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Research on the Application of Unjust Enrichment Rules in Protecting the Rights and Interests of Data Originators

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Abstract: Compared to traditional tort law remedies, unjust enrichment rules—by simplifying the burden of proof and broadening the scope of restitution—better align with the dynamic nature of data value generation and the often concealed character of data-related harm. This makes them more effective in safeguarding the relevant rights and interests of data originators. When applied in conjunction with the Civil Code and the Personal Information Protection Law, these rules can establish a dual-track relief mechanism characterized as "disgorgement of gains plus compensation for losses." This mechanism effectively deters enterprises from "free-riding" on data and helps channel benefits back to the originators. To address conflicts arising from the dual attributes of data-related rights and the challenge of balancing multiple interests, this study proposes adaptable solutions, including categorical treatment of cases, a dynamic benefit calculation model, and a tiered allocation of the burden of proof, thereby ensuring effective protection for data originators.

1. Introduction

The release of the 2022 " Opinions of the CPC Central Committee and the State Council on Establishing Basic Data Systems to Better Leverage the Role of Data as a Factor of Production " (hereinafter referred to as the "Data Twenty Measures") has provided a guiding framework for constructing China's data legal system. Article 7 specifically points out the need to "fully protect the legitimate rights and interests of data originators, promote data circulation and use models based on informed consent or statutory cause, and ensure that data originators enjoy the right to access or copy/transfer data generated through their contributions." This indicates that while data processors play a central role in data circulation and value realization, the protection of data originators' rights and interests cannot be overlooked.

As the marketization of data as a factor of production deepens, the challenges in protecting data originators' rights are becoming increasingly diverse. Regarding data rights confirmation, traditional property rights frameworks struggle to adapt to the dynamic nature of data value due to data's inherent non-exclusive and non-depletable nature. Enterprises leverage their technical advantages to transform raw data into market-monopolized data products, establishing a market expansion process of "data collection – processing – profit generation" [1]. This enables companies to freely acquire and utilize data for substantial profit, leading to an "imbalance in data benefit distribution." The limitations of existing legal remedies further exacerbate this imbalance. For instance, tort liability requires proving

fault and substantial damage, which is often difficult to quantify and substantiate in the data realm, while the path of the Anti-Unfair Competition Law struggles to address data misuse in non-competitive contexts. Against this backdrop, the unjust enrichment rule, with its core advantage of "causality-free relief" and the fundamental logic of "disgorgement of illicit benefits" as stipulated in Article 122 of the Civil Code, emerges as a potential breakthrough for addressing the challenges in protecting data originators' rights. However, the application of the unjust enrichment rule in judicial practice remains contentious. Some rulings overemphasize the technical investments of data processors while neglecting the rights of originators, highlighting theoretical divergences that urgently require resolution. This article will approach the issue from the perspective of restitution for unjust enrichment. By discussing the feasibility of applying unjust enrichment rules in the field of data rights protection and conducting a comparative analysis with other protective pathways, it aims to demonstrate the rule's effectiveness and provide insights for relevant judicial practice.

2. Feasibility Analysis of Applying Unjust Enrichment Rules

2.1 Compatibility with the Protection of Data Rights and Interests

Article 122 of the Civil Code stipulates that "if, without legal basis, a person obtains an improper benefit, causing loss to another person, the person suffering the loss has the right to request the return of the improper benefit." Its core lies in the disgorgement of illicit benefits, rather than taking actual damage as a necessary prerequisite. For example, in cases of erroneous fund transfers, even if a company causes an mistaken transfer due to a financial operation error, the claimant only needs to prove that the other party obtained a benefit and that there is no legal basis for it to claim restitution, without needing to quantify the indirect damages caused by privacy leaks or data misuse. This rule is highly compatible with data scenarios. For instance, when a company obtains commercial benefits by illegally scraping user data, the data originator does not need to prove the specific economic losses caused by the data misuse, but only needs to focus on the causal relationship between the company's benefit and the lack of a legal basis [2]. The core of data property rights lies in the lawful control over the data carrier and its content, and acts of illegal collection or processing formally constitute an "unauthorized disposition," directly triggering the obligation to make restitution for unjust enrichment. According to the theory of "flawed data collection," if there are technical defects or procedural vulnerabilities in the data collection process, even if the data is subsequently anonymized, the illegality of subsequent use may still arise due to the initial defect in rights. Through this linkage mechanism, the blind spots in protection during the dynamic circulation of data property rights can be effectively remedied.

2.2 Support within the Current Legal Framework

In the legal application for protecting data rights and interests, the right to claim restitution based on unjust enrichment established by Article 122 of the Civil Code and the rules on compensation for damages under Article 69 of the Personal Information Protection Law form a dual-track relief mechanism of "disgorgement of benefits + compensation for losses," providing more comprehensive institutional safeguards for data originators. Specifically, Articles 985-988 of the Civil Code construct the framework for restitution of unjust enrichment, requiring enterprises to bear the obligation to return benefits illegally obtained from data. Meanwhile, Article 69 of the Personal Information Protection Law states that "where the processing of personal information infringes upon personal information rights and interests and causes damage, the personal information processor shall assume compensatory damages and other tort liabilities if it cannot prove that it is not at fault" [3], thereby strengthening the force of tort-based compensation for damages through the presumption of fault.

The synergistic effect of these two sets of rules is reflected in the following aspects. Data originators can not only claim full restitution of illegally obtained benefits based on the Civil Code, such as profits gained by an enterprise from algorithms developed using non-public data obtained through scraping techniques, but can also claim compensation for damages based on the Personal Information Protection Law, such as damages to privacy rights resulting from a data breach, achieving the parallel objectives of "disgorgement of unjust enrichment" and "compensation for actual losses" [4]. In non-competitive scenarios, such as internal data misuse within an enterprise or the commercial use of individual user data, the Anti-Unfair Competition Law is difficult to apply due to the lack of the "competitive relationship" element. Here, the unjust enrichment rules fill the legal gap by "correcting the imbalance of benefits." For example, if an enterprise illegally scrapes public data for internal algorithm optimization without directly diverting competitors' users, but its data acquisition behavior violates platform rules, restitution of benefits can still be claimed based on unjust enrichment rules. Furthermore, the two sets of rules complement each other in the allocation of the burden of proof. The Anti-Unfair Competition Law focuses on proving the unlawfulness of the conduct, such as demonstrating that the data scraping methods violate industry practices or commercial ethics. In contrast, the unjust enrichment rules only require proving the connection to the data flow, such as the causal relationship between the enterprise's benefit and the illegal data source, and can leverage the presumption of fault under Article 69 of the Personal Information Protection Law to reduce the difficulty of proof.

3. The Relative Advantages and Functional Innovations of the Unjust Enrichment Rule

3.1 Institutional Advantages Compared to Tort Remedies

The core advantage of the unjust enrichment rule, compared to other protective mechanisms, lies in its mechanism for simplifying the burden of proof. Unlike tort remedies, which require proving complex elements such as fault, damage, and causation, the unjust enrichment rule only requires proving that "the enriched party obtained a benefit without legal basis" and the "correlation of the benefit change" [5]. For instance, in cases of illegal data collection, the data originator need not demonstrate the enterprise's subjective malice or specific damages from privacy leaks; it is sufficient to prove, through data flow records, that the enterprise gained benefits from the illegal data processing to trigger the obligation for restitution. In judicial practice, some courts have moved beyond the stringent requirement of "actual damage" in traditional tort law, applying the logic of unjust enrichment to order enterprises to disgorge illicit gains. This rule is particularly suited to the data domain, where value is difficult to quantify and harm often materializes with delay. By rectifying the imbalance of benefits, unjust enrichment provides a more efficient remedial path for protecting data rights and interests [6].Concurrently, the scope of restitution under the unjust enrichment rule is based on the "actual benefit obtained by the enriched party," which may significantly exceed the actual loss suffered by the aggrieved party. According to Article 987 of the Civil Code, an enriched party acting in bad faith must return all benefits along with accrued interest, while a party in good faith is liable only for benefits still extant, though this includes both the original benefit and its appreciation [5]. For example, derivative profits generated from the illegal processing of data by an enterprise are subject to restitution, whereas tort damages typically cover only direct losses. In data transaction scenarios, courts may support including profits from algorithm model development within the restitution scope, surpassing the limitations of traditional tort law concerning "foreseeable losses." This mechanism, which prioritizes the "disgorgement of benefits over compensation for losses," not only deters enterprises from seeking excessive profits through illegal data exploitation but also promotes redistributive justice concerning data-derived gains.

3.2 Role in Promoting the Data Circulation Cycle

The unjust enrichment rule reconstructs the boundaries of data circulation by stripping away illegal benefits, effectively curbing free-riding behaviors where enterprises exploit unauthorized resources through "data harvesting." Through the coordinated application of Article 985 of the Civil Code and Article 69 of the Personal Information Protection Law, data originators can claim both compensation for damages and full restitution of unjust enrichment, creating a dual deterrent. For example, in a case involving a Wuxi health product company that maliciously used the "Shou xian'gu" trademark, the court found it had gained unjust benefits through free-riding and ordered it to pay 500,000 RMB in compensation and bear joint liability. This judgment demonstrates the precise targeting of the unjust enrichment rule against illegal exploitation. In scenarios lacking a competitive relationship, the Anti-Unfair Competition Law is difficult to apply due to the absence of the "competitive relationship" element, and unjust enrichment fills this legal gap. For instance, if an enterprise scrapes public data to develop internal algorithms without directly harming a competitor, a court can still order the restitution of illegal gains based on the "absence of legal basis," achieving the stripping of benefits through dynamic calculation of the restitution scope [7]. Such rule design incentivizes enterprises to shift from "low-cost infringement" to "high-cost compliance," pushing them to establish authorization and licensing mechanisms. The characterization of data transaction contracts further reinforces this logic, requiring data acquirers to obtain authorization from data providers while also ensuring dual consent from personal information subjects, thereby blocking illegal data circulation chains [8].Claiming restitution of benefits through unjust enrichment corrects the structural imbalance in the marketization of data as a factor of production, ultimately promoting distributive justice in data benefits. The primary distribution of data factor proceeds emphasizes market efficiency, while redistribution needs government intervention to bridge the digital divide. The unjust enrichment rule effectively bridges these two aspects: on one hand, its benefit-based restitution scope is significantly higher than traditional tort damages, ensuring data originators share in the value-added benefits of data; on the other hand, through the interplay of the Civil Code's provisions on unjust enrichment and Article 69 of the Personal Information Protection Law, it forms a dual-track relief of "loss compensation + benefit disgorgement," channeling benefits towards vulnerable parties. Furthermore, the introduction of rules on compulsory contracting can further promote data circulation, preventing large platforms from hindering market fairness through data monopoly. Ultimately, the unjust enrichment rule effectively interfaces with the data property rights system, constructing a benefit distribution system that prioritizes "efficiency while considering fairness," laying a legal foundation for the sustainable development of the digital economy.

4. Challenges in Rule Application and Adaptive Approaches

4.1 Challenges Posed by the Particularity of Data Rights and Interests

The core contradiction of data rights and interests lies in their intertwined dual attributes of personality rights and property rights. Personal information data encompasses personality interests such as an individual's privacy and identity, while also possessing a property attribute due to the market value generated through data processing. For example, when an enterprise uses user behavior data to develop business models, inadequate anonymization may lead to personal information leakage. In such cases, the protection of privacy rights under Article 1034 of the Civil Code may directly conflict with the requirement for restitution of property-derived benefits under Article 69 of the Personal Information Protection Law [9]. To resolve this issue, a synergistic mechanism of "defensive protection of personality rights + dynamic distribution of property rights" needs to be constructed. On one hand, the Personal Information Protection Law grants users defensive tools such as the right

to withdraw consent and the right to data portability [7]. On the other hand, based on the hierarchical rules of property rights established by the "Data Twenty Measures," such as the right to hold data resources and the right to process and use data, enterprises are permitted to claim interests in derivative data within the scope of lawful authorization. Furthermore, within the data ecosystem, conflicts of interest among data originators, processors, and users are highly complex. Taking algorithm model development as an example, data processors invest technical costs through steps like cleaning and labeling to create derivative data value, yet data originators often assert a right to share in the benefits of the raw data. To address such issues, it is necessary to introduce a "dynamic cost-benefit balancing model." Under this model, the input costs of data processors can be compensated based on the "substantial substitution" standard in Article 2 of the Anti-Unfair Competition Law, while data originators can claim restitution of a reasonable proportion based on the unjust enrichment rule in Article 122 of the Civil Code [10].

4.2 Adaptation and Refinement of Rule Application

To address the variations in scenarios requiring restitution for unjust enrichment from data, it is also necessary to construct typified restitution rules. In cases of "positive unjust enrichment," such as an enterprise selling illegally obtained user profile data, full restitution of all benefits plus punitive damages should be ordered. For "negative unjust enrichment," such as an enterprise saving costs by failing to fulfill data security obligations, restitution should be based on the proportion of actual benefits gained. This classification draws on the German legal theory distinguishing between "performance-based" and "non-performance-based" unjust enrichment, achieving precise regulation through the dichotomous framework of the "right to hold data resources" and the "right to operate data products" established by the "Data Twenty Measures" [9].Simultaneously, due to the phased nature of the data circulation cycle, dynamic calculation rules must be established. At the collection stage, the restitution scope is limited to the market value of the raw data, such as the average transaction price of user data. At the processing stage, the value-added income generated by technical investment, such as algorithm model training costs, must be considered. At the transaction stage, market substitution effects are incorporated, such as the economic loss from user churn at the original platform due to another platform scraping data. This model also references the theory of the "three-tier distribution of data factor": the primary distribution focuses on market efficiency, redistribution adjusts data monopoly profits through taxation, and the tertiary distribution relies on public interest litigation to achieve social equity. Secondly, the concealed nature of data infringement also necessitates innovation in traditional rules of evidence, with the core challenge being to balance the tension between technological monopoly and the protection of individual rights. Based on the framework of presumed fault liability established by Article 69 of the Personal Information Protection Law, enterprises involved in data disputes bear a higher standard of proof to demonstrate their compliance. They must systematically disclose full-chain compliance evidence covering data collection, processing, and utilization—such as providing third-party certified data desensitization technical standards, interactive records of users' explicit consent, and dynamic audit reports on data usage scope and purposes. To address the difficulty of proving "data correlation," a "graded burden of proof for correlation" mechanism reconstructs the burden of proof through a layered, progressive logic: first, the plaintiff must demonstrate a reasonable correlation between the enterprise's business model and the data in question. Once this correlation meets a preliminary probability threshold, the burden shifts to the enterprise to prove the absence of a direct causal link between its data usage and the alleged harm, including submitting technical verification documents for data anonymization and models for disgorging data-derived benefits [11]. This mechanism not only resolves information asymmetry through a "technology-versus-technology" evidential path but also curbs platforms' use

of data monopoly for "black-box exploitation" through benefit correlation review, ultimately achieving a rule transition from "formal compliance" to "substantive justice."

5. Conclusion

Against the backdrop of deepening market-oriented reforms concerning data as a factor of production, protecting the rights and interests of data originators has become a core issue in constructing a fair and efficient foundational data system. Introducing the unjust enrichment rule provides a new approach to addressing the challenges of applying traditional legal tools in the data domain. The unjust enrichment rule established in Article 122 of the Civil Code, combined with the presumed fault liability under Article 69 of the Personal Information Protection Law, forms a dual-track relief mechanism of "disgorgement of benefits + compensation for losses." This mechanism can break through the constraint of "difficulty in quantifying damages" by simplifying the burden of proof, while also expanding the scope of restitution based on the "actual benefit obtained by the enriched party," thereby effectively correcting imbalances in the distribution of data-derived benefits. At the level of rule application, the proposed typified treatment and dynamic benefit calculation models provide feasible solutions for balancing the multiple interest conflicts among data originators, processors, and users. Furthermore, the flexible allocation of the burden of proof, coupled with the hierarchical data property rights rules established by the "Data Twenty Measures," both strengthens the defensive protection of personality rights and unleashes institutional dividends for the circulation of data factors. Future research needs to further explore pathways for refining the data property rights system, clarifying the boundaries of rights for raw data, derivative data, and data products, to provide viable solutions for safeguarding data originators' rights and facilitating data circulation and utilization.

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