

# *Legal Dilemma and Regulatory Path Reconstruction of Personal Credit Right in Digital Era*

Chunyu Yan

*Yunnan Open University, Kunming, Yunnan, 650500, China*

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**Abstract:** The rapid development of digital technology has reshaped the generation, circulation and application mode of personal credit information, and the protection and regulation of personal credit right, as a fundamental right in the era of digital economy, is facing unprecedented challenges. This paper systematically combs through the research status of legal regulation of personal credit right in the digital era, deeply analyses the core problems such as imperfect legislation, ambiguous positioning of the system, and difficulties in the identification of infringement, reveals the causes of the problems from the three dimensions of law, technology, and society, and puts forward targeted suggestions for the reconstruction of legal regulation in combination with domestic and international practices, with a view to perfecting China's legal system of personal credit right, safeguarding the rights and interests of citizens, and promoting the healthy development of the digital economy. In order to improve the legal system of personal credit right, protect citizens' digital rights and interests, and promote the healthy development of digital economy, we provide theoretical support and practical path.

## **1. Introduction**

Legal Attributes and Regulatory Significance of Personal Credit Right in Digital Era

### **1.1 Legal Attributes of Personal Credit Right**

Traditionally, the right to personal credit refers to the right of civil subjects to dominate, control and exclude others from infringing on their credit information, and the core of which lies in guaranteeing the authenticity, completeness and proper use of credit information, so as to safeguard the subject's credit evaluation in economic activities. The legal attributes of the right to personal credit in the digital age are not homogenous, but rather an innovative overlay on traditional attributes.

In the context of information technology and digitalisation, the right to credit cannot only emphasise the personal attributes and ignore the property nature. With the digital information and personal association enhanced, information security is highly valued, good personal credit can bring financing convenience, reduce transaction costs and other economic benefits, and can even indirectly reflect the characteristics of the right to property through the possession, use, income and disposal.



## 1.2 The practical necessity of regulating personal credit right in the digital era

In the digital age, the right to personal credit directly affects individual credit qualifications, employment opportunities, access to public services and social evaluation. For example, the inclusion of "overdue records" in credit scores may result in the blocking of loan applications, and the lack of regulation may lead to abuse of the right.

Personal credit is an important "lubricant" for digital transactions, and the uncontrolled collection and evaluation of its information may lead to improper use and undermine market fairness. At the same time, the digital divide has led to inequality in the collection of credit information, for example, the elderly are excluded from the normal evaluation system because they are less likely to participate in digital services and have incomplete credit information, creating "credit discrimination". Therefore, legal regulation is urgently needed to realise corrective justice and safeguard the proper exercise of individual credit rights and the fair and orderly development of the market.

## 2. The current situation of domestic and foreign research

### 2.1 The current situation of foreign research

Foreign countries started earlier in the legal regulation of personal credit rights and have formed a relatively mature system. The European Union (GDPR) represents the rights protection type, emphasising the absolute control of individuals over credit information, requiring explicit consent for data processing, granting the right of data portability, and strictly restricting automated decision-making; the United States (FCRA) represents the efficiency priority type, focusing on market self-regulation and industry regulation, and balancing the flow and protection of credit information through decentralised legislation (at both federal and state levels), for example, allowing financial institutions to share credit data under certain conditions, and allowing the use of credit information to be used in a variety of ways. In addition, other countries (e.g., Germany, Japan, etc.) have also established a legal regulatory system of personal credit rights in line with their own national conditions, and have made corresponding provisions on the collection, use, protection and balanced focus of credit information.

### 2.2 Current Status of Domestic Research

The research on the personal credit right in China presents the situation of deepening theoretical controversy and lagging legislative practice. At the level of the attributes of rights, Wang Liming (2012)<sup>[1]</sup> insists on the theory of personality rights and advocates that the right to credit should be included in the personality rights section of the Civil Code for independent protection; while Zhang Xinbao (2015)<sup>[2]</sup> puts forward the theory of composite interests, emphasising the need to balance the interests of individuals, enterprises and the public interest. Gao Fuping (2018)<sup>[3]</sup> further criticises the personal control theory and calls for the establishment of a social control paradigm. There are obvious differences in legislative models: Zhou Hanhua (2018)<sup>[4]</sup> advocates unified legislation to build an "incentive-compatible" mechanism, while Li Zhaohui (2003)<sup>[5]</sup> advocates drawing on the U.S. industry self-regulation model. The bottleneck in the field of technology regulation is highlighted by Lv Dandan (2006)<sup>[6]</sup>, who points out that the lack of judicial remedies makes it difficult to curb algorithmic discrimination, and Shu Fruit (2023)<sup>[7]</sup>, whose empirical study reveals that "pan-credit" triggers the risk of data misuse, reflecting the ambiguity of the existing legislation on the definition of the boundaries of credit information.

It can be seen that there are still significant uncertainties in China's academic community



regarding the basic theoretical construction of personal credit rights, the choice of legislative paths and technical regulatory solutions, and there are many gaps to be filled in the relevant research.

### **3. Issues with Legal Regulation of Personal Credit Rights in the Current Digital Age**

#### **3.1 The legislative system is still imperfect**

China's current legal regulation of personal credit rights mainly draws on the practice of the European Union, and has not formulated a law on the protection of personal credit rights, and the overall legal system is divided into separate parts. For example, the Regulations on the Administration of the Credit Collection Industry mainly regulates the behaviour of credit collection agencies; although the Personal Information Protection Law incorporates personal credit information into the scope of protection, its core legislative basis lies in the overall protection of personal information. Throughout the eight chapters and seventy-four articles of the Law, there are only a few articles dedicated to credit information, and the relevant provisions are also relatively principled and lack specific and detailed provisions. In addition, although there are some local rules and regulations, they lack uniform standards, and there are certain coordination costs and difficulties in mutual recognition and application.

#### **3.2 Uncertainty in the scale of collection and unregulated use of personal credit information**

In the digital age, the collection channels of personal credit information are becoming increasingly diversified. In addition to traditional financial institutions, e-commerce platforms and social networks are also collecting personal credit information in large quantities. However, the current law does not have a clear definition of the scope of collection of personal credit information, and when some institutions use personal credit information, there are irregularities such as over-collection of personal credit information beyond the scope of authorisation and unauthorised provision of personal credit information to a third party <sup>[4]</sup>, which leads to the long-term misuse of personal credit information, infringes on the legitimate rights and interests of individuals, and even has potential criminal risks.

#### **3.3 Poor avenues for rights relief**

When personal credit rights are infringed upon, victims often face problems such as difficulty in proving evidence, high cost of defending rights, and poor relief channels. Due to the professional and technical nature of personal credit information is strong, it is easy to lead to the victim into a self-evidence trap, while the content of the infringement has a strong hidden, non-professional means can not be proved to be infringed upon, including the subject of infringement, infringement of the content of the infringement and infringement of responsibility. At the same time, the existing litigation procedures are complex, the legal basis is insufficient, leading to the rights of the longer time-consuming, not timely and effective protection of the rights and interests of victims.

#### **3.4 Inadequate supervision and enforcement mechanisms**

At present, China's supervision of personal credit information involves a number of departments, such as the central bank, the Ministry of Industry and Information Technology, the Ministry of Internet Information, the General Administration of Market Supervision, etc., but the division of supervisory responsibilities between departments is not clear enough, and there are regulatory overlaps and regulatory gaps<sup>5</sup>. Although the Personal Information Protection Law stipulates that the



State Net Information Department is responsible for coordinating personal information protection and related supervision and management work, the boundaries of responsibilities are not specific enough. However, the boundaries of responsibilities are not specific enough. Meanwhile, in the digital era, the cross-border flow of personal credit information is becoming more and more frequent, which puts forward higher requirements for supervision, but China's current cross-border supervision mechanism is not perfect enough to effectively respond to cross-border infringement.

## **4. Suggestions for Improving the Legal Regulation of Personal Credit Right in the Digital Era**

### **4.1 Gradually improve the legislative system**

At the legislative level, a unified legislative standard and corresponding special laws can be formulated first, such as the Law on the Protection of Personal Credit Right, which clarifies the legal status, legal characteristics, right attributes, right contents, disclosure contents, use requirements, exercise methods and legal liabilities of personal credit right. In the legislation, it should coordinate the relationship with relevant laws and regulations such as the Regulations on the Administration of the Credit Collection Industry and the Personal Information Protection Law, so as to form a complete and unified legal regulation system of personal credit rights. At the same time, local legislation can be normatively formulated with reference to the superior law to solve the problem of cross-regional legal application.

### **4.2 Regulating the requirements for the use of credit information**

The scope of collection of personal credit information is clarified through legislation, adopting the principle of minimisation that can meet basic social needs and excluding personal information unrelated to credit. The scope and duration of use of credit information shall be clarified, and use beyond the authorised scope and unauthorised provision to third parties shall be prohibited. At the same time, the principle of informed consent and the individual's absolute control over data are further clarified, contrasting with the principle of prohibition without authorisation. At the same time, from the perspective of promoting industrial development, it is still necessary to stipulate the corresponding exceptions. And for the collection of sensitive credit information, more stringent conditions and procedures should be set.

### **4.3 Improve the rights and remedies**

The state shall, by reference to existing legal remedies for rights, establish a diversified rights remedy mechanism, including administrative remedies, judicial remedies, arbitration and mediation. Clear and specific relief standards can be set by way of incomplete enumeration, using industry as a categorisation criterion. Judicial authorities shall simplify litigation procedures, reduce the cost of safeguarding rights, and provide victims with convenient and efficient remedies. Meanwhile, they should strengthen judicial protection of individuals' credit rights, clarify the standards for identifying infringement, compensation standards, and rules for the allocation of tort liability, raise the cost of infringement, and promptly resolve conflicts and disputes.

### **4.4 Strengthening the regulatory mechanism**

The state should clarify the division of responsibilities among various regulatory authorities, establish a coordination and cooperation mechanism, and form a regulatory synergy. Relevant departments should strengthen daily supervision over the collection and processing of credit



information and increase penalties for illegal acts. At the same time, they should build a credit information supervision platform, and use technical means such as big data and artificial intelligence to realize real-time monitoring and risk early warning of personal credit information. In addition, it is necessary to strengthen cross-border regulatory cooperation, establish information sharing and law enforcement cooperation mechanisms with other countries and regions, and effectively respond to cross-border infringements. At the same time, the legal and information technology communities need to work closely together to accelerate the development of laws on scenario applications and refine legislation, enforcement standards and regulatory details. A filing system for the use of credit information should be established, requiring using organisations to record the use of credit information for supervision and inspection by regulatory authorities.

## 5. Conclusion

The boom of digital technology has made the legal regulation of personal credit rights face the opportunity and challenge of paradigm shift. The improvement of its system is not only related to the dual protection of civil subject's human dignity and property security, but also the cornerstone of maintaining social credit order and promoting the development of the rule of law in the digital economy. At present, the protection of personal credit rights in China still exists in the imbalance of the legislative level, fuzzy information boundaries, insufficient prevention and control of abuse, poor relief channels and other shortcomings in the system. In this regard, it is necessary to build a multi-level legislative system, outline the legitimacy of the information collection and use of the border, improve the rights of the relief mechanism, and strengthen the synergy of multi-dimensional supervision and other dimensions of concerted efforts. With the evolution of the digital ecology, the legal protection of personal credit rights will be confronted with new propositions such as cross-border data and algorithmic discrimination, and only by adhering to a problem-oriented and forward-looking mindset can we build a credit rights protection system that is suitable for the era of digital civilisation.

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