on Building a Data Infrastructure System to Better Unleash the Roles of Data Elements (the "Data Twenty Articles") issued by the CPC Central Committee and the State Council clearly states that it is necessary to improve the system for protecting the rights and

interests of data elements, perfect the rules for data circulation and trading, and promote the market-based allocation of data elements. As the totality of legal norms governing property and personal relations between equal subjects, private law serves as the fundamental guarantee for the regulation of data circulation. Through a series of laws and regulations including the Civil Code, the Copyright Law, and the Anti-Unfair Competition Law, it provides a basic framework for the protection of data rights and interests and the regulation of data transactions.

However, data possesses special attributes such as non-exclusivity, replicability, and multi-subject relevance, which are significantly different from the traditional objects of civil rights. This leads to numerous adaptability issues when traditional private law norms are applied to the field of data circulation. In judicial practice, cases involving data scraping, data abuse, and data transaction disputes occur frequently. Due to the lack of clear standards for rights definition and unified adjudication rules, courts often encounter difficulties in making judgments when handling such cases. The results of judgments vary among different regions and courts, which not only affects the credibility of the judiciary but also restricts the efficient circulation of data elements.

The research of Master of Laws should be based on judicial practice and focus on practical issues. This article takes the private law regulation of data circulation as the research object, combines the latest judicial cases and theoretical research results, and explores the judicial predicament of the current private law regulation of data circulation in China. It also proposes targeted improvement paths, with the aim of providing references for judicial practice, promoting the improvement and perfection of the private law regulation system of data circulation, and facilitating the high-quality development of the digital economy.

2. Current Norms and Judicial Practice of Private Law Regulation in Data Circulation

2.1. Review of Existing Private Law Regulatory Norms

At present, China has not yet formulated a specialized Data Law. The private law regulation of data circulation mainly relies on the interpretation and application of existing legal norms, forming a regulatory system with the Civil Code as the core and separate laws as supplements. As the basic law for the protection of private rights, the Civil Code provides fundamental norms for data circulation. Article 127 explicitly protects data as an object of civil rights and establishes the private law status of data rights and interests; Article 111 sets forth a declaratory provision on the protection of personal information and defines the basic boundaries for the circulation of personal information data. Meanwhile, relevant provisions of the Civil Code concerning real rights, claims and tort liability provide a basic framework for the protection of data rights and interests, the performance of data transaction contracts and the regulation of data tort acts. Separate laws and departmental rules

further refine the private law rules governing data circulation. The Personal Information Protection Law focuses on the protection and circulation of personal information data, clarifies the basic principles and rules for personal information processing as well as the rights and obligations of individuals, and regulates the collection, storage, use and transmission of personal information data; the Interim Provisions on Anti-Unfair Competition on the Internet specially regulate unfair competition acts in the data field and provide specific criteria for the identification and regulation of data crawling, traffic hijacking and other conducts; the Copyright Law includes eligible data compilations within the scope of work protection and provides intellectual property support for the protection of rights and interests in data collections.

In addition, the 47th batch of guiding cases (Special Topic on Judicial Protection of Data Rights and Interests) released by the Supreme People's Court covers multiple fields such as unfair competition in data, data infringement, and personal information protection, providing important references for judicial practice in handling cases related to data circulation and helping to unify the standards of judgment.

2.2. Current Situation of Judicial Practice

With the increasingly frequent flow of data, civil disputes related to data have been showing a year-on-year upward trend. The main types of cases fall into three categories: data unfair competition, data infringement, and disputes over data transaction contracts. From judicial practice, courts have gradually formed some judicial thinking when handling such cases: In data unfair competition disputes, the main basis is the basic principles and specific provisions of the Anti-Unfair Competition Law, combined with the attributes of data and the market competition order, to determine the legitimacy of the behavior; in data infringement disputes, the focus is on reviewing whether the data processing behavior has infringed upon the legitimate rights and interests of the parties and whether it has violated the mandatory provisions of the law; in data transaction contract disputes, the main basis is the provisions of the Civil Code regarding contract validity, performance, and liability for breach of contract, combined with the particularity of data transactions, to determine the validity of the contract and the responsibilities of the parties.

For example, in the case of a steel company suing an e-commerce company for infringement liability (Case 264 of the Guiding Cases), the court clearly stated that if a data processor legally collects enterprise data, processes it through a method that meets relevant standards, and reasonably utilizes it without causing damage to the rights and interests of the enterprise, they shall not bear liability for infringement. This judicial thinking has clarified the boundary of the legitimacy of data collection and processing. Another example is in the case of a technology company suing a

media company for unfair competition (Case 262 of the Guiding Cases), where the court clearly stated that the network platform operator has the protected rights to the operating benefits formed by its data collection, providing judicial guidance for the protection of the rights of data collection.

However, at the same time, there are still many problems in judicial practice, such as inconsistent judicial standards, ambiguous rights and interests definition, and difficulties in evidence presentation, which remain prominent. This has led to the fact that civil disputes in the field of data circulation cannot be resolved efficiently and fairly, and has restricted the market-oriented circulation of data elements.

3. Judicial Dilemmas Confronting Private Law Regulation of Data Circulation

3.1. Ambiguous Definition of Data Rights and Interests and Difficulty in Determining Ownership

The definition of data rights is the prerequisite for the private regulation of data circulation and also the primary challenge faced in judicial practice. The generation and circulation of data involve multiple entities such as data subjects, data collectors, data processors, and data users. Different entities have different interests in data, but the current laws in China do not clearly define the ownership and content of various data rights.

On one hand, the boundary of the rights of personal information data is ambiguous. Personal information data has both personal and property interests. The Civil Code and the Personal Information Protection Law have clearly stipulated that individuals have the rights to know, consent, access, and correction of their personal information. However, the legal provisions regarding the ownership and exercise methods of the property rights of personal information data, as well as the distribution of interests between individuals and data processors, are rather vague. For example, after personal information data is collected and processed to form data products, whether the property rights of such data products should belong to the individual or the data processor, there are different judicial opinions in practice.

On the other hand, the rights definition of non-personal information data is lacking. For commercial data generated in business operations and public data collected by public departments, the current laws do not clearly define their rights ownership and protection rules. Whether enterprises have independent civil rights over the commercial data they collect and process, what rights they enjoy, and the boundaries of data circulation and the distribution of rights for public data, all lack clear legal provisions, resulting in inconsistent judgments in judicial practice for such cases. As some scholars have pointed out, rights in reality cannot be fully defined in legal texts. When data rights cannot be clearly defined or the cost of clear definition is too high, it will bring difficulties to

judicial judgments.

3.2. Lack of Data Transaction Rules and Unregulated Transaction Practices

Data trading is the core procedure of data circulation. However, currently in China, there are no complete private regulations for data trading, which leads to unregulated data trading behaviors and frequent disputes.

Firstly, there is a lack of standardization for data trading contracts. The subject matter of data trading is unique, and the quality, purpose, usage scope, and duration of the data are difficult to clearly define. The current Civil Code's provisions on sales contracts and service contracts are not fully applicable to the data trading scenario. In judicial practice, data trading contracts often have ambiguous terms and unclear agreements, causing disputes between the parties regarding contract performance, and courts lack clear basis when determining the validity of the contract and liability for breach of contract.

Secondly, the rights and obligations distribution in data trading is unclear. During data trading, the rights and obligations of data providers, data purchasers, and data intermediaries, etc., lack clear legal provisions. For example, whether data providers have the obligation to guarantee the authenticity and legality of the data, whether data purchasers have the right to reprocess and recirculate the data, and how to define the responsibility boundary of data intermediaries, none of these have been clearly regulated, making it difficult to effectively protect the rights and interests of the trading parties.

Thirdly, the security guarantee rules for data trading are not complete. During data trading, the risks of data leakage, tampering, and abuse are relatively high. The current laws have relatively general provisions on the security guarantee obligations, risk prevention measures, and liability for infringement in data trading, which are difficult to meet the actual needs of data trading security and also bring difficulties in determining data trading-related infringement behaviors in judicial practice.

3.3. Inconsistent Judicial Adjudication Standards and Prominent Inconsistent Judgments for Similar Case

Due to the imperfect legal regulations related to data circulation and the ambiguous definition of data rights, in judicial practice, courts lack a unified standard for handling civil disputes related to data circulation, resulting in a prominent phenomenon of inconsistent judgments for the same case.

Firstly, the standards for identifying data unfair competition behaviors vary. Regarding behaviors such as data scraping, data hijacking, and data abuse, different courts have different judicial thinking. Some courts focus on whether the behavior has harmed the legitimate rights and interests of competitors, while others focus on

whether the behavior has disrupted the market competition order, leading to significant differences in the judgment results of similar cases.

Secondly, the standards for determining data infringement liability vary. In data infringement disputes, there is a lack of a unified judicial standard for the constitutive elements of infringement, the allocation of burden of proof, and the calculation of damages. For example, in data leakage infringement cases, some courts require the plaintiff to prove that the defendant has fault, while others apply the principle of fault presumption, resulting in significant differences in the plaintiff's burden of proof and affecting the determination and assumption of infringement liability.

Thirdly, the determination of the protection scope of data rights varies. Different courts have different understandings of the protection scope and protection methods of data rights. Some courts only protect the property rights of data, while others protect both the personality rights and property rights of data; some courts recognize the independent rights of data sets, while others do not; this leads to significant differences in the protection intensity of data rights.

3.4. Difficulties in Burden of Proof and Ineffective Relief for Parties' Rights and Interests

The burden of proof in civil disputes related to data circulation is relatively high, mainly due to two aspects: Firstly, obtaining evidence is difficult. Data has the characteristics of being intangible, replicable, and prone to tampering. The collection, storage, use, and transmission of data all rely on digital technology. Parties find it challenging to obtain the data processing records, transaction records, and other relevant evidence from the other party, especially when data is monopolized by platforms. The plaintiff faces greater difficulty in obtaining evidence. Secondly, the allocation of the burden of proof is unreasonable. The current laws do not establish specific rules for the burden of proof in disputes related to data circulation. In judicial practice, the general principle of "who asserts, who proves" is usually applied. However, the plaintiff often finds it difficult to prove that the defendant has committed data infringement or unfair competition, or to prove the causal relationship between their losses and the defendant's actions, resulting in the inability to effectively protect the legitimate rights and interests of the parties.

4. Improvement Paths for Private Law Regulation of Data Circulation

4.1. Clarify Hierarchical Definition Rules of Data Rights and Interests and Sort Out Ownership

The hierarchical definition of data rights is the core to resolving judicial dilemmas. It is necessary to combine the types and characteristics of data to establish a hierarchical and classified rights definition system, clearly defining

the rights attribution and exercise rules of different entities.

Firstly, the boundary of personal information data rights should be clearly defined. For personal information data, the principle of prioritizing personal interests over property interests should be adhered to. Personal rights such as the right to know, access, correction, and deletion should be clearly granted to individuals regarding their personal information. At the same time, the property rights of individuals over their personal information should also be recognized, allowing individuals to authorize others to use their personal information and receive reasonable compensation under the premise of complying with the law. For data products formed after the collection, processing, and transformation of personal information data, the data processor should be granted legitimate usage rights and income rights, but personal rights and interests should not be infringed upon. Individuals have the right to receive reasonable distribution of the income from data products.

Secondly, the rights definition for non-personal information data should be improved. For commercial data generated during business operations, enterprises should clearly have independent civil rights over the data they collect, process, and organize, including possession rights, usage rights, and income rights. Enterprises have the right to dispose of their commercial data through transactions, licensing, etc., but they must not infringe upon the legitimate rights and interests of others and the public interest. For public data, it should be clearly stated that the ownership of public data belongs to the state, and public departments are responsible for management and circulation. Encouraging the opening of public data to the public and promoting its rational utilization is necessary.

Thirdly, the concept of residual control rights should be utilized to make up for the deficiency in rights definition. When the rights of data cannot be clearly defined or the cost of clear definition is too high, it is necessary to make up for the ambiguity of legal rights definition by reasonably allocating the residual control rights in important links of the data flow process. For example, standard contracts can clearly define the residual control rights of both parties in data transactions, and the enterprise data protection reputation mechanism can set graded disclosure rules to clearly define the scope and manner of exercising residual control rights.

4.2. Improve Private Law Rules for Data Transactions and Regulate Transaction Conducts

Improved data trading rules are an important guarantee for promoting the legal and orderly circulation of data. Considering the particularity of data trading, a specialized private rule system for data trading should be constructed.

Firstly, standardize the data trading contract system. Clearly define the rules for

the establishment, performance, modification, and termination of data trading contracts, refine the contract terms, and specify the core contents such as the subject matter, quality, purpose, usage scope, term, price, and liability for breach of contract of the data. This will provide a clear basis for the performance of data trading contracts. At the same time, encourage industry associations to formulate data trading contract model texts to guide transaction parties to sign contracts in a standardized manner and reduce contract disputes.

Secondly, clarify the rights and obligations of data trading parties. Clearly define that data providers have the obligation to guarantee the authenticity, legality, and completeness of the data, and shall not provide false or illegal data; clearly define that data purchasers have the right to use the data as agreed in the contract, shall not use the data beyond the agreed scope, and shall not abuse the data to infringe upon the legitimate rights and interests of others; clearly define the neutral position of data intermediaries, stipulate their obligation to review the authenticity and legality of the data, as well as their responsibility to provide services for both parties and prevent transaction risks.

Thirdly, improve the data trading security guarantee rules. Clearly define the security guarantee obligations during the data trading process, requiring transaction parties to take necessary technical and management measures to prevent risks such as data leakage, tampering, and abuse; clearly define the responsibility division for data trading security, and for security issues arising from data trading, clearly define the infringement liability of relevant parties to protect the legitimate rights and interests of transaction parties.

4.3. Unify Judicial Adjudication Standards and Regulate Adjudicatory Conduct

Unifying judicial judgment standards is the key to resolving inconsistent judgments in the same case and enhancing judicial credibility. It should be achieved through various means to regulate the judicial judgment behavior in civil disputes related to data circulation.

Firstly, efforts should be made to strengthen the formulation of judicial interpretations and guiding cases. The Supreme People's Court should, based on judicial practice, promptly issue judicial interpretations on the regulation of data circulation private laws, clearly defining the standards for data rights, data transaction rules, infringement liability determination, burden of proof allocation, etc., providing uniform judicial basis for courts at all levels. At the same time, continuous release of specialized judicial protection cases on data rights should be carried out, summarizing the judgment experience of typical cases, guiding courts at all levels to unify their judgment thinking.

Secondly, a data dispute judgment guidance mechanism should be established. Courts at all levels should, based on local judicial practice, formulate judgment

guidelines for data circulation-related civil disputes, clearly defining the key points of judgment, evidence determination standards, legal application rules, etc., to standardize the judgment behavior and reduce judgment differences. At the same time, strengthening communication and collaboration among courts, sharing judgment experience, and unifying judgment standards.

Thirdly, efforts should be made to enhance the professional capabilities of judges. Data circulation-related disputes have strong technicality and professionalism, requiring judges to possess solid legal knowledge and certain digital technology knowledge. Professional training for judges should be strengthened, with particular emphasis on training in data-related legal norms, digital technology knowledge, and data transaction rules, to enhance the professional capabilities of judges in handling data dispute cases, ensuring the fairness and rationality of the judgment results.

4.4. Optimize the Burden of Proof Rules and Strengthen the Relief of Parties' Rights and Interests

To address the problem of difficulty in presenting evidence related to data circulation disputes, the evidentiary rules should be optimized, reducing the burden of proof for the parties and strengthening their rights to seek redress.

Firstly, implement the principle of reversed burden of proof and mitigated burden of proof. For disputes such as data infringement and unfair competition, based on the specific circumstances of the case, implement the principle of reversed burden of proof, where the defendant is required to prove the legality and lack of fault of their data processing actions. If the defendant fails to provide evidence, they should bear the liability for infringement. At the same time, for evidence that the plaintiff is unable to obtain, implement the principle of mitigated burden of proof, allowing the plaintiff to provide preliminary evidence to prove that the defendant has committed an infringement, and ordering the defendant to submit relevant evidence. If the defendant refuses to submit it, the court shall presume the plaintiff's claim to be valid.

Secondly, improve the evidence collection and preservation system. Clearly, parties can apply to the court for the investigation and collection of relevant data evidence. The court should lawfully obtain such evidence to protect the parties' right to prove. At the same time, establish a data evidence preservation system. For data evidence that is prone to being tampered with or lost, parties can apply to the court for preservation to prevent the evidence from being tampered with or lost, ensuring the authenticity and legality of the evidence.

Thirdly, clarify the calculation standards for damages. For disputes related to data circulation where it is difficult to calculate the amount of damages, clearly define the calculation methods for damages, including actual losses, infringement profits, and reasonable expenses, and allow the court to determine the amount of damages based on the specific circumstances of the case, allowing for

discretionary determination to ensure that the losses of the parties are fully compensated.

5. Conclusion

Data circulation is the core driving force of the development of the digital economy. Private regulations serve as the fundamental guarantee for data circulation regulation, and they are of great significance for defining data rights, regulating transaction behaviors, and resolving civil disputes. Currently, the private regulations for data circulation in China are facing judicial difficulties such as ambiguous rights definition, lack of transaction rules, inconsistent judicial judgment standards, and difficulties in evidence presentation. These problems not only restrict the efficient circulation of data elements but also affect the healthy development of the digital economy.

To solve these judicial difficulties, we should base ourselves on China's judicial practice, combine the special attributes of data and the development needs of the digital economy, and build a complete private regulation system for data circulation: by clearly defining the hierarchical rules of data rights, clarifying the rights attribution of different entities; by improving the private regulations for data transactions, regulating data transaction behaviors; by unifying judicial judgment standards, enhancing judicial credibility; and by optimizing the evidence rules, strengthening the rights relief of the parties. At the same time, we should pay attention to the combination of theory and practice, actively draw on advanced legislative and judicial experiences, continuously improve the private regulation rules for data circulation, promote the market-oriented allocation of data elements, and contribute to the high-quality development of the digital economy.

Due to the complexity and diversity of data circulation, the improvement of private regulations for data circulation is a long-term process. It requires the collaborative efforts of legislation, judiciary, and administration, constantly solving new problems and challenges in practice, and building a scientific, reasonable, and feasible private regulation system for data circulation, providing a solid legal guarantee for the development of the digital economy.

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