

Study on the Liability of Minors' Personal Information Network Infringement

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Abstract

With the booming development of the network, the increasing frequency of contemporary minor's contact with the Internet expanded their grasp of the information, use risk, compared with adults, the psychological and physiological level of minors in a mature and imperfect stage, facing the dazzling information in the network is difficult to distinguish. Therefore, high attention should be paid to the protection of minor personal information, the infringement subject should be classified according to its function and function; in attribution principle, adopt fault presumption, no-fault, general fault three attribution system; in liability, according to the actual damage classification, different compensation methods.

Keywords

Minors; Network; Personal Information; Tort Liability.

1. Definition of the Concepts Related to Minors' Personal Information

1.1. Connotation of Minor Personal Information

The growth of minors is dynamic, changing, and developing for a long time. The content of personal information is different at each stage of birth. With the growth of age, it gradually accumulates, and the connotation is richer and richer.

The Personal Information Protection Law of the People's Republic of China, issued in 2021, defines personal information as recordable and identifiable natural persons, excluding anonymous post-processed information. The Cyber Security Law defines personal information as various identifiable information that can be recorded electronically or in other means, including a natural person's name, date of birth, id number, etc. Referring to various laws and regulations, as well as the particularity of the personal information of minors, this paper defines the personal information of minors as dynamic development and change, can be recorded, can directly or indirectly identify the minors themselves of various information.

1.2. Definition of the Age of a Minor's Personal Information

There has been a controversy about the age protection of minors' personal information, and the laws have different provisions in different periods. Children under the Protection of Children's Personal Information Network are defined as minors under the age of 14. According to the Civil Code, natural persons over the age of 18 are adults, and minors over the age of 16, who take their labor income as the main source of living, can be regarded as a person with full civil capacity according to the actual situation. Thus, minors over the age of 16 and under 18 who can actively earn income are the same as adults. This article limits the age of minors' information network protection to under 16 years old, on the one hand, it makes up for the limitation of defining children's age as under 14 years old in the Protection of Children's Personal Information Network, on the other hand, it also highlights the legal protection of minors' personal information.

2. Current Situation of Minors' Personal Information Network Protection System

2.1. Relevant Laws on the Protection of Personal Information

On the civil law protection, our country on January 1, 2021, the civil code, the personal information included in the personality rights, the civil code, stipulates the personal information belongs to personality interests protected by civil law, on the criminal law protection, will violate personal information cases, punishment for the violation of personal information is also important for illegal criminals. In terms of other legal protections, the Network Security Law stipulates for network operators to build a system to protect personal information, puts forward the prohibitive requirements for personal information, and summarizes the general requirements for minors' network products and services.

2.2. Laws and Regulations Applicable to the Protection of Minors' Personal Information

In June 2021, the Law of the People's Republic of China on the Protection of Minors added government protection and network protection to the original four protection structures, highlighting the principle most conducive to the interests of minors and clarifying and maximizing the rights of minors. In the era of online we-media, in addition to the general obligations stipulated in the Protection of Minors, social protection is also included. For example, the Regulations on the Protection of Children's Personal Information Network clarify the responsibilities and obligations of children's guardians, other organizations or individuals, the Internet industry and other specific subjects in the cases of disclosing minors' personal information on the Internet; The Law of the People's Republic of China on the Prevention of Juvenile Crime requires that the prevention of juvenile delinquency should also respect the privacy and personal information of minors; Article 285 of the Criminal Procedure Law of the People's Republic of China stipulates that the principle of closed trial of criminal crimes for minors shall, And the criminal records of minors to be sealed; The Regulations on the Administration of Minors Program on TV programs involving minors, They shall not induce minors to disclose their personal information of their guardians, and shall not induce minors to respond to problems that do not conform to their own judgment, which reflect the great importance attached to the social protection of minors' personal information.

3. Identification of the Tort Liability Subjects of Minors' Personal Information Network

3.1. Network Operators

As the network managers, the network operators not only need to plan and design the network operation mode and formulate the network operation rules but also shoulder the responsibility of maintaining the stability of the network operation and ensuring the security of the network operation. But at the same time, network operators as the first beneficiaries of network operation, and it is easy to ignore their responsibilities and infringe on the personal information and privacy of network users, resulting in great security risks. Tort mainly includes direct infringement and indirect infringement, direct infringement generally refers to the network operators mastering the personal information for illegal use, for example, the use of minors' personal information engaged in activities endangering network security, or for minors' personal information to provide special procedures, technical support, advertising, etc[1]; Indirect infringement is the infringement of minors' personal information by providing network links or searches to other websites.

3.2. Government Network of State Organs

As the rule-maker and the centralized user of the rights, the government not only has the responsibility of supervision and reporting but also shoulders the responsibility of protecting the basic rights of the citizens. While formulating the basic regulations on network operation, the government network should also implement them effectively. However, while ensuring the normal and healthy operation of the network, the government network may also be the offender of civil rights. Government agencies will take strict regulatory measures on cyber crimes against national security based on national security considerations[2]. And the protection of citizens' rights is often not satisfactory, especially in the network users occupy a large proportion of minors, due to the lack of network protection of minors, directly or indirectly leads to minors' information leakage, due to dereliction of duty, practice favoritism leads to personal information leakage cases everywhere.

3.3. Network Users

According to statistics, Chinese Internet users account for more than half of the national population, As a major component of the network users, Due to the differences in age, gender, and educational background, The overall quality of network users in China is uneven, Some netizens lack the awareness of network security, It is difficult to recognize that even the online world obeys its rights and obligations, Even as the industry of the "keyboard man", "Internet trolls", "professional black fans" countless, Has brought an extremely bad impact on the network environment, Minors are subtly affected by the majority of network users, Also began to be unruly on the Internet, While violating the privacy of others, Their personal information is also illegally used by others, Form a vicious circle.

3.4. Other Organizations

In addition to the above three groups, there are also online fundraising, donkey association, membership, and other online organizations. They build network fan groups, WeChat small programs, and other ways to attract network users to join. In the network, users register and log in and use these small programs at the same time, but also unknowingly uploaded their personal information, for illegal use of information to create conditions. In a network BBS registration, for example, often need to fill in personal real information for real-name authentication, especially with minors as the main body of the game BBS, etc. gathered countless minors' personal information, and due to the network BBS management omissions, greatly increased the risk of minors personal information leakage.

4. Difficulties and Improvement of the Tort Liability of Minors' Personal Information Network

4.1. It is Difficult to Provide the Infringed Subject to Evidence

The development of science and technology makes the Internet operation more and more complicated, coupled with the rapid spread of network we-media, rich and diverse content, and difficult to regulate the trend, which makes the means of minors' information infringement more and more hidden and difficult to detect. Even many minors are not aware that their personal information has been leaked, and they do not know how to protect their rights when their personal property and other legitimate rights and interests are damaged. Moreover, the decisive evidence in most cases of minors' information infringement is often controlled by the infringer. Compared with the infringed subject, which has more material resources and human resources, it makes it difficult for the infringed subject to obtain evidence from the hands of the infringer or other channels.

4.2. The Liability Principle of Tort Liability of Minors' Personal Information Network

The Personal Information Law of the People's Republic of China issued in August 2021 stipulates that if personal information infringes on the personal rights and interests of information subjects and causes damage consequences, the principle of presumption of fault shall apply. The actor cannot prove that he is at fault and shall bear the corresponding liability for compensation. However, the author believes that according to the characteristics of minors' information dynamics, development, and close contact with their guardians, the liability principle of tort liability should not be generalized, but should be divided according to the different subjects of tort liability.

As the controller of network space, network operators have superb network technology and manipulate the network with cumbersome procedures. It is easy for network operators to carry out infringement. If the infringed bears the burden of proof, it is unfair, which violates the fairness principle of civil law and increases the difficulty of proof. Therefore, the author believes that the network operator should bear the presumption of fault, bear the burden of proof, and prove that he is no fault, otherwise it is presumed to be at fault to bear the tort liability for damages[3]. The government network of government and other state organs is the collector and manager of key basic information and also the largest data controller. As the owner of public power, the government is difficult for minors to game with public power whether in terms of financial and material resources or evidence collection and litigation status. Therefore, the author believes that the government agencies should apply the principle of no-fault liability in the case of infringement of minors' personal information, to increase the protection of minors' personal information. Cases of Internet users or other organizations that use the network to infringe on minors' personal information are mostly manifested as leakage, dissemination, walking, and other ways, and shall bear the tort liability following the general fault liability principle, while if the operator controlling the network fails to fulfill the obligation to prevent it, they shall bear the corresponding supplementary liability.

4.3. Clarify the Tort Liability of Minors' Personal Information Network

Non-property liability. According to Article 995 of the Civil Code, if the right of personality is infringed, the victim shall have the right to request the infringer to bear civil liability by the law. The victim has the right to stop the infringement, eliminate the danger, eliminate the influence, restore the reputation and make an apology. The victim of this article is minors, minors physical and mental development is not mature, very one-sided understanding of things, many times when the victims of minors found infringement, their personal information has been spread, even immediately disconnected link to stop infringement, damage of minors personal information can not be restored to original, should not just request an apology but should be transformed into compensation losses.

Property liability. According to Article 1,183 of the Civil Code, if he infringes upon the personal rights and interests of a natural person and causes serious mental damage, the infringed shall have the right to claim compensation for mental damage[4]. The definition of "serious mental damage", due to the development of minors' personal information has changed, development, uncertain characteristics, when it is difficult to determine whether infringement is "serious mental damage", from the perspective of protecting the development of minors, the author thinks can be in minors personal information network tort liability for the infringer bear liability for mental damage. In addition to the compensation for mental damage, if the Internet infringes on the personal information of the minor and causes other property losses to the minor or its close relatives, it shall bear the corresponding liability for compensation.

5. Conclusion

With the rapid development of the Internet, on the one hand, minors are the biggest beneficiaries of this era, their life, entertainment, online learning, online communication, free to travel in the Internet world, enjoy the great convenience of the Internet; on the other hand, the development of the Internet also brings great challenges to the protection of minors' personal information. Information resources, as an emerging force, contains huge wealth, the value of minors' personal information is immeasurable, some Internet enterprises use tedious technology to explore minors' personal information, commercial use, minors' private life is prying, is not conducive to the healthy growth of minors. Minors are the beneficiaries of the development of the Internet, but there is also a potential crisis of infringement. How to protect minors' personal information from being leaked in the Internet era, and give minors a healthy Internet environment. It has become an urgent problem to be solved in China. This paper aims to classify the infringement subject, adopt the three-way liability system, adopt the liability method of both property and non-property according to the different damage results, increase the crime cost of the infringement subject, and then reduce the enthusiasm of the infringement subject to infringe on personal information. To protect the vital interests of minors, to ensure the personal information security of minors in the era of big data.

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