

Analysis of the Legal Regulations of “Big Data Killing”

Bingwu Wang

Anhui University of Finance and Economics, Bengbu, Anhui, 233000, China

Abstract: With the development of platform economy, it is more and more common for Internet enterprises to use big data to analyze consumer consumption habits and guide consumers to consume irrationally. Due to the rapid development of Internet technology, the absence of legal supervision, algorithmic technology is very high concealment, “big data killing” is frequently infringing on consumers’ fair trade, free choice, “big data killing” violates the principle of equal pay, fair trade, disrupt the market order, adverse to the healthy development of the economy, for the “big data kill” problem, should focus on improving the regulatory system, improve the enterprise responsibility system two aspects, such “killing” behavior.

Keywords: Platform Economy; Legal Regulation; Big Data-based Price Discrimination

1. First, “big data kills” the formation of the causes of analysis

1.1 The absence of legal supervision

At present, special legislation on consumer information protection does not exist, only in Article 14 of the Consumer Rights and Interests Protection Law of the People’s Republic of China stipulates that consumers have the right to personal information to be protected in accordance with the law, and Article 5 of the Electronic Commerce Law of the People’s Republic of China stipulates that e-commerce operators have obligations to perform personal information protection. According to the current law, it is difficult to determine that Internet enterprises are illegal, Internet enterprises are using the legal regulatory loopholes, to continue to infringe on the rights and interests of consumers.

1.2 The high concealment of algorithmic technology

Big data is a typical application of algorithmic discriminatory pricing, which has also been discussed in a considerable amount in the academic^[1] community. With the progress of science and technology, the application of new technology is of great significance to promote the development of commodity trading, but it also brings us a negative effect that can not be ignored.

2. Second, “big data kill mature” development status study

2.1 Identification of “big data killing” behavior

“Killing” has a certain illegality, that is, price discrimination and price fraud.^[2] The E-Commerce Law defines the behavior of “big data killing”, the so-called “big data killing” refers to the behavior of e-commerce operators to paint users according to their consumption habits and users’ personal information, and to provide different price services for people at different consumption levels according to the level of consumption.

“Big data kills” are mainly expressed in: differential pricing and differential display. Differential pricing means that different consumers have different transaction prices, and differential display means that different goods are displayed to different consumers.

For another part of the consumer, its price sensitivity is low, its own economic conditions are better, will not care too much about commodity prices, as to whether to promote, for this part of the consumer is not important, its emphasis on the quality of goods, less attention to promotional activities, for such consumers, the Internet trading platform will accurately push high-priced luxury goods, and will increase the price of goods, to obtain additional profits.

2.2 The implementation path of “big data kills”

The development of Internet platform, thanks to the progress of science and technology, the emergence of Internet trading platform for consumers to buy goods has brought great convenience, the emergence of Internet trading platform broke the traditional face-to-face trading methods, whether for operators, or consumers, the emergence of Internet trading platform has undoubtedly made a great contribution to the promotion of commodity trading.

3. Third, the legal regulation dilemma

3.1 Asymmetric information acquisition

Consumer information access is a single, information access is more difficult, compared to the operator, consumers are often in the latter of information acquisition, often operators to the information processing procedures, information is transmitted to consumers. Consumers enjoy the right to fair trade, that is, when they buy goods or receive services, they are entitled to quality assurance,

reasonable prices, correct measurement and other fair trading conditions.^[3]

3.2 The rapid development of customized services

With the rapid development of Internet technology, a variety of customized services develop rapidly, consumers in the process also showed different consumer demand, operators use the collected consumer information, to push customized services to consumers, consumers for Internet platforms often have a greater dependence, and the more consumers show specific needs, the more operators use this to collect more consumer information, and this behavior in the name of legal collection, the law can not prohibit operators to freely formulate business strategies, Operators have the right to operate freely, operators are willing to provide specific services under the guise of obtaining more personal information from consumers, in order to accurately analyze consumer behavior, and further seize the benefits of transactions.

4. Fourth, the regulatory approach

4.1 Improve legal protection

At present, the legal protection of personal information is small, the law is not sound enough, the protection of consumers' personal information regulations are too vague, there is no special personal information protection law, consumers often passively into the situation of information theft, in the Internet era, the background of personal information protection is more and more difficult, the Internet spread fast, enough At home, known world affairs have become the norm today, information dissemination of the era background, in order to protect personal information, we must make special laws. While taking legal measures, taking into account the freedom of the digital economy, constructing a multi-subject supervision mechanism and a diversified feedback channel for consumers, forming a regulatory mechanism supplemented by the self-regulatory and consumer associations of industry organizations.^[4]

4.2 Improve the system of responsibility

For the illegal collection of consumer personal information by the platform, today's law defines the responsibility of the behavior vaguely, the punishment is small, and the realization of "big data is familiar" has two basic requirements: first, to obtain consumer big data information;^[5] It is difficult to prevent operators from carrying out price fraud, Internet enterprises often hold a lucky mentality, in the illegal collection of consumer personal information, if not found, you can use consumer personal information for profit, if found by consumers, often will not have a big loss, so more unscrupulous. The law provides that the law provides for the operator to carry out price fraud, law enforcement departments have the right to impose administrative penalties on the enterprise, but the current law for price fraud is too vague, the definition of responsibility is not clear, but also more conducive to the arrogance of enterprises, the law must improve the consumer's personal information disclosure relief mechanism, better protect the legitimate rights and interests of consumers. In addition, there is a need to harmonize the concept of price fraud and the legislative provisions that constitute the elements.^[6]

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