

# *Deconstruction and reconfirmation of legal interests of the crime of infringing citizens' personal information— The value return of the theory of compound legal benefit*

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**Abstract:** With the advent of the era of big data, the legal interests involved in data crimes pay more attention to specific individual interests, and focus on the construction of legal interests centered on the information of data itself. The legal interest protection of the crime of infringing on citizens' personal information must clarify the differences, deconstruct the two main divergent theories of the theory of individual legal interest and the theory of superpersonal legal interest in the current theoretical field, and reconfirm the theory of legal interest in combination with the concept of the theory of complex legal interest, emphasizing that the protection of citizens' rights should be the main goal of the crime of infringing on personal information, and the protection of public security should be the auxiliary goal.

## 1. Introduction

In the documents of the fourth Plenary Session of the 19th CPC Central Committee, data was listed as a factor of production for the first time, emphasizing the exploration of the establishment of a unified and standardized data management system. Under the digital age, people in a variety of scenarios of a large number of personal information data, including but not limited to the use of e-commerce platform, social media and applications and other kinds of authorized use of personal information data, the data can be used to form the personal identity, habits, interests, preferences, build personal privacy personality data pattern analysis. Digital technology provides convenience and opportunities for human beings, but the high collection of personal information data also increases the risk of data leakage, abuse and theft, and the means and harmfulness of data crime are constantly upgraded with the progress of data technology. According to data released by the Supreme People's Procuratorate, the number of cases of infringing on citizens' personal information has remained at a high level, with more than 9,300 people prosecuted during 2022 alone, and nearly 30 percent of the defendants were sentenced to more than three years in prison. According to statistics, from 2020 to 2022, prosecutors prosecuted more than 25,000 defendants suspected of infringing on citizens' personal information. Therefore, it can be seen that the security of citizens' personal information is facing increasing challenges, and it is urgent to carry out more reasonable and effective regulation from the legal level.

In order to protect the security of personal information, in addition to the "criminal law" of the crime of violation of citizens' personal information, our country also issued "data safety law" the personal information protection law, in addition the civil code of personality rights also carries on the protection of personal information of citizens, the supreme law, the highest inspection on the criminal cases of citizens' personal information applicable law several interpretation (hereinafter referred to as "personal information interpretation") also for the criminal law protection of personal information. The law of protecting personal information is stipulated in three different fields: criminal law, civil law and administrative law. The criminal law needs to maintain the necessary modesty, so the boundary of personal information must be clarified, and the root of exploring its boundary lies in the legal connotation of the crime of infringing citizens' personal information. Identifying the legal interests of the crime of infringing on citizens' personal information can not only clarify what kind of behavior, distinguish the crime from his crime, but more importantly, it can promote the balance between crime prevention and free circulation of information.

## **2. The theoretical definition standard of "personal information" in the age of data**

At present, the arrival of the era of data makes people focus on personal information is no longer limited to the traditional identity information (such as name, gender, date of birth, etc.), but includes the daily behavior and communication behavior situation data (such as search records, browsing, social information, location information, etc.) and all kinds of perceptual data (such as fingerprint, facial recognition, etc.). In the digital social environment, personal information is not only the direct participation and influence of each individual in the external world in the digital society, but also an important way for each individual to convey his real state to the outside world. In addition, personal information also has complex theoretical connotations, including personal cognition and value achievements, the concrete expression of autonomy and privacy rights, as well as an important part of managing social information resources according to law.

"Personal information" represents the privacy of individuals in the application of information technology, but also the autonomy they desire or need to implement. The discussion and protection of this autonomy is not only important in political and legal ethics, but also in the direction of technological development and the improvement of individual quality of life. From the perspective of social information resources, "personal information" as an important part of social information resources, its protection is one of the important premises and links of managing social information resources according to law. As defined by the IEEE standard, "personal information" is information that people are associated with their specific identity, including name, address, contact number, time of birth, social security number, and other identification information. They can be used to identify individuals, and the use and protection of personal information is also an important part of the digital ecology. Different laws in China's legal system have different definitions of the concept of citizens' personal information. China's Network Security Law points out that personal information covers information that can be independent or identify the identity of natural persons in combination with other information. In the Protection Law of Personal Information Law, the concept of personal information goes further, expressing the carrier of personal information as "electronic or other records". In addition, the Data Safety Law also stipulates personal information, which defines defined as all kinds of information that can identify the identity of a specific natural person alone or in combination with other information, including basic information, contact information, daily behavior trajectory, etc. In conclusion, in the laws and regulations on the definition of citizens' personal information refers to be used to identify a specific individual identity of different types of information, the information records the basic identity information, identity authentication, social and behavior trajectory data, the more accurate expression should be " associated with a specific natural person, reflect the individual characteristics, has personal identity identifiability, recorded in electronic or

other ways, can alone or combined with other information to identify various symbols of natural person personal identity system. This definition is also called "identifiable theory". "identifiable theory" is also the main theory mainly adopted in China, which focuses on the role of information basic function in identity identification, but the theory also hides identity information overflow and related information utilization. Whether personal information can be identified is not an absolute concept, and human information has variability and diversity. Although we take identity as the definition standard, personal information is not only identity information, but also includes a variety of other information, such as personal association data, social information, etc., which may be violated. At the same time, the boundary of personal information is blurred, and the rapid change of technology also makes more and more information may be connected with personal identity information and become a part of personal information. Some information that does not have personal identity characteristics may also be associated with the overflow of identity information, so as to be identified.

### 3. The legal benefit deconstruction of the crime of violating citizens' personal information

#### (1) Reconstructing based on different theoretical and legal interest views

In the theoretical field of criminal law, there are many views on the connotation of the crime of infringing citizens' personal information, among which the debate between personal legal interests is the most prominent, which mainly refer to the particularity of the crime.

##### 1) The deconstruction of personal theory

Personal legal interest theory believes that the legal interest of this crime is personal legal interest, which can be subdivided into several different views. This paper mainly analyzes the privacy rights and the right of information self-determination. The right of privacy believes that only this part of the information reflecting personal privacy in personal information can be protected by the criminal law. The right to information self-determination believes that the legal benefit of this crime protection is the citizens' right to self-determination for personal information.

Specifically, the right to privacy believes that only this part of personal information involving the right of privacy is protected by the criminal law. The biggest problem with this view is the reduction of "personal information" to privacy. The Cyber Security Law, the Personal Information Protection Law and the Interpretation of Personal Information both take "identifiability" as an important criterion to judge personal information, but not all identifiable information and data are personal privacy. Personal privacy refers to the private information that individuals do not want to disclose. For example, personal work information and education information are only information related to individuals but not privacy. However, in the era of data, the widespread use of cloud computing and artificial intelligence technologies enables the information related to individuals to be collected and processed at a low cost, and the probability of it being used for criminal activities has increased significantly. If the legal benefit of the protection of the crime of infringing citizens' personal information is limited to personal privacy, it will not be able to fully regulate the use of personal information related to citizens to commit crimes, which greatly reduces the scope of the crime, and cannot properly deal with the current number of criminal cases of infringing citizens' personal information. In addition, data is an important factor of production in contemporary society, and the property value of data carried by data and information cannot be ignored. The privacy right of privacy cannot reflect the property attribute of personal information, and there are some defects.

The right to information self-determination is the mainstream view in the criminal law circle at present. <sup>[1]</sup> "The right of data subjects to personal data is basically no longer understood as the right of privacy, but is considered to be independent of personal information independent of the right of privacy. Its main content involves the right of self-decision of personal information. "The theory holds that the legal interest protected by the crime of infringing on citizens' personal information is

the self-determination right of personal information, which is a kind of exclusive right and control right. The information subject has the right of information processing and secret, the right to inquire, modify, delete or change personal information, and even the right to request payment of remuneration due to the commercial use of personal information.<sup>[2]</sup> It is undeniable that the right of information self-determination can make up for the deficiency of the connotation of the right of privacy, avoid the paradox of "property ownership transfer" in the theory of property rights, and also has spiritual rights, property and independent decision, but it still has shortcomings. details are as follows:

First, information and data sharing is one of the principles of social development in the data era. In the data era, information subjects cannot achieve complete control over personal information, and cannot completely realize the exclusive right and control right of personal information.

Second, from the perspective of China's criminal legislation, there is no absolute exclusive right to decide, whether the right to life, the right to body, or sexual autonomy, should be influenced and restricted by the criminal law paternalism. In China's Criminal Law, helping others to commit suicide and self-harm will be punished by the criminal law, which reflects the restriction of the criminal law on citizens' right to life and body. The regulation of the crime of gathering adultery also shows that China's criminal law is not unlimited for sexual autonomy.

Third, the complete right to self-determination of information in practice is difficult to achieve. Some scholars put forward that the right of consent is the core content of the right to self-determination of information. Without the consent of the right holder, no one is allowed to collect, process or use his personal information. But from the realistic level analysis, the consent actually basic cannot realize, many electronic software, website in the form of format terms and user collect personal information "consent", do not agree to normal use, once agreed to the information collector for personal information collection degree often is no longer controlled by citizens, which greatly limits the user really control information related to their consent.

In general, personal legal interests limit the legal interests of the crime of infringing on citizens' personal information to personal legal interests, while ignoring the guarantee of public information security provided by the criminal law through this crime. Network information exchange presents explosive growth in recent years, numerous personal information formed in the intersection of the large and complex information network, personal information security at this time not only related to individual citizens, the behavior of the actor may cause great harm to public security, but personal method cannot reflect the sin in essence for public information security and social interests maintenance and attention. Data, as a factor of production, is not the legal benefit of data crime, but the view that the information represented by data is the legal interest of data crime is affirmed by most criminal law scholars. Data information not only involves personal interests, but also involves public interests and national security.

## 2) The deconstruction of the supra-personal legal interest theory

The theory is a view developed on the basis of the theory of super individual legal interest. It extends the crime of infringing citizens' personal information to natural persons as the subject of crime, and makes a judgment on whether the behavior belongs to the super individual legal interest. Citizens' personal information is closely related to social and public interests and national security, and personal data information belongs to public goods and should be managed by the government. The legal interest protected by this crime is the collective interests. Initially, Professor Qu Jiuxin argued that "citizens' personal information" is not only a personal legal interest, but also a legal interest beyond the individual. On the one hand, the word "citizen" represents not only personal legal interests, but also a kind of information that transcends personal legal interests, which needs to be deeply interpreted from the perspective of civil society and the state. Some scholars believe that the legal benefit of the crime of infringing on citizens' personal information is public information security, while some scholars should evaluate its legal interest as the order of social information management. Violation of citizens' personal information crime easy to cause a variety of illegal behavior, become

the root of telecom network fraud and all kinds of new crime, even with kidnapping, extortion and other criminal activities, have a negative impact on people's sense of security, pose a threat to social harmony and stability, should study the super personal interests in the field.

First, the criminal law has three modes: direct provisions, indirect provisions and no provision for the legislation of "violating national provisions".<sup>[3]</sup> The supporters of super personal legal interests usually identify this crime as a legal crime according to the expression of "violating relevant national provisions in paragraph 2" of the Criminal Law, so that the legal interests of the protection of the crime is the public interest. There are obvious loopholes in the path of such proof, and not all the expressions that "violate the relevant provisions of the state" appear in the provisions of the criminal law mean that the crime is a legal crime. For example, the provisions of the Criminal Law on the crime of employing child labor in critical labor specify "violation of labor management regulations". The labor regulations belong to the relevant provisions of the state, but the crime of employing child labor in critical labor is a typical natural crime, and the legal benefit of the infringement is the right to physical and mental health of children.

Therefore, it is impossible to prove that the crime is a legal criminal based on "violating the relevant provisions of the state", let alone that the legal interest of this crime is the collective legal interest.

Second, At present our country for the protection of citizens' personal information is really rely on public power, data era of personal information is not completely in the hands of individuals, data processors, storage can access to citizens' personal information, in this case simply rely on enterprise own self-discipline is obviously unable to realize the proper protection of citizens' personal information, need to through the public power management control. However, the government's excessive control of the management and control of data and information will undoubtedly limit citizens' relevant rights to personal information. Although all kinds of enterprises are more cautious about the collection, processing and storage of citizens' personal information, in fact, there are still many enterprises or APPs that excessively collect citizens' personal information for their own profit purposes or other reasons. Obviously, it is difficult for enterprises to observe the boundary of "moderate and necessary" when collecting citizens' personal information. At present, China still takes government control as the most important means to protect citizens' information, and relies on the excessive collection of personal information by enterprises through the formulation and implementation of laws and regulations and the supervision and notification of relevant government departments. In this case, it is not appropriate to advocate the theory personal personal theory.

Third. Just as the excessive development of datationalism will erode humanism and is not conducive to the harmonious and healthy development of society, the public interests advocated by superpersonal legal interests, if improperly expanded, will seriously interfere with citizens' free processing of their personal information. If the public information security or collective law as the law of the crime, there may be the expansion of the scope of punishment of the crime, such as even information subject I agree to dispose of their personal information, but the use of the "collective law damaged" this reason, the punishment will still be legal punishment, it will not only against the crime of infringing citizens' personal information, more will make the crime scope is improper expanded, it also with the criminal law need to keep the requirement of modesty. This will also cause huge obstacles to the interaction and sharing of data and information, which is not conducive to the development of the digital economy.

Fourth, compared with personal law, superpersonal theory has obvious uncertainty. The determination of "collective legal interest" is undoubtedly subjective and without a fixed answer. To protect the abstract concept as legal interest, there is a risk of violating the principle of legal punishment for crime, which will greatly weaken the demarcation function of the concept of legal interest and bring great difficulties to judicial practice. From the perspective of the unity of law and order, we will also find the current shortcomings of the superpersonal legal benefit view. If there is

no negative evaluation of behavior in the field of front law (civil law and administrative law), it is obviously inappropriate to take the broad "collective legal benefit" as the legal benefit of this crime and evaluate the criminal subject by damaging the collective legal benefit.

In general, the superpersonal legal theory only focuses on the collective interests. If the collective legal interests while the individual interests are blindly emphasized, the scope of this crime will be improperly expanded, which does not meet the modesty requirements of the criminal law and the provisions of the legal principle of criminal punishment. Both the personal interests and the superpersonal interests only one-sided emphasis on personal interests or public interests, and cannot play the important role of legal interests in the crime of access. The emergence of compound legal interest can make up for the theoretical defects under the legal interest monism, and make a more reasonable interpretation of the legal interest of this crime.

## **(2) The deconstruction of the dual legal interest attribute of the crime of violating citizens' personal information**

### 1) The Right to personal information is a comprehensive right

With the continuous improvement of civil law, administrative law and other pre-laws, personal information is no longer regarded as an equivalent concept with privacy, and this trend is obvious. At the legal level, personal information does not have an independent view of legal interest, but constitutes a complete legal interest system in parallel with the right of privacy. With the public recognition of the essential difference between personal information and privacy, the claim of privacy has lost its foothold. The right of personal information has been clearly established as a right belonging to the category of civil law, and its status and role as a new type of civil subject identity right has been recognized by the society. However, there is still a controversy over the legal nature of the right to personal information.

The right of personal information has not only the basic human rights of general civil subjects but also the characteristics of special personality interests, so it belongs to the right of personality. In the civil law field, there is a debate about the right of personality and the new rights in terms of the right orientation of personal information right. Personality right claims that personal information belongs to the category of personality interests and has the characteristics of personality interests independent of property. The former claims that although there is some overlap in the connotation of personal information right and personal privacy, the concept of personal information has gone beyond the scope of private information, so it is necessary to separately stipulate the right of personal information. The latter holds that the right of personal information is a social public interest, which belongs to the category of public power, does not have the characteristics of private rights, and should not be classified into the field of private law. The latter view holds that excluding the right of "personal information right" from the personality, real, property and intellectual property rights in civil law should be regarded as a new right. In fact, in China's current legal system, the relevant provisions on the right of personal information are very scattered and imperfect, and it is difficult to meet the practical needs. The essence of personal information right not only lies in its personality attribute, but also lies in its comprehensive embodiment as a property right and public order attribute. Therefore, when the criminal law protects the right of personal information, it cannot ignore the value orientation and behavior mode of its social public interests.

At present, the focus of the crime of citizens' personal information lies in the legal interests and the connotation protected by this crime. Some scholars argue that although the crime of infringing on citizens' personal information is regarded as a "legal crime of natural crime" to some extent, its fundamental nature is still a natural crime, and the legal interest of this crime should be personal legal interest. In addition, since the crime of assault is aggravated, the definition of its legal interests should be based on the damage. In fact, the right to personal information in the crime of infringing citizens' personal information is a comprehensive right covering both personality and property. In the theory of criminal law, the right of personal information is regarded as a kind of legal interest belonging to

the individual.

## 2) The rights and interests of personal information have compound properties

The rights content of personal information has the characteristics of compound. In the era of data, the rapid progress of science and technology makes information can be transmitted more conveniently. Information of different types and forms can be saved and transmitted in the form of electronic data, realizing storage and interaction around the world. Data has gradually become synonymous with information, that is, data is the carrier of information, and information is the data with background.<sup>[4]</sup> In the process of the flow and use of personal information, the initial right subjects gradually no longer have complete control over personal information, and the subjects of information rights also show diversification, expanding from the information subject to the collector, user and processor.<sup>[5]</sup> Personal attribute, property attribute and public attribute together constitute the legal core of personal information, which is determined by the different content of personal information and its use value as special resources.<sup>[6]</sup> For example, the "health code" and "travel card", which are widely used in epidemic prevention and control during the COVID-19 outbreak, are of course personal information, but they are not only personal, but also public. In other words, the rights and interests of personal information in the data era cannot be simply covered by personal legal interests, but also reflects the side of public safety or collective legal interests. Countries through the use of big data and other technologies to realize the COVID-19 outbreak, access to show health code and travel card, need to collect and use COVID-19 confirmed or suspected personal information, travel information, close contacts, actually reflects the balance and choice between the right to self-determination and the public interest. At this time, citizens' right of self-determination about personal information is limited by the public power, and they need to sacrifice part of the rights and interests of personal information to protect public security.

From another point of view, for the legal interests of the crime of infringing on citizens' personal information, in addition to the right of personal information, it should also cover the maintenance of information management order. China has initially established the protection system of personal information at the legislative level. According to the provisions of the Personal Information Protection Law (draft) or the Network Security Protection Law and other pre-laws, the protection mode of personal information has changed from the mode of rights protection mode to the data order control mode, and this change is gradually emerging. In this process, information resources and information security has also become a new problem. Therefore, it is far from enough to only safeguard the rights of individuals, which must be effectively controlled from the order level of information management. In the information society, the criminal law should regulate the personal information in all aspects. As a kind of guaranteed public law, criminal law should give full play to its functions and comprehensively safeguard the legitimate rights and interests of citizens to personal information.

## 3) The value regression of the compound legal interest theory in the crime of infringing on citizens' personal information

The compound legal interests theory attaches great importance to the protection of personal legal interests and public legal interests, trying to maximize the protection of legal interests and make full use of personal information. In the data era, the information interaction and sharing form a big data environment. In the wave of digital, data as the carrier of information, not only is digital, people are in the process of digital, personal information of major personal, property law and citizen correlation is higher and higher, every year worldwide there are about billions of information data leakage records and lead to nearly \$6 billion of economic losses.<sup>[7]</sup> At the same time, the violation of citizens' personal information will also endanger public information security, may even endanger national security, if the violated individual is important leaders or confidential personnel, or interested or foreign institutions grab a large number of national personal information data statistical analysis, will cause incalculable harm to national security. Therefore, this paper holds that in the context of the data era,

the legal interest of the crime of infringing on citizens' personal information is the compound legal interest.

From the perspective of law and doctrine, the object of this crime is "citizens' personal information", which is obvious personal legal interest, but it is not the crime of citizens' personal information once their personal information is violated. The law stipulates that only "serious circumstances" to establish this crime, "Personal Information interpretation" detailed provisions of the "serious circumstances" situation, in these circumstances are clearly stipulated, more than half to reach a certain number or amount as the identification standard. In fact, most of the majority of the practice case, the crime of the suspect is mostly professional crime, they for personal information of infringement does not have a specific object, hundreds of thousands of personal information of tens of thousands of illegal income of the common place of such cases, the violation is not only a specific person or a small number of personal information security, and has endangered public security and even national security. Some scholars also put forward that "the harm of this kind of crime is national and public", which mainly infringes on the legal interests of the unspecified majority of people. But it cannot be said that it is the correct theory. In addition, the crime of this crime caused the victim's death, serious injury, mental disorder or kidnapping and other serious consequences belong to the "particularly serious circumstances", these provisions all reflect that the crime is not all the legal interests of the unspecified majority of people, the criminal law for the violation of specific people in this crime is also regulated. Therefore, it can be seen that the theory of legal interest monism is one-sided.<sup>[8]</sup>

The purpose of the crime of infringing citizens' personal information is to protect the autonomy of citizens' personal information, but it should not ignore the public attributes contained in personal information. The legal interest of this crime is the compound legal interest, and personal legal interest plays the main position, while public information security and social order play the secondary position as the derivative legal interest.

The reason why the right of information self-determination is the primary protection legal benefit of the crime of infringing citizens' personal information is to maintain public information security and social management order from point and surface, and realize the comprehensive protection of personal interests and public interests.<sup>[9]</sup>

#### 4. Conclusions

To find the balance between social interests and personal freedom is the eternal pursuit of criminal law. <sup>[10-11]</sup>The criminal law of citizens' personal information needs to protect citizens' rights and interests in personal information and realize the rational use and management of information data, and to take into account both personal freedom and social public interests. Taking the social public legal interests as the derivative legal interest of this crime can maintain the social management order and public information security under the premise of protecting the citizens' right of information self-determination, and take into account the social value requirements of personal information.

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