

The Regulatory Framework of the Right to be Forgotten in the Context of Big Data and Its Localization in China

Kexin Wang*

China Jiliang University, Hangzhou, Zhejiang, China

**Corresponding author*

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Abstract: Internet technology continues to develop, more and more citizens' data and information has been infringed upon, China's existing personality right protection system can not fully meet the needs of citizens' growing personal information protection, so the right to be forgotten as a new type of right to protect personal information data for the purpose of its introduction into our country has a certain degree of necessity. The right to be forgotten can effectively solve the problem of the permanence of Internet memory, better improve China's personality right protection system, and protect citizens' personal information. The article analyses the composition of the right to be forgotten and the boundary between the right to be forgotten and the right to delete, so as to explore the necessity and feasibility of legal transplantation of the right to be forgotten.

1. Introduction

The internet era has developed rapidly, with information changing in the blink of an eye. The term “big data” frequently appears in people's lives. For netizens, big data not only involves their personal digital footprints (data they leave behind themselves). More importantly, it also involves personal data shadows (information generated by technology that relates to them). Unlike physical footprints and shadows, digital footprints and shadows are not fleeting but persistent, even eternal. The primary challenge in storing and processing electronic data within the big data context lies in the absence of humanity's innate capacity for forgetting. Forgetting is a defining human trait with significant social functions, and its absence has led to numerous issues involving the infringement of personal information rights. In practice, China's existing personality rights protection system has proven inadequate in addressing real-world personal information infringements, making the legal transplantation of the right to be forgotten a necessity. The 2014 “Gonzalez v. Google” case led the European Court of Justice to recognize the right to be forgotten as a novel legal entitlement. However, this right remains relatively underdeveloped in China. [1] Against the backdrop of internet big data, this paper analyzes the distinctions between the right to be forgotten and the right to erasure to demonstrate the necessity and feasibility of transplanting the former into Chinese law. [2] Drawing on the international development of the right to be forgotten over the years, China should selectively adopt its essence while discarding its shortcomings. Through legal transplantation, China can enhance its system for protecting personal dignity rights, address significant gaps in personal information

protection, and empower individuals to genuinely erase their digital footprints and data shadows left on the internet.

2. An overview of the right to be forgotten

2.1 The definition and development of the right to be forgotten

Sometimes known as the right to erasure or the right to be forgotten, the "right to be forgotten" has its roots in France and Italy. It refers to the ability of data subjects to ask controllers to remove material on them that is unsuitable, out-of-date, or still harms them after it has been posted online. [3] In France and Italy at the time, this right primarily emphasized the deletion of criminal records stored by courts and governments after a certain period. This was grounded in constitutional provisions aiming for the social reintegration of convicted offenders who had undergone judicial proceedings. Deleting records after a set time served both facilitated reintegration and protected the privacy of offenders. Before the era of big data and the internet, once individuals obtained publicly available information, details about them held by others would gradually fade over time. Consequently, the impact of negative or embarrassing information on one's reputation typically diminishes with the passage of time, allowing individuals to restore their reputation. Therefore, the right to be forgotten was not widely exercised during that period.[6]

The case of Mario Costilla González also sparked intense debate, ultimately becoming a landmark ruling on the right to be forgotten. Costilla demanded that Google and a Spanish newspaper remove an article reporting on the government auction of his home. Although existing European legal frameworks did not grant a right to erase true but embarrassing information, the European Court of Justice ordered Google and the Spanish company to remove the relevant content from search results, stating that search engines must delete information that is "inadequate, irrelevant, no longer relevant, or excessive." The European Court upheld Mario's request, with judges ruling that individual users possess a "right to be forgotten." While this ruling sparked some controversy in the press, it undoubtedly stands as a landmark decision. The right to be forgotten has significant support from the EU. Under the direction of Commissioner Viviane Reding at the time, the European Commission suggested include this provision in the General Data Protection Regulation (GDPR). [4] The fundamental tenet of the right to be forgotten is that information expires after a certain period of time. Consequently, on May 25, 2018, the EU enacted the GDPR, whose Article 17 stipulates: Individuals may request that controllers collecting or processing their personal data delete information related to them." This formally established specific rules for exercising the right to be forgotten. It permits data subjects to demand that any data controller remove information about them from their databases at any time, regardless of the information's source or potential harm, provided this is balanced against other rights such as freedom of expression.

The case of Google v. Gonzalez marked a leap from theory to practice for the right to be forgotten. Against the backdrop of the big data era and the continuous advancement of science and technology, the speed of information dissemination has accelerated, its reach has expanded, and its impact has deepened. Consequently, the right to be forgotten has become an indispensable right in people's online lives.

In 2015, a Beijing court heard the case of Ren Jiayu v. Baidu, marking the first instance in China where a court accepted a case involving the right to be forgotten. In this case, the plaintiff, Ren Jiayu, was a former employee of the Tao Education Group. She left the company due to the deterioration of the group's commercial reputation. Baidu's search engine linked her name with search keywords such as "Tao Education," severely damaging Ren Jiayu's reputation and preventing her from finding new employment. Ren Jiayu requested that Baidu remove the relevant content, but Baidu refused. Ren Jiayu asserted that Baidu's actions caused severe mental distress and economic harm, infringing upon

his rights to his name, reputation, and the right to be forgotten. He demanded that Baidu immediately delete or block all content related to him. The court held that the prerequisite for civil liability protection in infringement cases is the plaintiff's legitimate civil rights or interests in the subject matter of the lawsuit. The right to be forgotten has only been referenced in foreign legislation and case law, and thus cannot serve as a legal basis for protecting such rights in China. The court determined that the right to be forgotten falls under general personality rights. It required Ren Jiayu to provide evidence demonstrating the legitimate interest and necessity of protection for the right to be forgotten, he asserted. However, he failed to furnish such evidence. Consequently, Ren Jiayu's request did not meet the requirement of legitimate legal interests in infringement protection. Therefore, the court did not support the plaintiff's claim regarding the right to be forgotten.

2.2 The regulatory framework of the right to be forgotten

2.2.1 Subjects of the right to be forgotten

The right to be forgotten applies to natural persons, not legal entities.[9] There are two reasons why legal entities cannot be subjects of this right: First, the material composition of legal entities differs from that of natural persons. Legal entities are fictitious persons—essentially organizations—that lack the rich emotional mechanisms inherent in natural persons. Consequently, they do not suffer psychological harm when infringed upon. Second, in order to facilitate societal monitoring, business information must be transparent and publicly released under the People's Republic of China's Company Law. As a result, legal persons cannot claim the right to be forgotten in order to remove historical data pertaining to businesses. The obligated parties for the right to be forgotten primarily include all network service providers capable of deleting or modifying publicly available data content on the internet, such as search engine service providers.

Consequently, the scope of individuals entitled to the right to be forgotten should be restricted to natural persons only. Legal persons and unincorporated organizations do not possess this right. In the event of the natural person's death, applications for the right to be forgotten may be made by their close relatives, with court decisions made in accordance with relevant provisions on the right to reputation.

2.2.2 Subject matter of the right to be forgotten

The subject matter of the right to be forgotten refers to the object targeted by this right—personal data information, which denotes valuable intelligence or information existing in data form.[8] The personal interests it encompasses include both spiritual and material interests, constituting a comprehensive form of personal interest.

First, personal information must be particular in order to be covered by the right to be forgotten. Information that can identify a particular natural person, either by itself or in conjunction with other information, and is largely preserved in electronic or other forms, is referred to as specificity. [7] Examples include a specific individual's name, identification number, and life history. Only when data is directly linked to a specific individual or entity can we thoroughly examine whether such data is legitimate and should be protected by law.

Second, the right to be forgotten falls under personality rights, which encompass both spiritual and property interests. Personal data similarly possesses both property and personality attributes. Personal data is both a form of property and a vital carrier of spiritual interests. It is neither a physical object nor equivalent to intellectual creations. With the advent of the information age, characterized by the development of the internet and digital storage and processing technologies, the status of data as the subject matter of the right to be forgotten will grow increasingly significant.

2.2.3 The content of the right to be forgotten

The right to be forgotten directly addresses the rights and obligations existing between the rights holder and the obligated party, namely the data subject and the data processor. As the rights holder, the data subject possesses the right to demand that the obligated party—the network service provider—take necessary actions regarding information related to their person. No one other than the data subject has the right to demand that the data controller fulfill the corresponding statutory obligation to erase data. As the obligated party, the data controller must strictly fulfill its obligations when the data subject asserts their right to have personal data processed. This constitutes the core principle of the right to be forgotten framework.

3. The delineation of the right to be forgotten and the right to erasure

The earliest protection of the right to be forgotten primarily manifested in the exercise of internet users' account deletion rights.[11] By deleting their accounts, users erased their digital footprints on the internet. Using this initial deletion act as a starting point to explore the legal transplantation of the right to be forgotten is scientifically sound and reasonable. Although China's deletion right shares many similarities with the EU's right to be forgotten, the latter should be recognized as a specific personality right encompassing the deletion right, as illustrated in Figure 1.[5] Both rights share the common objective of preventing the improper use or further dissemination of personal information, thereby protecting the privacy and rights of data subjects. However, they exhibit fundamental differences in their connotations, subjects of exercise, scope of application, and conditions for applicability.

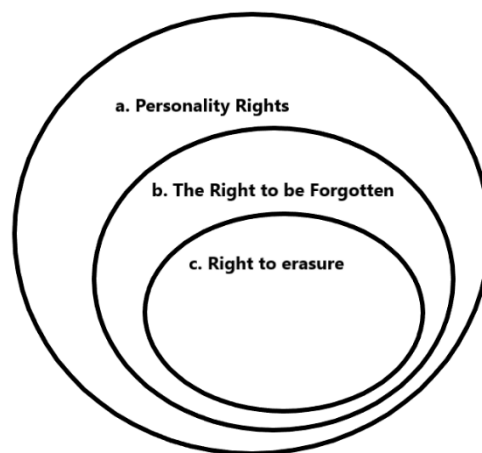


Figure 1. The Relationship between the Right to Be Forgotten and the Right to Erasure

In essence, the right to be forgotten encompasses two aspects: first, the right to have one's personal information deleted, which can be understood as "removal"; second, the right to have one's personal information removed from search engine results, which can be understood as "delisting." The GDPR also states in its articles that "deletion" is a method, while "being forgotten" is a means to achieve this right. The right to be forgotten offers greater protection for personal data than the right to deletion, which only directly reflects the impact of eliminating information. It focuses not only on the physical removal of data but also extends to respecting personal privacy.

In terms of the subjects affected by the exercise of the right to be forgotten, it involves entities at different levels. The scope of those affected extends beyond the originators of the information to include other data processors who manipulate the information.[10] During the processing of

information, the originators retain the right to demand that directly relevant data processors or third-party data processors take appropriate measures to delete the relevant information. The right to be forgotten transcends traditional one-to-one relationships, shifting responsibilities and obligations from a single source to multiple participants. This creates a more complex and extensive network governance structure within the legal framework. In contrast, the right to erasure remains confined to direct deletion by the directly involved data processor themselves. Neither the originator of the information nor third-party data processors can achieve the deletion of the information.

In terms of the scope of its subject matter, the right to be forgotten refers to an individual's right to have information about themselves that they have published online, as well as information related to them, deleted. This includes information they have published that may be republished by others in the future. Within the scope of the subject matter of the right to erasure, whether the information is unpublished or already published, it should be included within the protection of the right to erasure as long as it falls under the circumstances stipulated by law.

Regarding the conditions for applicability, the Court of Justice of the European Union has interpreted the applicability of the right to be forgotten to search engines, emphasizing their unique position within information dissemination channels. The Court noted that search engines are typically regarded as data processors, given their widespread distribution across the global internet and their profound influence on how people access information. [12] Therefore, when discussing the applicability of the right to erasure, it is essential to comprehensively consider the special circumstances of search engines and closely link them to Article 13 of the Personal Information Protection Act. This ensures that when determining the erasure obligations of data processors, the complex relationship between public interest, personal data protection, and the free flow of information in the internet context is appropriately balanced.

From an implementation perspective, the only way to exercise the right to erasure is through deletion. Methods such as modification, restricting dissemination, or hiding content can also fulfill the right to be forgotten, making deletion unnecessary unless absolutely unavoidable. Since deletion signifies the complete disappearance of information, yet it is difficult for humans to determine whether more appropriate methods than deletion may emerge in the future, the implementation methods for the right to be forgotten align better with human information management practices.

In conclusion, it is evident that the notions of the right to erasure and the right to be forgotten differ greatly in both their definitions and real-world applications. Therefore, equating the two is not only inappropriate but may also lead to confusion in legal application. Precisely because of these distinctions, when the right to erasure fails to fully meet the demands for personal information protection in the big data era, the legal transplantation of the right to be forgotten becomes particularly crucial.

4. The necessity and feasibility of localizing the right to be forgotten

4.1 The necessity of introducing the right to be forgotten in China

In the era of big data, personal information violations are characterized by low cost, rapid execution, and persistent visibility, posing severe harm. When such violations occur online, those exposed often suffer significant psychological trauma while also enduring substantial damage to their personal rights. Whenever individuals encounter such information online or contemplate others viewing it, they experience unease and shame. In some cases, those exposed fear renewed cyberattacks if they reappear in public, preventing them from promptly defending their rights. Personal dignity and freedom are the wellsprings of human development and represent a shared pursuit among all nations worldwide. If the right to be forgotten is implemented, data subjects could demand that data processors delete or disconnect links to personal information associated with

them—a concrete manifestation of realizing personal dignity and freedom. Therefore, it is necessary to transplant the right to be forgotten into legal frameworks.

4.1.1 The introduction of the right to be forgotten is necessary to improve China's personal information protection system.

The widespread use of the internet and the quick development of digital technologies have led to a growing amount of personal information being shared online. While this broad reach offers greater convenience to individuals, it simultaneously raises a series of issues, such as privacy breaches and data misuse. As a result, improving the security of personal information—especially the legal implementation of the right to be forgotten—has emerged as a pressing issue that has to be resolved.

In the early days of self-media and the internet era, personal events would gradually fade from people's memories over time. However, in today's big data era, the internet's memory function has made recollection a constant state. The primary issue with storing and processing electronic data in a big data context is the absence of human forgetfulness. A uniquely human trait with significant social functions. Precisely because big data lacks this forgetting function, individuals cannot escape the digital footprints and shadows they leave online. This binds them in fear of memories, making the introduction of a right to be forgotten essential. This would enhance China's personal information protection mechanisms, enabling people to forget information they do not wish to be remembered by the internet.

In summary, the legal transplantation of the right to be forgotten represents a solid step forward in refining China's personal information protection framework. It not only fills gaps in the existing system and safeguards individuals' privacy rights but also promotes the healthy and orderly development of cyberspace, aligning with international legislative trends. Therefore, it is imperative to intensify research and legislative efforts on the right to be forgotten, thereby providing more comprehensive and robust legal support for China's personal information protection initiatives.

4.1.2 The introduction of the right to be forgotten is necessary for safeguarding personal dignity and freedom.

The localization of the right to be forgotten contributes to further protecting the dignity and freedom of speech of data subjects in China, as citizens become more conscious of their rights and human rights protection develops. Today, with the proliferation of big data, "memory" has become the norm, while "forgetting" is the exception. When an individual commits a mistake, that error is not only preserved online indefinitely but also exposed to netizens nationwide. While such an internet system undoubtedly serves a deterrent purpose, potentially reducing the likelihood of future misconduct, it may prove overly harsh from the perspective of personal dignity. A single mistake does not equate to a lifetime of errors; individuals deserve the opportunity for societal forgiveness. [13] Contemporary society requires the establishment of a tolerant mechanism based on "respect and forgiveness," enabling individuals to reform and start anew. Such a system can be built precisely upon the "right to be forgotten." Swiss law stipulates that publishing criminal records under someone's name is illegal if the information lacks newsworthy value. Maintaining social stability requires forgiveness and tolerance toward those who have erred, making the introduction of the right to be forgotten particularly crucial. This right extends the entitlement to societal forgiveness to unspecified groups in the online environment, fully respecting human dignity and freedom. This aligns with China's advocated socialist human rights values, demonstrates our unwavering commitment to advancing China's human rights cause, and contributes to fostering a harmonious atmosphere in socialist society, thereby promoting the stable development of socialist nations.

4.2 The feasibility of introducing the right to be forgotten in China

4.2.1 China's legislative foundation

The Constitution, Personal Information Protection Law, Cybersecurity Law, Civil Code, and Data Security Law form the legal foundation for establishing the right to be forgotten in China. Although this right is not clearly defined in Chinese law at the moment, the trend of laws and regulations protecting human rights and personal data has made it possible for the right to be forgotten to emerge.

Article 33 of the Constitution, which is part of China's current legal system, states that human dignity is a fundamental human right that must be upheld and offers important guidelines for the creation of other laws and regulations. The legislative origins of China's Personal Information Protection Law lie in Articles 38 and 40 of the Constitution, which address the protection of personal dignity. The series of provisions concerning personal information protection within the Constitution clearly demonstrates the high priority China places on safeguarding personal data, making the introduction of the right to be forgotten both reasonable and necessary. Second, both Article 43 of the Cybersecurity Law and Article 1037 of the Civil Code stipulate the data subject's right to erasure. [9] However, these provisions are overly general, failing to specify concrete statutory circumstances. They remain declaratory in nature, posing significant challenges for legal application. Moreover, the scope of application is too narrow, limited solely to the individual data subject, and thus cannot fully resolve the issues currently present in internet-related cases. Therefore, the introduction of the right to be forgotten is crucial. Furthermore, while Articles 1194 to 1196 of the Civil Code address online infringement liability, these provisions require prior infringement as a precondition. They offer only passive, post-incident remedies. In contrast, the right to be forgotten is a proactive right that does not require prior infringement. Instead, it aims to prevent infringement by allowing data subjects to promptly exercise deletion rights. This preventive provision better safeguards the personal information security of internet users and reduces the occurrence of infringements. Although academic circles have significant debate over whether to introduce the right to be forgotten, in 2019, the General Office of the State Council issued the "Data Security Law (Draft for Comment)." This regulation reflects a new development trend: how to better achieve information transparency and better protect personal information security in the context of the online information environment.

The Constitution, Personal Information Protection Law, Cybersecurity Law, Civil Code, and other statutes provide relatively explicit provisions regarding personal information security. [11] However, most of these legal provisions are declaratory in nature, with many concepts remaining undefined. Therefore, in the process of protecting personal information, legal provisions should be further refined to establish a systematic personal information protection framework. Academic debates surrounding the right to be forgotten primarily stem from the ambiguous definition of this right under EU law, particularly its broad scope, which makes it prone to conflicts with other rights in practical application. Building upon this and drawing from the legislative practices of European countries, China can establish clear boundaries for the scope of application of the right to be forgotten.

4.2.2 China's judicial practice

In 2015, a Beijing court heard the "Ren Jiayu v. Baidu" case, marking the first instance of a Chinese court accepting a case involving the right to be forgotten. Ren Jiayu searched her name using Baidu's search engine and discovered her name was associated with Dow Education Group, an education company with a poor reputation where she had previously worked. This information adversely affected Ren Jiayu's job search and personal life. She requested that Baidu remove the relevant search terms from its search engine. After being denied, Ren Jiayu filed a lawsuit against Baidu. Although the Chinese court rendered a judgment in this case that diverged significantly from

representative “right to be forgotten” cases, this was because the court determined that the plaintiff’s asserted “right to be forgotten” lacked legitimate interests and the necessity for protection. This does not signify that Chinese courts have comprehensively rejected the right to be forgotten. The Supreme People’s Court designated *Ren Jiayu v. Baidu* as a guiding precedent, affirming citizens’ right to self-determination over their information and providing judicial support for the legal transplantation of the right to be forgotten.[14]

A legal regulatory model primarily focused on post-incident remedies struggles to effectively address personal information protection issues. The right to be forgotten aims to empower data subjects to demand the timely deletion of certain personal information from data processors, thereby preventing harm caused by its widespread dissemination or excessive exposure. Existing infringement laws struggle to fully safeguard the objectives of the right to be forgotten, as online infringement remedies presuppose the actual occurrence of an infringement. Failure to promptly delete personal information does not necessarily lead to infringing consequences, and even when such consequences materialize, establishing a causal link to the delayed deletion proves challenging. Furthermore, quantifying damages from improper personal information processing is challenging in practice, often resulting in litigation that is time-consuming, costly, and yields minimal outcomes. However, the consequences of personal information leaks or misuse may include illegal activities that threaten personal dignity and life safety. Therefore, it is crucial to create effective enforcement agencies, encourage businesses to process personal information legally, and guarantee the efficient application of pertinent laws and regulations due to the special nature of personal information protection.

From a judicial practice perspective, introducing the right to be forgotten in China is urgently needed. This right constitutes a vital component in safeguarding the integrity of personal information rights. Furthermore, as individual citizens—a vulnerable group—face overwhelmingly dominant online platforms, establishing the right to be forgotten can, to some extent, alter this unequal dynamic. In a sense, the formulation and application of the right to be forgotten can help redress this imbalance. The emergence of this right enables citizens to exercise their information rights more comprehensively, thereby achieving full control over their personal data. When individuals find they cannot delete past personal information, they can initiate legal proceedings under the provisions of the right to be forgotten to protect their personal dignity and advance the cause of human rights in China.

5. Conclusion

The right to be forgotten is a way to strike a balance between the advancement of online information and the protection of personal data in the context of big data. The legal transplantation of the right to be forgotten is a monumental and complex systemic endeavor. However, we must not retreat in the face of these challenges; rather, we must confront the practical issues within China’s personal information protection framework head-on. The legal transplantation of the right to be forgotten is an urgent matter. Building upon existing research on the legal transplantation of the right to be forgotten, this paper compares the multifaceted aspects of both the right to be forgotten and the right to erasure. Through analyzing the necessity and feasibility of transplanting the right to be forgotten, it argues that introducing this right is essential in today’s big data environment. The legal transplantation of the right to be forgotten can restore humanity’s inherent capacity for forgetting. While its introduction may impact China’s online economy to some extent, transplanting this right would enhance the existing personal information protection system, aligning with China’s unwavering commitment to advancing human rights. China should undertake the legal transplantation of the right to be forgotten based on its national conditions and practical circumstances, while exploring and

refining this right through judicial practice.

References

- [1] Wu Taixuan, Li Xin. *Research on Countermeasures Against "Over-Memory" in the Big Data Era: Localized Reflections on the Right to be Forgotten* [J]. *Journal of Northwest Minzu University (Philosophy and Social Sciences Edition)*, 2020, (02): 69-78.
- [2] Sun Yurong, Guo Yanxu. *Legal Issues of the Right to be Forgotten in the Big Data Era* [J]. *Journal of Beijing Union University (Humanities and Social Sciences Edition)*, 2019, 17(02): 92-97.
- [3] Chen Jianzhang. *Considerations on the Right to be Forgotten in the Big Data Era* [J]. *Journal of Southeast University (Philosophy and Social Sciences Edition)*, 2022, 24 (S1): 50-53.
- [4] Casarosa F. *Judicial Interactions with the Court of Justice and the Application of the Right to be Forgotten by National Courts*[M]//*Digital Media Governance and Supranational Courts*. Edward Elgar Publishing, 2022: 72-90.
- [5] Huang Yuyuan. *Considerations for Introducing the Right to be Forgotten in China in the Era of Big Data* [J]. *Journal of Harbin University*, 2025, 46 (02): 63-67.
- [6] Feng Yanran. *Reflections on China's First Right to be Forgotten Case* [J]. *Hebei Enterprise*, 2018, (11): 144-145.
- [7] Xie Yuanyang. *Private Law Protection of Personal Information* [M]. China Rule of Law Publishing House: 201603: 255.
- [8] Kuang Hong, Hu Chunhui, Wang Xinhong. *Establishing the Right to be Forgotten System in the Era of Big Data* [J]. *Journal of Chengdu University (Social Sciences Edition)*, 2020, (04): 20-27.
- [9] Wang Liming. *On the Legal Protection of Personal Information Rights: Focusing on the Demarcation Between Personal Information Rights and Privacy Rights* [J]. *Modern Jurisprudence*, 2013, 35 (04): 62-72.
- [10] Zhu Lijun. *"Questioning the Argument That the Right to Be Forgotten Can Be Replaced by the Right to Erasure"* [J]. *Forum on Politics and Law*, 2024, 42 (05): 78-90.
- [11] Ruan Chenxin. *The Right to be Forgotten as a New Type of Right: Its Affirmation and Practical Development* [J]. *Journal of Anhui University (Philosophy and Social Sciences Edition)*, 2022, 46(03): 98-105.
- [12] Tsesis A. *Data subjects' privacy rights: regulation of personal data retention and erasure*[J]. *U. Colo. L. Rev.*, 2019, 90: 593.
- [13] Shen Weiwei. *On the Recovery Mechanism for Digital Emergency States: Taking COVID-19 Prevention and Control as an Example* [J]. *Tsinghua Law Review*, 2021, 15 (02): 121-142.
- [14] Zhang Ruikun. *Reflection and Reconstruction of China's Right to Be Forgotten System* [J]. *Journal of Fujian Police University*, 2020, 34 (06): 88-93.