Research on the Risk and Legal Regulation of Face Recognition

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Abstract— *Face recognition technology is used in many fields, from people's daily life to government security management. But the convenience and risk of face recognition technology coexist, if the face information collector does not have strict security measures, the face information will be leaked in the use of great security risks. In this paper, we will focus on the design of our country's face information protection scheme. With the development of new technology and new technology, it provides strong protection for personal information security and social order stability.*

Keywords— *Biological Information; Face Recognition; Legal Regulation.*

I. THE PRESENT SITUATION OF THE APPLICATION OF FACE RECOGNITION TECHNOLOGY AND THE NECESSITY OF ITS LEGAL REGULATION

(I) Risks in the application of face recognition technology

1. Lack of awareness of face information collection and weak awareness of self-protection. Now the phenomenon of face information is getting more and more serious. People's facial feature information can be collected by the collector at will. Most users have no awareness of protecting their own face information.

2. Face information is frequently leaked, causing irreversible damage to data subjects. Facial information is unique, once leaked will cause irreversible consequences, to the damage caused by the main body of information even if the use of after-the-fact remedy measures are often useless.

3. Catalyze the development of a series of illegal industries. Because of the profitability of the illegal industry, they focus on the face recognition industry which can bring them great benefits, and the cyberspace has the virtual changeable and unfathomable characteristics. Therefore, many illegal industries illegally trade facial data through the cyberspace, which has a bad influence.

(II) Necessity of applying laws and regulations to face recognition technology

Face data is unique, and it is impossible to replace a person's face. Our facial information, once leaked, will give us a lifelong impact, even after the leakage of timely rely on legal means to safeguard the success, it is impossible to restore to the state before the leak. It can be concluded that among all personal information, the most special and important information is facial information. Therefore, face recognition technology should be regulated by law, so that facial information can be protected reasonably and legally, so as to prevent the disclosure or abuse of facial information from causing serious damage to the legitimate rights and interests of individuals.

II. PROBLEMS IN THE APPLICATION OF FACE RECOGNITION TECHNOLOGY

(I) Inadequate regulatory measures

The secrecy of face recognition technology brings great challenges to the supervision. The law is absent in face recognition technology, and the government is not in place to regulate this issue. Due to the government's lack of regulations on face recognition technology and industry standards, the face recognition industry is growing brutally, which brings convenience to people's production and life. There is no special face recognition technology system supervision mode in our country. At present, the way to deal with the enterprises involved depends on the administrative contract. At the same time, there is no special supervision organization, no clear supervision subject, no unified supervision mode, which is the problem in the face recognition technology supervision process. Unclear regulatory subjects lead to overlapping and multiple law enforcement in some areas while unsupervised in others, making it difficult to effectively enforce the law.

(II) Relief system to be improved

At present, the relief situation is that when people's information has been leaked or illegally used, the judicature will carry on the relief after being infringed. But the information tort caused by face recognition technology has great particularity compared with common personal information tort. Relieving only after the event cannot solve the risk effectively. In view of the different types of personal information infringement, we should adopt different relief methods.

(III) Immature industry self-discipline mechanism

Western countries implement industry autonomy in face recognition regulation, and the industry autonomy system has been relatively complete. At the same time, the development of face recognition industry in our country is very slow. The advantage of industry autonomy lies in that it is different from the mandatory provisions of the national law. It is a unified norm that can be negotiated by the practitioners in the industry.

The Privacy and Security Protection Initiative for Biometric Users is a provision on industry self-regulation issued by Alipay in 2019. The release of the provision is of pioneering significance and is the first biometric industry self-governance activity that calls on relevant enterprises to join. From this point of view, our country's face recognition technology industry autonomy of the self-regulatory model needs to be constantly improved.

III. LEGAL REGULATION PATH OF FACE RECOGNITION TECHNOLOGY

(I) Improve administrative supervision measures

The lack of supervision subject is one of the reasons for the ineffective protection of personal information. Therefore, the establishment of a special regulatory body to achieve all-round, dynamic external supervision and management to ensure the collection of personal information, the use of security. Any other behavior using personal information must be under dynamic supervision, so as to reduce the frequency of misuse of face recognition system and standardize the collection and use of personal information by enterprises and governments.

Because the technical features of face recognition may bring many unknown risks, the regulatory mechanism should be flexible, dynamic and gradual, rather than stagnant and static. The following two points may be used as the specific implementation methods of the regulatory mechanism: First, while strengthening the supervision of information security, promote the communication between the government and enterprises, strengthen the training of enterprises, strengthen the guidance of information security, and provide enterprises with external guidance on legal compliance. In addition, the internal supervision mechanism of enterprises shall be improved to ensure that they are in a reasonable and uninterrupted dynamic development process; and secondly, attention shall be paid to the connection with legislation while intensifying administrative supervision, with laws and regulations as the value orientation for technology application, supplemented by external supervision, so as to protect the safety of facial information.

(II) Improving the judicial relief system

1. Clarify the subjects of litigation rights. Face recognition technology is supported by computer algorithm. It is easy to obtain the privacy data of the person by simply collecting and analyzing the features of the person's body. When the infringed perceives that their legitimate rights and interests have been infringed upon, the whole infringing act has generally come to an end. Even if the infringed is aware of the infringement on the spot, it is difficult to accurately grasp the relevant evidence through their own knowledge and ability, which leads to the dilemma of defending rights without basis. At this time, defining the infringer is the most important thing to protect the right of relief of stakeholders.

2. Clarify the burden of proof. The burden of proof has always been the focus and difficulty of civil litigation. At present, the principle of who asserts and who adduces evidence is taken as the principle in our country. Therefore, according to the principle of proof in our country, the infringed party should not only prove the result of the infringement, but also prove the causality between the result of the infringement. The intellectualization and concealment of face recognition technology make it difficult for the infringed to provide evidence, which leads to the embarrassing situation that it is difficult or even impossible to protect rights. In this kind of infringement case, the burden of proof of the infringed should not be excessively demanded. Reasonable distribution of the burden of proof is the key to realize the effective exercise of the right of relief.

3. Improve judicial response capacity. Judicial organs should also promptly respond to the judicial disputes caused by new technologies and improve the legal system to respond to the needs of the times. Therefore, we can enhance the ability of judicial organs to deal with this kind of disputes from the following aspects, balance the relationship between personal information protection and technology development.

(III) Strengthen industry self-regulation and establish a long-term supervision mechanism

Restricting the scope of use of face recognition technology by enterprises can protect citizens' personal information and privacy rights to the greatest extent, regulate the collection and use of users' personal information by enterprises, and play a positive role in guiding enterprises to use personal information such as faces to carry out business activities. However, the law itself is the outcome of weighing the interests of multiple parties can only provide minimum protection for citizens' personal information. Under such circumstances, corresponding administrative regulations may be promulgated, making enterprises must introduce industrial self-discipline norms as supplementary measures, which can, on the one hand, enhance enterprises' enthusiasm to protect users' personal information and establish a positive corporate image, on the other hand, help enterprises to formulate more stringent internal regulations according to their actual conditions, and balance the conflict between personal information protection and face recognition technologies to the greatest extent.