Academic Journal of Management and Social Sciences
ISSN: 2958-4396 | Vol. 9, No. 3, 2024

Exploring the Path to Enterprise Data Rights

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Abstract: Enterprise data are business data generated and controlled by enterprises in the course of production, operation and management, and do not involve personal information or public interest. However, due to the lack of a national law to provide a specific definition of data ownership, the differences between local systems are obvious and difficult to articulate, and confined to the characteristics of the data itself, there is a tension between enterprise data and personal information, which hinders the full release of the value of the data elements in the social-economic life, and the confirmation of the right is the basis of the market-oriented allocation of the data, based on which it is necessary to determine the protection of enterprise data at the legislative level, and to further Define the scope of the subject and object of the new type of property right of enterprise data.

Keywords: Enterprise Data; Data Rights; Data Protection.

1. Introduction

With the rapid development of the Internet, big data and artificial intelligence, the world has entered the era of data capital. Data has become an important factor of production and competitive resources, known as the "most valuable resource". 2022 China's digital economy reached 50.2 trillion yuan, accounting for 41.5% of GDP, it is expected that in 2025, China's data elements market size will exceed 174.9 billion yuan. In the era of "big data", enterprise data resources, like traditional property right objects such as land, assets and intellectual property rights, reflect significant economic value and become an important part of enterprise assets. [1] However, there are no national laws and administrative regulations defining data ownership, and some local legislation has been explored in the area of data protection. The clarity of the property rights system is positively correlated with the efficiency of market transactions, and the uncertainty of data ownership will radiate to the entire digital economy market and affect the further development of the market and the stability of the order. [2] As a result, the issue of enterprise data rights has become a brand-new topic of general concern and active exploration in the theoretical and practical circles. Based on the urgent need to establish data property rights, this paper analyzes the path of data rights, and puts forward proposals that are more in line with the governance of data property rights.

2. Institutional Foundations for the Protection of Corporate Data Rights

Enterprise data is a collection of data and data products formed by an enterprise based on data generated by its own business and legally collected massive personal data, and processed on this basis. Enterprise data is both general and unique. Unlike personal data, enterprise data has the characteristics of complexity in construction, diversity in data interests and variability in data forms, which have become the main obstacles to the property rights of enterprise data.

Currently, courts rely mainly on the existing legal framework to deal with relevant data disputes. Due to the rapid development in the field of data, the established legal framework does not provide sufficient protection for data and cannot adapt in the form of multiple subjects and complex relationships in the field of data disputes. In corporate data infringement cases, there exists a dispute adjudication model centered on the Anti-Unfair Competition Law of the People's Republic of China (hereinafter referred to as the "Anti-Unfair Competition Law"). Because the courts often rely on the principle provisions of Article 2 of the Anti-Unfair Competition Law as the basis for determining the infringement of enterprise data as unfair competition rather than breach of contract or infringement of personal information, and the core concepts of business ethics and market order, which are closely related to enterprise data and property infringement cases, are ambiguous, which often leads to different adjudicating standards, resulting in "different judgments for the same case". Different judgments". For example, in Taobao v. Meijing, [3] the court found that the two parties had a competitive relationship, and regarded the harmed interests as "competitive interests", and then protected the interests of enterprise data in accordance with the Anti-Unfair Competition Law. In the case of Scorpion Technology's infringement of citizens' personal information, [4] the court, on the grounds that there was no substantive competitive relationship between Scorpion Technology and the enterprise whose data had been crawled, only evaluated Scorpion Technology negatively on the basis of "infringement of citizens' personal information", and imposed a "negative" judgment on Scorpion Technology for the crime of entering other enterprises' databases to crawl data. It did not evaluate its behavior of entering other enterprises' databases to crawl data, which led to the decision structure of the case only protecting the rights of users whose personal information had been infringed upon, but not the rights of enterprises whose data interests had been infringed upon. [5] In summary, it can be seen that the court examined the source and nature of the enterprise data and the extent of the third-party subject's use of the enterprise data to determine whether its behavior constituted unfair competition, and thus provided a temporary solution to the data dispute with the help of the general provisions of the Anti-Unfair Competition Law. However, at the level of determining the ownership of enterprise data, the courts have consistently adopted an evasive attitude.

Confirmation of rights is the basis for the market-oriented

allocation of data, and China has continued to introduce national policies and relevant systems to strengthen the protection of data. It intends to propose a data property rights program with Chinese characteristics and establish a data property rights system in line with China's national conditions. And enterprises are an important driving force in the development of the digital economy, making great contributions to the development of data technology and the prosperity of the digital economy, and enterprise data should be actively protected by law. The increasing number of enterprise data infringement cases and the problems concerning the attributes of rights and the definition of rights in enterprise data have brought new challenges to the traditional legal system.

3. The Many Dilemmas Facing Enterprise Data Rights

3.1. Dilemmas Originating from Within the Data: Characteristics of the Data Itself

The ability to construct rights in enterprise data faces a number of dilemmas and unresolved issues, which can originate from within the data or from outside the data. The dilemma originated from the internal data refers to the characteristics of enterprise data rights and interests themselves, which make the construction of rights obstacles. First of all, China's civil code on the right to property, one of the main characteristics of the object of the right is the exclusivity of the right, and enterprise data rights, data can be a variety of forms of storage media for the form of expression, therefore, the same data by several people at the same time the possibility of collection and processing. Secondly, the provisions of Article 127 of the Civil Code of China. Our country is not clear about the legal attributes of data or enterprise data, which also leads to more difficult to confirm the rights of enterprise data. From the point of view of the normative system of the article, the Civil Code will be provided in the data after the right to property, it seems that there will be data into the right to property space; but from the point of view of the meaning of the text, the attributes of the data is not yet clear. Once again, the existence of data, like air and soil, has a strong public nature. Rights-based treatment of data would constitute an obstacle to data sharing or data freedom, and would not be conducive to the survival and development of the Internet and data .

3.2. Dilemmas Originating Outside the Data

As far as the dilemma originating from the outside of enterprise data is concerned, there are two main parts: one is that there is a tension between enterprise data and personal information, and that the protection of enterprise data property rights will cause immeasurable and irreparable harm to personal information; the other is that the establishment of property rights on enterprise data is not in conformity with the law of development of the entire economy and society.

3.2.1. Threats to Personal Information and Privacy

There is a tense relationship between enterprise data and personal information, and personal information is inevitably present in the data contained in enterprise data, so if the focus is on recognizing the property rights of enterprise data, the protection of personal information will inevitably be jeopardized. It has been argued that personal information occupies the majority of enterprise data and is often linked to personal dignity, so enterprises do not have the right to dispose of this data, but personal information that has been anonymized can be disposed of as intangible property because it only has property attributes. The opposite view is that corporate data is a property interest owned by the enterprise and therefore the enterprise has freedom of property. It can be seen that the way in which corporate data is treated also indicates the attitude towards the protection of personal information, and whether corporate data is authorized or not has a profound impact on the safety and security of personal information.

3.2.2. Contrary to the Underlying Logic of Digital Economy Development

If enterprise data is rightsized, it means that enterprise data exists as an absolute right, and the data owner enjoys exclusive and exclusive rights accordingly. However, the market in the era of digital economy is different from the traditional trading market, and data has a very high transaction value for economic and social participants. In the whole transaction line, if the upstream data holder controls the data with rights, it will hinder the circulation of data to the downstream, and the property value of the data will be damaged as a result.

In addition, the rights-based protection of enterprise data certainly has the effect of strengthening the power of the enterprise itself, but in terms of the entire data market, the space and potential of other data enterprises to explore and expand data resources are limited, rather than being conducive to the efficient use and full exploitation of data as a precious resource.

4. Doctrinal Validation of Enterprise Data Rights

4.1. Labor Empowerment of Enterprise Data

The most classic theoretical basis for data empowerment is Locke's theory of labor empowerment, which constructs the path of private property acquisition as "human common - labor - property right". According to Locke, in the state of nature, goods are shared by human beings, but when individuals make the goods shared by human beings out of the state of nature through their labor, they obtain the right of property, and the right of property rewards the value attached to the goods by their labor. The theory became an important cornerstone for the establishment of the later modern property rights system, successfully building a bridge between labor and property rights empowerment, illustrating the central role of labor in the increase of social wealth. In China's existing legal framework, data rights and interests have not been clearly identified as civil rights. Some scholars believe that data is an incorporeal object in civil law, which exists objectively in a physical manner such as light, electricity, and magnetism, and therefore can be empowered according to the principle of property rights. However, the characteristics of data can be copied and backed up determines that it does not have exclusivity and competitiveness, which is contrary to the principle of "one right for one thing" of property rights. Some scholars advocate that data should be recognized through intellectual property rights, and data should be protected as the object of copyright. However, due to the lack of originality, data is significantly different from works, trademarks, inventions, utility models and designs. And corporate data does not meet the requirements of secrecy, value and confidentiality that must be met by trade secrets,

and is also different from trade secrets. The question of "whether enterprise data can be labor-righted" cannot be answered with an all-or-nothing answer; rather, it is necessary to fully identify the presence or absence and extent of enterprise labor when constructing data property rights, and then adopt property rights protection of different strengths for enterprise data legal interests under different scenarios.

4.2. Rule Selection in the KAME Framework

The clear positioning of the scope and content of the protection of enterprise data in legislation is the basis for the effective operation of the rules for the protection of enterprise data property. C&M Framework (C&M Framework) was proposed by Calabresi and Melamed in the 1970s, which is a kind of legal economic analysis framework oriented to the effect model and judged by the free transfer and voluntary transaction of private interests in law. Under the Kamei framework, legal rules are categorized into prohibition rules, property rules and liability rules. In the context of the digital economy, our scholars amended the "Carmel framework", added the rule of inaction, control rules, and enriched the connotation of the "framework", so as to make it more suitable for the current social situation. [6] From the judicial cases mentioned above, our country mainly adopts the responsibility rule. By applying the general provisions of the anti-unfair competition law, the legal interests of enterprise data are protected by way of damages. The transfer of corporate data legal interests is forced by the court as a third party to force transactions and force pricing, rather than by the free will of the parties.

5. Some Recommendations for Improving Data Protection in Enterprises

5.1. Defining Enterprise Data Protection at the Legislative Level

In the context of the digital economy, enterprises are the key drivers of the growth of the digital economy. For enterprises, enterprise data has been transformed into a key asset for obtaining their economic value and competitive advantage. Given that enterprise data is an emerging field in the digital economy, there may be gaps in the existing legal framework to find standards on the protection of interests in enterprise data assets. An enterprise's willingness to invest in the data industry relies heavily on the availability of adequate and complete legal protection of its data property rights. In order to promote high-quality growth of the digital economy, we need to enact timely laws to protect the data property rights and interests of enterprises.

In view of the fact that the new type of civil rights is part of the basic civil system, the establishment of the basic civil system should be clearly stipulated through legal means as a reserved content of the legislation. Therefore, the system of data property rights of enterprises should be clarified through legal means. In the civil rights chapter of the Civil Code, a certain institutional space is provided for the legislation of enterprise data property rights. By legal means, the enterprise's data property rights and interests are upgraded to legal rights and interests, which can provide direct legal protection for the enterprise in terms of data property, thus circumventing the existing problems of confusing legal rules and inconsistent adjudication standards. Once the legislation establishes enterprise data property rights, it can clarify the objectives, subjects and contents of enterprise data property rights, thereby satisfying the desired interests of enterprises and promoting the circulation of data and the prosperity of the market.

5.2. Clarify the Scope of Subject and Object of New Property Rights in Enterprise Data

5.2.1. Subjects of New Property Rights in Enterprise Data

The subjects of a new type of property right in enterprise data are fundamentally those entities that have paid for the lawful collection and use of the data and in fact exercise control over the data subjects. The economic value of corporate data is the basis for determining property rights, but this is different from property rights in general. Controlling enterprise data requires strong economic strength, advanced hardware equipment and a team of specialized personnel, all of which are costly inputs that natural persons can hardly afford. While natural persons lack the conditions to control enterprise data, legal persons or unincorporated organizations can obtain economic benefits by controlling and using data, thus incentivizing them to produce data, mine data and trade in data, which in turn contributes to the increase of social welfare. From a legal perspective, the core objective of granting property rights to enterprise data is to protect the property rights and interests of relevant entities in enterprise data. It follows that the civil entity for the new type of enterprise data property rights should be a legal person or an unincorporated organization rather than a natural person. As a regulator of the market, the government cannot act as both a contestant and a referee; it has the right to buy data services from other entities, but cannot sell data to other entities. The government, as a provider of public services, cannot provide a property interest in the data, while natural persons cannot control corporate data for profit. Therefore, at the level of civil subjects, neither the government nor natural persons can be considered as suitable subjects, while other legal persons and unincorporated organizations are considered as suitable subjects for the new type of property rights in enterprise data.

5.2.2. Objects of the New Property Right in Enterprise Data

The object of the property right determines how the specific rights of the property right are controlled and used by the "resource", and this is the basis for defining the property right. We should clearly define the scope of application of the new property right to corporate data, and data that lacks intrinsic value or belongs to the public domain should not be included in the protection of this right. The theory that public information should be the property of the state is rooted in the fact that it may touch on public interests. All data complying with the provisions of the Regulations of the People's Republic of China on the Disclosure of Government Information should be made public in accordance with the law, and all civil entities have the right to use such data.

When dealing with non-public data, we need to make a clear distinction between raw data and derived data. In the process of legal enforcement, the court's judgmental thinking is also based on the grading and categorization of enterprise data and provides various degrees of protection for it. The court's hierarchical and categorical protection of enterprise data conveys a clear message that in determining the attribution of data rights and interests, the judiciary has taken into account the resources, funds and other costs required by

the enterprise in the process of data collection and processing, which also reflects the important theoretical support of the theory of labor empowerment in actual operation.

5.2.3. Clarifying the Content of the Right to Data for Enterprises

The right to enterprise data represents the civil rights and interests of enterprises and other related entities in the collection and processing of data, and this interest covers both the positive and negative impacts of the right to enterprise data.

The positive powers of the right to enterprise data are divided into four main categories: the first is the power of preservation, which means that enterprises and other rights subjects can independently decide on the method, place and duration of preservation of enterprise data. The second point is about the use of the right, which means that enterprises or other rights subjects have the right to obtain the data through lawful means and can use it independently or authorize others to use it. The third point is about the right to gain, that is, enterprises and other rights subjects have the right to utilize the data to obtain economic returns, and this means of pursuing economic benefits must comply with laws and regulations, and at the same time, it cannot disrupt the normal economic order of the data market, not to mention harming the public, collective and individual interests of the society. The fourth point is the power to dispose of data, that is, enterprises and other rights subjects have the right to dispose of data in accordance with the law. Enterprises and other subjects of rights can adopt a licensing method similar to that of intellectual property rights to trade with data of different subjects through general use licenses or exclusive use licenses in contracts. The negative power of the right to enterprise data refers to the right of enterprises and other subjects of rights to be free from unlawful interference, which includes denial of unlawful access to data, denial of unlawful access to, or theft of, data, as well as exclusion of others from impairing the integrity and authenticity of data.

6. Conclusion

In order to ensure that corporate data is truly protected, we should also provide an opportunity for rights holders to establish their own avenues for defending their rights. Article 19 of the Data Security Law clearly states that "China needs to establish and improve the management system for data transactions, regulate the behavior of data transactions, and promote the development of the data transaction market." Currently, there is no unified professional law or regulation to regulate data trading, and there is a lack of a clear regulatory body for big data trading. We should encourage and support regions that have better development in the basis of data trading to make positive attempts and explorations according to the local actual situation, exert local effects, and implement local big data trading regulations on a trial basis before formulating and launching a national data trading law. At the same time, there is also a need to effectively connect the data transaction law with other domestic laws dedicated to data transactions, in order to realize good laws and good governance in the field of data.

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