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Methods of Adjudication and Principles for Handling New Types of Cases in the Digital Economy

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Abstract

The digital economy, in the context of the development of digital industrialization and industrial digitization, continues to expand the boundaries from cyberspace to physical space, and promotes the acceleration of the transformation of traditional industries into digitalization and networking. Digital economy cases have broken through the scope of traditional Internet cases, compounding and intersecting with "intellectual property cases" and "Internet cases". The scope of judicial involvement in the governance of the digital economy is affected by the current ambiguity regarding the meaning and scope of digital economy cases. The purpose of this paper is to examine the connotation and scope of the new types of cases in the digital economy, to sort out the adjudication concepts and adjudication methods of the new types of cases involving the digital economy, and to further explore the path of the people's courts to participate in the digital economy governance of the dynamic judicial practice.

Keywords: digital economy, methods of adjudication, principles of justice

1. Introduction

Digital economy cases derive from cyberspace and are inextricably linked to the development of information technology and Internet platforms. With the extensive use of big data, blockchain, artificial intelligence and other cutting-edge technologies, digital economy cases are overflowing from cases under the jurisdiction of traditional Internet courts, and traditional civil and commercial, criminal and administrative cases are gradually emerging as "digitalized" factors. Judicial participation in the governance of the digital economy, in the early stage of the performance of "criminal law first", through the criminal crackdown efficient governance of the Internet space chaos; with the digital economy gradually turned to "deepen the application, standardize the development, universal sharing" of the new stage, the judicial attitude to the digital economy governance from the early stage of development "heavy criminal law control", gradually give way to the comprehensive governance of civil and commercial law, economic law, administrative law. With the digital economy gradually shifting to a new stage of "deepening application, standardizing development and sharing for all", the judicial attitude towards the governance of the digital economy has shifted from the early stage of development, which emphasized criminal law, to the comprehensive governance of civil and commercial law, economic law and administrative law. At this stage, the relevant theories of digital jurisprudence are still

immature, and new types of cases in the digital economy are facing the challenge of legal subject and object brought by digital identity and digital property under the existing legislative conditions. Due to the various types of new types of rights and interests that have not yet risen to the legislative level, there is a large space for judicial activism, facing three major challenges: technical identification, application of the law and balancing of interests. Therefore, the proper hearing of cases involving the digital economy to safeguard digital justice is not only the challenge of the times faced by the Internet Court, but also the duty and mission of most ordinary grass-roots courts in the era of the digital economy.

2. Adjudication Methods and Treatment Principles of the People's Courts in Dealing with New Types of Cases in the Digital Economy

The principles or rules established by judicial cases can not only directly produce a general and extensive social demonstration effect on the development and governance of the digital economy, but also feed back into the legislation and promote the continuous updating and improvement of laws and regulations in related fields. This paper analyzes the trial of cases with different digital elements based on the three major elements of "data, algorithm, and platform" in the development and governance of the digital economy.

2.1 Data Class — Adjudication Methods and Treatment Principles for New Types of Cases in the Digital Economy

2.1.1 Principles of Judicial Decision-Making on Personal Data Security and Privacy Protection

a. Judicial creation of access rules for obtaining personal data

In the case of Sina Weibo v. Pulse, the "triple authorization principle" was created, i.e., "user authorization + platform authorization + user authorization" as the judicial decision rule for determining enterprises' access to personal data information. The decision rule plays an important role in guiding future disputes in cases involving user data information. For example, in the later case of Taobao v. Meijing Unfair Competition Dispute, the court of first instance adopted the principle of triple authorization to determine the legality of the defendant's software in obtaining user information.

b. Judicial protection of personal information to prioritize personality rights over property rights and interests

Property interests and personality rights and interests in personal data are inextricably linked, and personal data has a two-way demand for personality rights protection and value circulation. In judicial practice, the courts have paid attention to the divergence and reconciliation of personal property interests with personality interests. In Taobao v. Fairview, justice prioritized the protection of personality rights and interests carried on personal information. Therefore, in the determination of the legitimacy of the data in question, priority is given to the protection of the personality rights and interests carried on the data. Therefore, the court made a judicial decision on whether "user behavioral trace information" and "tagging information" are personal information of Internet users. Regarding the criteria for desensitization of personal information, the court held that the criteria for determining whether or not the behavioral traces of network users involved in the data products of "Business Counsel" and the labeled information of the actors such as gender, occupation, location, personal preferences, and so on, derived from the behavioral traces, belonged to the personal information of the network users lay in the criteria of whether or not they could be used alone or in combination with other information to connect to the identification of natural persons. The criterion for whether or not it is personal information of a network user is whether it can be linked to the identification of a natural person, either alone or in combination with other information.

c. Handling the demarcation between "personal information" and "privacy"

The Civil Code contains separate legislative provisions on "privacy" and "protection of personal information". In practice, privacy and personal information are also judicially protected separately, but there is currently a controversy over whether unauthorized capture and opening of users' personal information infringes on personal privacy. For example, in the case of Huang's lawsuit against WeChat Reading, "Huang argued that WeChat Reading's automatic following of WeChat friends and opening of reading records by default infringed on her personal information rights and interests and her right to privacy. The court found that

the two books in question, which the plaintiff read in this case, were not of a private nature not known to others and did not constitute an infringement of his right to privacy. However, the APP's default opening of reading information between WeChat friends constitutes an infringement of the plaintiff's personal information rights and interests." [1] Another example is on whether the use of their publicly available personal data violates an individual's privacy. In the case of Xu Mou v. Sesame Credit Management Co., Ltd.[2], the plaintiff believed that the defendant had violated his right to privacy because he had received information about the execution of the case from the defendant's Sesame Credit platform. However, in that case, the defendant's data on the defaulter's information originated from the public release of the local court, so the trial court held that the personal credit data in question originated from the data and information disclosed by the government, the court, and other state organs in accordance with the law, and that it could be rationalized for commercial use.[3]

2.1.2 Adjudication Methods and Principles for Handling Disputes Involving Unfair Competition over Data

a. Judicial recognition of competing property interests in data products

With the gradual increase of the economic value of data, the competition of market players around the property rights and interests of data has triggered a series of typical disputes in "new types of unfair competition" cases. At the same time, data has not been included in the objects protected by intellectual property law, but in practice, the unfair competition law serves as an "incubator" for new rights related to data-related business results. Various types of intellectual creations that have not yet been upgraded to the status of objects of intellectual property rights have gained legitimacy of their existence by being transformed into legal benefits. For example, in the case of Taobao v. Meijing unfair competition dispute, it was judicially recognized that the big data product "Business Intelligence", as an innovative business result, has an independent property right and interest in the sense of the competition law, and its nature should be protected by the Unfair Competition Law.[4]

b. Data source as a criterion for determining legitimacy

The core criterion for determining data unfair competition behavior is whether the source of data is legitimate. At present, China's data behavior regulation legislation mainly includes the E-Commerce Law, the Data Security Law, the Personal Information Protection Law, the Network Security Law, the Regulations on the Administration of the Credit Collection Industry, the Measures for Determining the Acts of Collecting and Using Personal Information in Violation of the Law for APPs and the Code for Personal Information Security of Information Security Technology, which mainly involves the principles of lawfulness, legitimacy, openness and transparency, minimum necessity, clarity, security and confidentiality, and ensuring security. clear principle, principle of security and confidentiality, and principle of ensuring security, as an important basis for judicial determination of the legitimacy and reasonableness of data behavior. For example, in the case of Tencent v. Jumbo Seconds, Inc. for infringement of trademark rights and unfair competition, Jumbo Seconds, Inc.'s act of obtaining WeChat public number users' account numbers and passwords through the download process of the "Public Number Assistant" software and uploading them to its server belonged to the act of collecting and storing data such as WeChat public number users' account numbers and passwords. The Company's behavior of uploading the user accounts and passwords of WeChat Public Number to its server is an act of collecting and storing data such as user accounts and passwords of WeChat Public Number. Therefore, the court held that the behavior of Jen Minutes & Seconds damaged Tencent's normal operation order and safety of WeChat's public number platform, and constituted an act of unfair competition that undermined the normal operation of the network services legally provided by other operators.

c. Judicial broadening of the recognition of

[1] Huang v. Tencent Technology (Shenzhen) Co., Ltd., Guangzhou Branch, Tencent Technology (Beijing) Co., Ltd. internet infringement dispute.

[2] Case No. (2018) Zhe 0192 Min Chu 302.

[3] Case No. (2018) Zhe 0192 Min Chu 302.

[4] See Taobao (China) Software Co. Ltd. v. Anhui Meijing Information Technology Co. Ltd. Unfair Competition Dispute, Case No.: (2018) Zhe 01 Min Zhong 7312.

competitive relationships

Under the development environment of decentralization and de-structuring of the digital economy, cross-border competition and multi-dimensional competition have become the mainstream, and the competition object of market entities has changed from "operating products" to "connecting dividends". [1] Competitive relationships under the development of the digital economy transcend the competition between peers in the same industry, and are highlighted in the relevant unfair competition as the fierce competition for user data and traffic resources between market players. For example, "Huawei and WeChat's dispute over user data," "Shunfeng and Cainiao's dispute over logistics data," and Internet companies such as Today's Headlines and Sina Weibo, Sina Weibo and Pulse, and Volkswagen Dianping and NetEase, which centered around data capture and denial of openness. Disputes.[2] Judicial determinations of competitive relationships in disputes over data-related cases have centered around the appropriation and seizure of key data, competition for the same group of network users, and competition for limited user traffic. Because in disputes involving unfair competition over data, competing data interests can have an impact across industries. Therefore, the judicial determination of unfair relationship has gradually broadened from the narrowly defined competitive relationship in the past to a broadly defined competitive relationship.

2.1.3 Criteria for Recognizing Data as Trade Secrets

When data is closely related to the commercial operation of an enterprise, whether data carrying important commercial information can be regarded as a trade secret is an important breakthrough in granting intellectual property law protection to data. The practical crux of the protection of data as trade secrets lies in the judicial standard of determination. In the case of Hangzhou a technology company and Wang Mou commercial secret dispute, the court made a determination of the determination standard of the live data constituting commercial secret, and it pointed out in the gist of the decision that the data type of business information conforms to the constituent elements of the commercial secret, it should be protected, and the review should be combined with the composition of the data and the characteristics of the industry to determine the confidentiality, secrecy, and commercial value. Derivative data or big data composed of original data on the network, or public data on the network combined with other contents that have not yet been made public to form new data and information, may be examined on the basis of the element of secrecy to determine whether it constitutes a trade secret. Data-type information should take into account the state of reality of the industry and the nature of the carrier, the recognizable degree of confidentiality measures, and the determination that confidentiality measures should be appropriate as a criterion.[3]

2.1.4 Basic Principles for the Regulation of the Commercial Use of Public Data by the Department of Justice

The lack of clarity on the legitimate boundaries of the commercialized use of public data has led to a data market that may face problems such as the tragedy of the commons and the privatization of public resources, exacerbating the disorder of competition in the data market. According to statistics, public data accounts for 70% of the total amount of data and holds enormous economic value. However, no clear classification standards have yet been established for the hierarchical and categorical use of public data. In Zhejiang Ant Small and Micro Financial Services Group Co., Ltd. et al. v. Suzhou Langdang Network Technology Co., Ltd., a dispute over commercial defamation and unfair competition, the defendant company used historical information mined from public data for publication without timely verification, which had a significant impact on the plaintiff's goodwill. The case points out that big data product or service providers, when using public data, should follow the principles of source legality, focusing on information timeliness, guaranteeing information quality, and checking sensitive information.[4]

[1] Luo Min and Li Liangyu, (2015). "Business model innovation in the Internet era: a value creation perspective." *China Industrial Economy, 1*(1).

[2] See Huang Zhixiong, (2021, December). *The Legal Logic of Data Governance*. Wuhan University Press, p. 342

[3] Top Ten Typical Cases of Data and Algorithms, Hangzhou Internet Court, First Trial Case No. Hangzhou Railway Transportation Court (2021) Zhe 8601 Min Chu 609; Second Trial Case No. Hangzhou Intermediate People's Court (2021) Zhe 01 Min Zhong 11274.

[4] First Trial Case No.（2019）Zhe 8601 Min Chu 1594; Second Trial Case No. (2020) Zhe 01 Min Zhong 4874.

2.1.5 Criminal-Civilian Intersection of Malicious Uses of Data

Currently in the malicious use of traffic behavior in the criminal law is not yet expressly provided for, such behavior is included in the scope of whether and how to incorporate the criminal law system has become an important issue facing the theoretical and practical circles. In the case of cyber black and gray production crimes, the main manifestations are new types of legal interests such as infringement of data form rights and interests and crimes against citizens' personal information. Especially in the cases involving "data flow threatening" network black and gray production, the use of traffic hijacking and other promotional black and gray production to provide powder attraction services, "crawler" and "crash" to obtain personal information, data black and gray production. Data black-ash production that obtains personal information by "crawling" and "crashing"[1]. The criminal-civilian crossover in cases of malicious use of data is mainly reflected in the existence of "behavioral crossover" in the behavior of data use. With regard to data crawlers, the criminal law system mainly involves the criminalization and punishment of crimes of illegally obtaining computer information systems, infringing on citizens' personal information, and assisting in the commission of information network crimes. At the same time, however, some of the crawler cases have been regulated through anti-unfair competition laws, which argue that there is an impropriety in the acquisition and use of the data.

2.2 Algorithmic Category — Status of Trials of New Types of Cases in the Digital Economy

2.2.1 Criteria for Recognizing Algorithms as Trade Secrets

Algorithm is one of the core technologies for the development of digital economy, and recommendation algorithm technology has been widely used in various industries represented by Internet platform enterprises. In the case of Wisdom Search Company v. Lightspeed Snail Company and other infringement of trade secrets dispute, the case of the algorithm as a trade secret for judicial protection of the determination of the criteria for model selection and optimization as the core of the algorithm, even if the model used are publicly known information, but if the selection of the model and the ranking of the weights need to be collected through the collection of big data, processing and testing, the algorithm should be regarded as not for the field of the relevant personnel generally known and easily accessible information, not for the public and may constitute a trade secret of the right holder. The algorithm shall be regarded as information that is not generally known and easily accessible to the relevant persons in the field to which it belongs, and is not known to the public and may constitute a trade secret of the right holder.[2] "Guangdong High Court Releases Typical Cases of Intellectual Property Protection in Digital Economy Judging Key", Wisdom Search Inc. v. Lightspeed Snail Inc. et al. Infringement of Trade Secrets Dispute — Determination of Algorithms as Trade Secrets for Judicial Protection.

2.2.2 Algorithms as a Determining Criterion for Considering the Platform's Ability to Be Liable

In the case of Plus Salt v. Byte Company and Yujiu Company Infringement of Information Network Dissemination Right Dispute, the court made a standard for determining the responsibility of the platform operator to help infringement in algorithmic recommendation, pointing out that the operator of the network platform that adopts the synchronization technology of RSS content source access and text classification algorithms should bear the responsibility consistent with its algorithmic capability and platform content management mode, and take the necessary technological measures for the distribution of content to prevent infringement in conformity with the capability of its algorithm. Adopting the necessary technical measures to prevent infringement for the content distributed in line with their algorithmic capabilities.

2.2.3 Judicial Caution in the Restrictive Application of "Technological Neutrality"

At present, the academic community has put forward three mainstream views on the connotation of technology neutrality: function neutrality, responsibility neutrality and value

[1] Zhou Fen, (2022). "Ruminations on the Dynamics of Online Black and Gray Production and Criminal Governance", in *Case Law Inquiry*, First Series.

[2] "Guangdong High Court Releases Typical Cases of Intellectual Property Protection in Digital Economy Judging Key", Wisdom Search Inc. v. Lightspeed Snail Inc. et al. Infringement of Trade Secrets Dispute — Determination of Algorithms as Trade Secrets for Judicial Protection.

neutrality. Among them, "value neutrality" plays a central role in the validity of the claim of technology neutrality. The judiciary's grasp of the scale of technology neutrality is not only related to the sustainability of technological and commercial innovation, but also needs to prevent the use of technology neutrality in the name of infringement; neither can all the consequences of infringement be attributed to technological innovation, nor can it overemphasize technology neutrality to the neglect of the purpose of the use of the technology behind it, so as to enable the parties concerned to take advantage of technology neutrality to evade legal recourse. In Taobao v. Fairview unfair competition dispute, it was pointed out that "although the technology itself is neutral, when the technology is used as a means or tool of unfair competition, the behavior is punishable, and the so-called technological neutrality can not be a reasonable ground for Fairview to be exempted from liability." Therefore, the judiciary judges the legitimacy of the relevant behaviors by rigorously examining the purpose of the use of technology behind "technological neutrality", the value pursuits triggered, and the damaging consequences produced.

2.3 Platforms — Status of Trials of New Types of Cases in the Digital Economy

2.3.1 Judicial Decisions Create New Types of Obligations for the Platform

In recent years, there has been a proliferation of new types of cases in the digital economy, especially in the platform economy. Because of the natural lag in legislation, many new issues in judicial practice lack a direct legal basis. In order to timely protect the legitimate rights and interests of relevant market players, regulate the order and environment of fair and legitimate market competition, and promote the smooth and orderly development of the digital economy, the judiciary has actively played a pioneering role and demonstrated its exemplary role in creating new types of obligations on digital platforms.

a. Creation of the principle of triple authorization and increased obligations of the platform's "gatekeepers"

Against the background of the absence of provisions on enterprise data rights in China's existing laws, in order to protect the legitimate data rights and interests of data-holding enterprises, the judicial authorities created the "triple authorization principle" in the case of Sina Weibo v. Pulse and tried to strike a reasonable balance between data-holding enterprises, data-acquisition subjects and data subjects. The "Triple Authorization Principle" was born out of judicial practice prior to the enactment of the Personal Information Protection Law and is directly related to the content of Article 23 of the Personal Information Protection Law. It is conducive to strengthening the data security governance of large online enterprises, such as online platforms, and configuring special obligations for the protection of personal information that are commensurate with their control and influence, i.e., "gatekeeper" obligations.

b. Platforms Utilizing Algorithmic Recommendation Technology Should Have a Higher Duty of Care

The judicial creation of new types of platform obligations or raising the standard of obligations is not an unjustified increase in the burden of network service providers or network platform operators, but rather an inevitable requirement of "the stronger the capacity, the deeper the involvement, the greater the interest, the heavier the responsibility", which helps to promote the mutual unification of the rights and obligations of Internet enterprises. In China's first algorithmic recommendation case — today's headlines "Yanxi Raiders" short video infringement case of the judgment, the people's court on the network service provider's duty of care, algorithmic recommendation of infringement of the duty of care and so on to make a clear determination, "the infringing short video involved in the case of the widespread dissemination of the short video = infringement of users + platform's information storage space service + platform's information flow recommendation service". According to the principle of reciprocity of rights and obligations, Byte should have a higher duty of care for users' infringement than other operators who do not use algorithmic recommendation and only provide information storage space services. In the effective judgment of another algorithmic recommendation case, the short video infringement case of "Old Nine Gates" by Racer, the court of second instance further pointed out that, for large-scale head platforms with increasingly sophisticated technology, the court should no longer confine its duty of care to the

traditional "notify-delete" rule, but should proactively assume a higher level of platform governance obligations and social responsibility. The court further pointed out that for large and technologically sophisticated head platforms, the duty of care should no longer be limited to the traditional "notice-and-delete" rule, but should proactively assume a higher level of platform governance obligations and social responsibility.

2.3.2 Judicial Recognition of New Types of Contracts Created by the Platform, Respecting the Autonomy of the Parties

Under the booming development of the platform economy, flexible and changeable contract terms help promote the innovation of business development models and stimulate the creative vitality of the digital economy. In recent years, new types of clauses such as "exclusive brokerage," "exclusive live broadcasting," "non-competition," "performance betting," etc. have emerged in practice, posing new challenges to the development of the industry and the protection of workers' rights and interests. New types of clauses such as "exclusive brokerage", "exclusive broadcasting", "non-competition" and "performance betting" have emerged in practice in recent years, posing new challenges to the healthy and sustainable development of the industry and the protection of workers' rights and interests. For example, the anchor contract dispute belongs to a new type of case, when the anchor jumped ship without authorization, the platform based on the "exclusive live broadcast", "non-competition", "modeling exclusive terms" and other agreements, claiming higher penalty. The platform claimed higher liquidated damages based on agreements such as "exclusive live broadcast", "non-competition" and "modeling exclusive clause". The court recognized the huge commercial value created by the "anchor economy" and "Netflix economy" to the platform, and at the same time, by defining that the relationship between the anchor and the platform was not a traditional labor or service relationship, but a contractual dispute based on autonomy of meaning, it determined that the relevant "anchor" contract was valid, but made appropriate adjustments to the high liquidated damages. The "anchor" contract was found to be valid, but the excessive liquidated damages were appropriately adjusted, which has safeguarded digital fairness and justice.

2.3.3 Judicial Rationalization of the Burden of Proof Based on the Platform's Dominant Position

In contractual disputes involving the digital economy, courts assign the burden of proof to the party who is close to the evidence and who bears the adverse legal consequences of failing to prove the case. For example, as between the platform and the consumer, the burden of proof of the fact of infringement is clearly more appropriately placed on the platform, which is in a vastly superior position, both financially and technologically. In the case of Pang v. China Eastern Airlines Company Limited and Beijing Funna Information Technology Company Limited Privacy Dispute[1], the court held that the burden of proof should be reversed for the plaintiff's claim that the platform leaked information. Because from the point of view of the financial and technical costs of collecting evidence, the plaintiff, as an ordinary person, simply does not have the ability to prove whether there are loopholes in the management of data and information within the defendant's company and other circumstances. In Xiao Mou v. Beijing Jingdong Three hundred and ten E-commerce Co., Ltd. network service contract dispute[2], the court held that the defendant, as the controlling party of the shopping platform system, has a stronger technical advantage in proving the operation of the system, and in the case where both parties are still unable to ascertain the disputed facts after exhausting the evidence, the e-commerce platform shall bear the burden of proof in the sense of the result.[3]

3. Building a Dynamic Judicial Path for New Types of Cases Involving the Digital Economy

3.1 Reinvention: Building a Philosophy for Adjudicating New Types of Cases in the Digital Economy

3.1.1 Adopting a "Development First" and "Regulation Later" Judicial Approach to New Types of Rights and Interests in the Digital Economy

Judicial participation in the governance of the

[1] Pang Lipeng v. China Eastern Airlines Company Limited, Beijing Qunar Information Technology Company Limited Privacy Dispute Case, Case No. (2017) Beijing 01 Civil Final 509.

[2] Xiao Mou v. Beijing Jingdong Trilogy E-commerce Co., Ltd. network service contract dispute, Case No. (2019) Beijing 04 Civil Final No. 4.

[3] Beijing Internet Court: Judgment Thinking and Regulation of Typical Internet Cases (I), People's Court Press, 1st edition, September 2020, p. 249

digital economy should, first of all, rationalize the relationship between "development" and "regulation". The rapid development of the digital economy has given rise to a series of new economic and business models, and the judiciary needs to adopt the attitude of "crossing the river by groping the stones" in order to face a variety of new types of cases and disputes that are difficult to characterize. For example, a new type of tenure, "competing property interests" in derived data products, is judicially recognized as the basis of rights that can be protected under unfair competition law[1]. "When using existing laws to adjust those legal relationships that are not clear at the moment, especially when the adjudication has a significant impact on a specific legal relationship or business model, the direction of industry development, etc., it is preferable to adopt the attitude of developing first and regulating later, i.e., letting the new thing develop first and regulating it gradually."[2]

3.1.2 Justice Should Encourage Autonomy and Protection of Reliance in Innovative Models

Compared with the traditional economy, the digital economy, with data as an important production factor, relying on platforms and algorithms as an important support, can break the physical space, break through the territorial and industry factors, at the same time, with the sharing and reciprocity of the gene, in the process of development will be formed in the development of the centralized and decentralized mode of development. Therefore, the judiciary should uphold a certain tolerant and open attitude towards the digital economy, affirm the role of the economic value brought by traffic data, encourage the innovation of digital economy market players, and respect their autonomy. For example, for the "exclusive brokerage", "exclusive live broadcasting", "non-competition", "performance betting" and other new types of clauses under the netizen economy in recent years, the judiciary has given a legal evaluation. For example, in recent years, new types of clauses under the Netroots economy such as "exclusive brokerage", "exclusive live broadcasting", "non-competition" and "performance betting" have emerged, and the judiciary has given legal evaluation. In a contractual dispute case involving the Netflix economy, the judiciary affirmed the role played by the Netflix economy in promoting and supplementing the development of the real economy, and encouraged and guided the real merchants to strengthen their legal awareness of the digital economy.[3]

3.1.3 Moving from a Rights-Based to a Duty-Based Approach, Promoting Some Degree of Alienation of Rights and Interests

Judicial escorting of the development of the digital economy requires respecting and protecting the property rights and interests of data and balancing the two pairs of needs of data protection and data sharing. At present, the traditional concept of justice is based more on the rights-based approach of legal subjects, focusing on whether the rights and interests of all subjects are protected. In the era of digital economy, there will be a deep integration of data and social production and life. Data will gradually become an important social resource that drives human progress and development, just like natural resources shared by all of society. The share of public property in social property has increased dramatically in the era of the digital economy, while at the same time the rights of individuals in a digital society have declined dramatically rather than increased. Citizens enjoying data rights and interests will also face corresponding data obligations. Therefore, while protecting the rights and interests of citizens related to personal data, advocating the principle of alienation and requiring citizens to alienate their digital rights to a certain extent is the key to balancing legitimate protection and reasonable utilization. The principle of alienation is the key to balancing the legitimate protection and rational utilization of personal data and helps to promote the public welfare of society and safeguard national interests.

3.2 Penetration: Lifting the Veil of the Digital Economy in New Types of Cases

3.2.1 Penetrating the Formality of the Case and

[1] Hangzhou court judicial protection of the digital economy top ten cases: Taobao (China) software Co. v. Anhui Meijing information technology Co. unfair competition disputes, first instance Case No. (2017) Zhe 8601 in Chu 4034; second instance case number: (2018) Zhe 01 Min Zhong 7312.

[2] Hangzhou court judicial protection of the digital economy top ten cases, Case No.(2019) Zhe 0109 Min Chu 16158.

[3] Top Ten Cases of Hangzhou Court Judicial Protection of Digital Economy, Case No. (2019) Zhe 0109 Min Chu 16158.

Accurately Defining the Substantive Legal Relationship

The term "penetrating trial" means that when a judge is hearing a case, he or she must take into account the identity of the parties, the requirements for prosecution, the reasons for the prosecution, the facts of the evidence, the arguments in court, etc., and combine them with his or her own knowledge of the law and practical experience in the administration of justice, in order to unearth the truth behind the case. Penetrating to examine the true will of both parties, focusing on the inner expression of true will rather than the purely outer expression. For example, penetrating the appearance of the crime of counterfeiting registered trademarks and accurately grasping the essence of the criminal trademark behavior, in order to accurately combat the use of new technologies to commit crimes. Digital economy cases, especially new types of cases, have complex legal relationships, and it is difficult to accurately identify and judge the types of rights and interests, so it is necessary to penetrate the digital veneer of the case disputes and accurately find the basis of the claim and its substantive legal relationship. For example, in the platform economy, there is a need to penetrate whether labor disputes or other types of contractual disputes are formed behind various types of contractual disputes, and so on. For example, in a contractual dispute involving a new type of contract, the case of unauthorized transfer of a network anchor triggered a dispute over contractual liquidated damages. For the legal relationship between the anchor and the platform, according to the anchor agreement signed by the two sides, the anchor of their own live time, location, content, etc. have a certain degree of autonomy, and labor, labor contract of personal dependence and management affiliation characteristics are different; its income from a network broadcasting company is not a direct source of a network broadcasting company, but from the broadcasting platform, the user of the anchor of the network value-added rewards. The income obtained from a webcasting company is not directly from a webcasting company, but from the value-added network rewarded by users of the live broadcasting platform to the anchors, which is obviously different from the labor and labor service remuneration in the labor and labor service contract; therefore, it should be concluded that the two parties have a contractual relationship.

3.2.2 Penetrating the Appearance of Digital Interests to Accurately Grasp New Types of Rights Objects

The appearance of new types of rights in the digital economy is complex, involving different types of rights such as personality, property, etc., and various types of rights have competing laws in the case, which requires layers of penetration to accurately divest various types of rights and interests. It is therefore necessary to clarify whether digital identity or data property, privacy or personal information, etc., is at stake when examining a specific case. In turn, the case of "public" and "private" rights and interests in the perspective of the conflict, the interests involved in the subject of the data of public or private interests; is the competition rights and interests or business autonomy, and so on. At the same time, regulating the "penetrating trial" is essentially regulating judicial discretion, and judges still have more room for discretion in individual cases.[1] Therefore, care needs to be taken to determine whether the relevant rules of autonomy, contractual compliance, contractual relativity, and appearanceism would be contrary to the normative purpose or undermine the value of order if they were strictly adhered to.

3.2.3 Penetrating the Appearance of Digital Identity to Accurately Protect the Rights and Interests of All Subjects

Identity penetration is concerned with the protection of privacy of natural persons and involves the judicial protection of citizens' personal information and personal privacy rights under the appearance of personal data. Under the development model of the digital economy, a natural person often has multiple digital identities, and different digital identities involve different claims for preservation of rights and interests. The object of personal information protection is never the personal information itself, but precisely the autonomy and integrity of the individual's identity construction in the digital age. In recent years, various platforms have launched data-derived products such as "digital portraits", which involve the collection of personal information and personal data. The determination of

[1] See Huang Hailong and Pan Weilin, (2023). On the Basic Connotation and Practical Methods of "Penetrating Trial", *Law Application*, (7).

personal data in judicial practice specifically involves (1) the distinction between personal information and non-personal information; (2) the definition of the transformation of personal information into non-personal information; and (3) the distinction between personal information and network user information. Therefore, the judiciary needs to accurately delineate what constitutes rights behind various types of digital identities.

3.2.4 Penetrating the Rules of Community Self-Governance to Promote Pluralistic Governance in Digital Communities

Community rules are a "consensus mechanism" that brings together and forms the consensus of the majority of the community's users, based on the laws that are observed. The widespread use of online community rules will have a significant impact on the establishment of judicial trial rules. Digital economy cases have the characteristics of Internet cases, which are manifested in the dispersion and non-specificity of the subject of the legal relationship, and based on the aggregation effect of various platforms, there are a large number of crowd-related disputes. [1] Therefore, it is imperative that pluralistic governance will become the core governance of disputes in the digital economy. The judiciary should incorporate into the governance system important participating subjects of the digital economy ecosystem, such as platforms, enterprises, users and consumers, and give full play to the comparative advantages of all parties to the digital economy in governance, so as to improve the construction of a new direction of governance innovation. Platforms have become the basic unit for coordinating and allocating resources in the era of the digital economy, and it has become a consensus among all sectors of society to incorporate platforms into the governance system, assign them certain governance responsibilities and clarify the boundaries of their responsibilities.[2] Justice should encourage platforms to take on their own governance responsibilities and to utilize their status and natural advantages as the main body of digital community governance. Encourage platforms to use blockchain, smart contracts and other new technologies to build a digital virtual space governance model, establish community governance rules, prevent and resolve risky disputes in the digital space, and promote the use of virtual community rules to resolve contradictions and disputes arising in the virtual space under the premise of complying with the law.

3.3 Optimization: Adapting Adjudication Methods for New Types of Cases in the Digital Economy

3.3.1 Distinguish Between Moral and Legal Judgments and Use Moral Judgments with Caution

In the "new type of anti-unfair competition" disputes involving data rights and interests in China, the phenomenon of "generalized moralization of the judgment of competitive behavior" has appeared, and the circular argumentation of abstract principles has made the judgment filled with all kinds of "moral words", which makes it difficult for market players to know the reasonable boundaries of data competition. The circular argumentation of abstract principles has led to a variety of "moral words" in the judgments, making it difficult for market participants to explore the reasonable boundaries of data competition. [3] In practice, this is mainly manifested in the negative evaluation of such behaviors as "getting something for nothing", "free-riding", "feeding on others", etc. in the flow and use of data; and a large number of moral judgments, such as "violating honesty and trust" and "violating business ethics", have appeared in the adjudication. A large number of moral judgments, such as "violation of honesty and trust" and "violation of business ethics", have been directly labeled as moral judgments without specific justification. The principles of public order and morality and the principle of honesty and good faith have a natural uncertainty of application because of their heavy moral overtones. [4] Therefore, the judiciary should try to apply moral judgment carefully and prevent the use of abstract principles as

[1] Gu Quan, "Reflections on the Trial Concept and Typology Research of Digital Economy Cases". Shanghai Law Research Collection 2022, Volume 17 — Anthology of the Yangtze River Delta Rule of Law Forum.

[2] China Academy of Information and Communication Research (CAICR): White Paper on the Development of China's Digital Economy (2017).

[3] See Wu Boya and Zhang Junyu, "The Unspecified Rule: Empirical Review of Unfair Competition in Data Rights, Path Reshaping and Case Proof", First Prize of the Thirty-third Academic Symposium on National Courts.

[4] Kong Xiangjun, (2010, October). *Judicial Philosophy and Adjudication Methods*. People's Court Publishing House, 1st edition, p. 250.

underpinning clauses to reduce the uncertainty of the rules and standards of adjudication.

3.3.2 Balancing Dynamic Interests and Reconciling Divergent Property and Personality Interests

In view of the conflicts and differences between different rights and interests, the principle of proportionality, the principle of excessive prohibition, the principle of giving way and other principles of adjudication are flexibly applied, and the distribution of interests and attribution of responsibilities of all parties involved in the digital economy are put under comprehensive consideration and dynamic balance in individual cases. For example, in the case of WeChat group owners, the group owners have the necessary duty of care, the judgment is liable for their inaction, apologize and be jointly and severally liable for moral damages, but the judgment is not the same as declaring that all the WeChat group owners have to bear the supplemental liability for the infringing speech in the group, which still needs to be analyzed specifically. At the same time, in the existing legislation, personal information personality rights and interests are prioritized over property rights and interests, facing the contradiction between the two, it is necessary to strengthen the protection of data personality rights and interests, and to reconcile human rights and interests and property rights and interests arising from the data public-private conflict.

3.3.3 Breaking down Mechanical Justice and Promoting Substantive Settlement of Disputes

First, the mechanics of the application of the law need to be broken down. In response to past judicial practice, which relied excessively on textual meaning and stayed only in textual interpretation, the law should be grasped in terms of substantive reasonableness and its own loopholes should be overcome by means of limiting or expanding its application, i.e., by not confining itself to formal considerations but by making substantive considerations when necessary. [1]Secondly, it is important to avoid over-reliance on general principles and to prevent the generalization of unfair competition. With regard to the substitution of moral evaluation for judicial judgment, it is necessary to strengthen the rationalization of the application of abstract principles and to avoid the mechanical application of all kinds of abstract principles. Focusing on the basis of the right of request, summarizing and refining various types of digital scenarios, new types of digital technology use, and new types of digital rights and interests in the case adjudication of the hearing rules, and promoting the substantive settlement of disputes in the case. Further, the burden of proof should reflect substantial justice. Evidence in digital economy cases has electronic characteristics, so in cases involving digital economy, the burden of proof between users and platforms should first follow the principle of reciprocity, to ensure that the burden of proof of the plaintiff and the defendant is equal, and the risk of losing the case is equal on the basis of the second emphasizes the principle of substantive fairness, and gives full consideration to the degree of difficulty of the parties to the proof of the degree of difficulty of the evidence; and once again follow the principle of convenience of proof, digital evidence and digital justice, smart court. Thirdly, it follows the principle of ease of proof, combines digital evidence with digital justice and intelligent court construction, and promotes the digitalization of litigation procedures.

4. Conclusion

With the rapid development of digital economy, the cases concerning digital economy spill over from the disputes of traditional internet cases, and form new digital economy cases and traditional digital economy cases. The wide application of digital technology has changed the structure of social industry model and social organization. In the background of legislation lag, the judiciary plays an important role in the development and governance of social digital economy. At present, China's courts in dealing with digital economy cases have experienced from the "Criminal law first" to the gradual transfer of civil and commercial law, economic law, administrative law comprehensive governance development stage, in the case of digital economy, the issue of data property rights and personal rights caused by the three elements of "Data, algorithm and platform" has formed a lot of judgment rules and methods with Chinese characteristics, it provides Chinese practical experience and judicial wisdom for the development and governance of the global digital economy. I hope this article can Tossing out a brick to get a jade gem, more scholars at

[1] See Kong Xiangjun, (2010, October). *Judicial Philosophy and Adjudication Methods*. People's Court Publishing House, 1st edition, p. 6.

home and abroad on the judicial participation in the development of digital economy and governance of valuable thinking.

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