Definition of Ownership of Enterprise-Derived Data

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Abstract: In the context of today's big data era, with the continuous high-speed development of enterprises and the expansion of the scope of obligations, there is an increasing amount of derivative data generated within enterprises, and the generation, collection, management and utilization of derivative data are facing many problems. However, in recent years, the judgments of various courts on cases concerning derivative data have not formed a unified standard, and different means have been adopted for the protection of enterprise derivative data, leading to the confusion of the mode of protection of enterprise derivative data in China, which is not conducive to the protection of enterprise derivative data. Based on this, this paper will analyze the legal problems of the current status quo of enterprise derivative data protection in China through the case of Taobao v. Meijing, first of all, it is necessary to identify the infringement, and secondly, it is necessary to clarify the object, subject and content of the rights of enterprise derivative data. It is hoped that it will be beneficial to the protection of enterprise derived data.

Keywords: Data; Enterprise derived data; User information; Definition of tenure; Property rights in enterprise derived data

1. Introduction

The Internet era has accelerated the development of China's enterprises, with the continuous emergence of 4 G, 5 G and other new technologies, China's enterprises, whether in their own construction, or in foreign trade, often have to carry out data transmission and data exchange, it can be said that the development of modern enterprises is dependent on the data to maintain. However, due to the fact that the specialized legal provisions for enterprise derivative data have not been established in China, the courts at all levels can only apply the relevant provisions in the Civil Code and the Anti-Unfair Competition Law or the underlining provisions in adjudicating the relevant cases, which results in the court's adjudication not being able to directly hit the core of the dispute over the enterprise's derivative data, i.e., the court avoids the issue of the affirmative right of the derivative data. This paper will use empirical research method, through the "Taobao v. Meijing" case to analyze China's current enterprise derivative data protection status quo existing legal problems, the infringement of the determination, this paper believes that it should be clear that the owner of the derivative data enjoys a new type of property rights, so that can effectively solve the practice of the derivative data confirmation of the difficult problem, but also through legal means to protect the derivative data, and to ensure that the owner of the derivative data is not a party to the dispute, and to protect the derivative data. This not only can effectively solve the problem of difficulty in establishing the right of derivative data in practice, but also can protect the rights of the owner of the derivative data through legal means [1].

2. Typical Cases and Issues Raised

2.1 Briefing on Taobao v. Meijing

In 2018, the case of Taobao Inc. v. Meijing Inc. was publicly pronounced by the Internet Court in Hangzhou, a case that was the first major case in the era of big data to publicly recognize that property rights in data can be enjoyed by businesses.

The "Business Intelligence" big data analysis product was the cause of the dispute in the case. The "Business Counsel" data product involves Internet users' visits, collections, transactions, and other behavioral track data, on the basis of which Taobao processed it to form a data product with derivative characteristics. The plaintiff Taobao provided personalized and customizable services to other merchants

through this product.

Defendant Meijing Company developed two software and network platforms, "Gu Gu Mutual Aid" and "Gu Gu Business Counseling", and at the top of the homepage of the webpage in question, there were several options, such as "Gu Gu Business Counseling", "Business Counseling Rental", "Recommendation Money", and "Software Download". At the top of the homepage, there are several big words "Gu Gu Business Counselor" and options such as "Business Counselor for Rent", "Recommendation to Make Money" and "Software Download". Vision's service is a commission-based lure for Taobao users who have already purchased Business Intelligence data products to download its products to share, share sub-accounts, and rent out sub-accounts. Meanwhile, Meijing also provided remote technical support and services for profit.

Based on the above facts, the Plaintiff Taobao Company requests the judgment that Meijing Company immediately stop infringing the data product "Business Counselor" and compensate Taobao Company for the economic losses and reasonable legal costs, and bear all the litigation costs in this case [2].

2.2 Controversial Focus

The court found that there were three points of contention in this case: first, whether Taobao could collect and process the personal information of network users for justifiable reasons; second, how to determine Taobao's legitimate interest in the big data product "Business Counsel"; and third, whether the behavior of Meijing constituted unfair competition.

Focus 1: Taobao can legitimately collect and process user information. The data products involve information about network users' visits, collections, transactions, etc., as well as labeling information such as the actor's gender, occupation, region, personal preferences, etc., as inferred from the behavioral trace information. Therefore, according to the provisions of the Network Security Law, such information does not belong to the personal information of network users, and the various types of user information contained in the said information products fall within the scope of collection and use as stipulated in the Taobao Privacy Policy. Therefore, Taobao's collection

and utilization of network users' information and the development of corresponding data products, an act that meets the requirements for the protection of network users' information security, is justified.

Focus 2: Taobao Company has independent property rights and interests in "Business Counselor". First of all, a single online behavior traces of information, its economic value is very limited, if there is no legal provisions, or no contractual special agreement, the network user is no independent property rights or property rights. However, the network data product is different from the original network data, which is attached to a large number of intellectual labor results, the data content is also deeply mined, and finally presented in front of the consumer, is a kind of network user information, the network original data does not have a direct correspondence with the network, the independent derivative data, which can be operated by the operator of the actual control and use, and can bring about economic benefits.

Focus 3: Meijing's behavior has constituted unfair competition. In the absence of authorization, and without putting in new labor to create it, Meijing directly used the data products in question to make commercial profits for itself, which was a clear violation of generally accepted business ethics. The accused behavior substantially replaced the data products in question, undermining Taobao's business model and competitive advantage, and has constituted unfair competition.

2.3 Reflections on the Case

This article is centered on the main controversy of the case and seeks to address it from two perspectives:

First, the concept of derivative data is first defined, and the distinction between it and user information and original data is mainly discussed at the legal level.

Secondly, the court's decision avoided the issue of the affirmative right of derivative data. On the one hand, because China's legislation on data rights is still in the blank stage, the judge had to use the anti-unfair competition law in the bottom of the article as a legal basis for adjudication. However, the author believes that the judge should make a breakthrough in the selection of the basis of the right to claim

for data infringement relief, because the application of the anti-unfair competition law will never be able to confirm the property right of the derivative data, so the application of the anti-unfair competition law is limited. In the following, the author will elaborate that it is justified and feasible to protect derivative data as an object of property right.

3. Legal Nature and Definition of Ownership of Enterprise Derived Data

3.1 Conceptualization of Enterprise Derived Data

Definition of enterprise derived data and its characteristics

Derivative data is an important object of data property rights. Derivative data, refers to the data formed on the basis of the original data through algorithmic technology, after analysis, processing, refining, integration and anonymization and desensitization. Generally speaking, only technology-based enterprises, have enough money and technology to process and form derivative data. Therefore, derived data is also called enterprise derived data, except that enterprise derived data emphasizes more on its being held by enterprises. Therefore, this paper does not make any distinction between Derived Data and Enterprise Derived Data. Raw data, also known as native data, refers to digital records that can be directly collected and stored without any processing or treatment and reflect the content of objective facts, and is data that is not dependent on existing data. The division between raw data and derived data is based on the way in which the data content is generated. Compared with general data, enterprise-derived data has its special characteristics. The specificity of enterprise derivative data refers to the characteristics that can be clearly distinguished from other data and belong exclusively to enterprise derivative data, which is mainly manifested in two aspects, namely: aggregation and anonymity. (1) Aggregation. The essence of enterprise derived data is a collection of data, which covers a large number of single data. This characteristic is the source of the value of the derivative data, because the value of a single individual data is almost negligible, so in order to realize the value of the data, it is necessary to merge a large number of individual data to form the derivative data. (2) Anonymity. It is because of experiencing anonymous desensitization processing that the value of enterprise derived data is further enhanced. Moreover, this technical processing is an irreversible process, so that it technically achieves the purpose of both maximizing the potential of the data and maximizing the protection of individual privacy [3, 4].

Differences between derived data and raw data, user information.

In Taobao v. Meijing, the court for the first time made a distinction between derived data, raw data, and user information in terms of their physical nature.

In terms of physical attributes, there is no difference in nature between raw data and user information; raw data digitizes user information. Simply put, there is only a difference in form between the two, not in content. In this process, the efforts made by network operators are very limited, and the essence of user information has not changed. Therefore, in terms of the attributes of rights, the original data cannot exist independently from the user information, so it does not have the conditions to become an independent object. Therefore, the rights and obligations formed between Taobao and its users should follow the relevant regulations or agreements.

Derivative data is fundamentally different from original data and user information in terms of physical attributes; the former is an innovation based on the latter, and is a new kind of right object. In particular, the derivative data has its own special generation method, which is mainly generated by the network operator for processing, rather than similar to the information directly provided by the individual user such as cell phone number, ID number, payment password, and so on. The generation of derivative data is more complex, as it requires both original information provided by users and secondary processing by network operators. The acquisition of derivative data requires the use of certain algorithms to deeply parse, select, integrate, and anonymize and desensitize the original data. Although individuals are also involved in the process of generating derivative data, their contribution is minimal as providers of raw materials for derivative data, and the information products are mainly attributed to the intellectual labor of enterprises.

3.2 Definition of Ownership of Derived Data

In Taobao v. Meijing, the judge recognized that the derivative data was the fruit of Taobao's labor and that Meijing had infringed on Taobao's business profits. In this case, the judge found that Taobao was infringed upon by a property interest, whereas the plaintiff Taobao claimed that Meijing infringed upon its property right to the derivative data.

Can the property interest enjoyed by Taobao after processing and integrating the data be transformed into a right? The terminology that the court has been using in the judgment is property interests and competing property interests, and the court has avoided the issue of affirmative rights in the derived data because the law provides absolute protection for property rights and weak protection for property interests.

Locke's labor theory of property rights provides a theoretical basis for the emergence of property rights from the perspective of labor. Locke made a corresponding argument in the Treatise of Government, "The individual has only to make anything by labor no longer appertaining to other substances provided in nature, because the attribution of labor is not disputed, and is of course enjoyed by the individual. He has therefore added to that thing something which he possesses, and has thus made it his own property." In other words, because labor belongs to the laborer, if a person uses his labor to separate a thing from its natural state, he should be found to have a property right in it [5].

In a data-driven approach to business operations, the company took the initiative to analyze and process user information, transforming it into derivative data that could improve user service and guide future development. And the court found in the judgment that Taobao had paid a lot of manpower, material and financial resources in the collection of raw data, and Taobao had also paid a huge amount of labor in the subsequent processing of the data. Therefore, the author believes that this kind of derivative data, as an asset reflecting the core competitiveness of the enterprise, represents the level of the enterprise's innovation ability. Combined with Locke's labor theory of property rights and the provisions of the current law, the various types of derivative data appearing in the big data products involved in this case can be regarded as the proceeds of Taobao's labor production, and therefore Taobao can enjoy property rights over the derivative data in this case.

Confirmation of the right to property in data refers mainly to the confirmation of the right to the data processor, and natural persons who are the source of the data should not, in principle, enjoy the right to property in data. Data is the property created by the data processor through substantial labor. Some scholars believe that the relationship between the rights of the data source and the rights of the data processor is that of "mother's right and child's right", which describes the relationship between the data source and the data processor to a certain extent, but this description is not entirely appropriate. The reason is that, on the one hand, although the data comes from the data source, but the data processor also put substantial labor in the process of data generation. It is through the substantial labor of the data processor that the right to the data is created, and the data processor creates property through his or her labor [6-8].

The rights of the data processor and the rights of the data source are intertwined but still separable. In order to objectively present and explain this phenomenon of intertwined interests, Article 20 on Data distinguishes between two main types of rights in the "bundle of rights" of data: the statutory prior rights of the data source, and the property rights and interests in data in the sense of factors of production of the data processor. In terms of the nature of the rights, the rights of data processors are more homogenous and are mainly property interests. In the case of data products, the rights are intertwined, but they are property interests as a whole [9-11].

4. Concluding Remarks

The case of Taobao v. Meijing is the first case in China to recognize the data rights and interests of a network operator, and there are many points that deserve our attention and research. Although the judge applied the Anti-Unfair Competition Law to give some protection to the dominant position enjoyed by the enterprise, this law does not meet the enterprise's claim to the rights of the derived data, and at the same time, it cannot meet the needs of the high-speed development of the big data economy.

Whether to protect derivative data as rights or to recognize derivative data as rights and interests for protection has been a topic of debate in academia for a long time. The author recognizes that the derivative data should be protected as rights, and the derivative data can be recognized as property rights. The property right of enterprise derived data should be attributed to the data processor, while the data source enjoys some personality rights or intellectual property rights and other types of rights, such as personal information rights and interests, copyrights and so on. This distinction between the rights of the data processor and the data source also determines the different methods of protection of the rights, i.e., the protection of the rights of the data source shall be governed by the relevant provisions on personality rights or intellectual property rights, while the protection of the rights of the data processor shall be governed by the rules on the protection of property rights.

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