

Research on Legal Issues of Electronic Contract in China

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Abstract— With the rapid development of the network in China, some legal issues on the network are becoming more and more prominent. Based on China's current Internet related legislation, and drawing on the beneficial experience of foreign legislation, this paper refines the regulation and governance of China's status from the aspects of the details of legislation, the protection of consumers' rights, the clarification of the rights and obligations of both contracting parties, and the restriction of operators' unilateral modification rights. At the same time, it also pays attention to the protection and guidance of minors, helps minors correctly use the Internet, and signs electronic contracts according to law, Improving the system of determining the effectiveness of minors' signing of electronic contracts will enable China's civil law to play a better normative role in this era of continuous development of network information.

Keywords— Electronic Contract, Legal Characteristics, Standard Terms, Minors' Electronic Contracts.

I. INTRODUCTION

Electronic contract, also known as electronic commerce contract, according to the model law on electronic commerce of the United Nations Commission on International Trade Law and the electronic transaction laws promulgated by countries around the world, and in combination with the relevant provisions of China's civil code, electronic contract can be defined as: electronic contract is an agreement reached between two or more parties in the form of electronic information network to establish, change and terminate the relationship of civil rights and obligations of property.

The subject matter of an electronic contract may be the delivery of goods or the provision of services. Where the parties to an electronic contract have otherwise agreed on the manner and time of delivery of goods or provision of services, such agreement shall prevail.

II. ANALYSIS OF LEGAL CHARACTERISTICS OF ELECTRONIC CONTRACTS

Electronic contracts cover a wide range of contents, and the signing and performance of electronic contracts are mostly carried out through e-mail, network contracts, etc. This contracting mode can greatly reduce the transaction cost and increase efficiency. In the context of global economic integration, the transaction object of electronic contracts can be any natural person, legal person or other relevant institutions. Therefore, electronic contracts must have a set of corresponding legal norms. For example, the establishment of a credit system enables the parties to understand each other's credit situation before the transaction. In the context of today's global economic integration, credit is also an important intangible asset.

The format of electronic contracts has also become specialized and formatted. Electronic contract is carried out through the networking of electronic equipment. It is different from the traditional paper contract. Its whole transaction process is completed by network technologies such as electronic signature and electronic authentication. Without the

corresponding technology and specification, electronic contract cannot be truly realized and cannot exist.

Networking of electronic contract signing. The civil code of China divides the signing of contracts into two stages: offer and acceptance, and so does electronic contracts. The traditional way of contract offer and acceptance is different from electronic contract. The offer and acceptance in electronic contract are carried out through data exchange. The main mode is to input the relevant information into the predetermined program, and then the computer automatically makes the corresponding expression.

As a special form of contracting, the establishment of electronic contract is similar to the general contract, but also must have the corresponding elements and conditions. Most of the civil laws in the world have simplified the establishment of electronic contracts. Its purpose is to adapt and promote electronic transactions and meet the needs of social development. Therefore, in the establishment of electronic contracts, only the two parties need to reach a consensus on the main terms of the contract.

As for the main terms of the contract, the current legal provisions are relatively general, and the Chinese civil law has only enumerated terms, that is, general terms. In terms of the essence of electronic contract, if both parties reach an agreement on the main terms of the contract, the agreement of both parties should be the main terms. If no agreement can be reached, the main terms of the contract should be determined according to the nature of the contract.

III. LEGISLATIVE ANALYSIS OF STANDARD TERMS IN ELECTRONIC CONTRACTS IN CHINA

China's current legal regulation is mainly reflected in the civil code, e-commerce law, insurance law, maritime law, and other aspects. Articles 496-498 of the civil code give a detailed description of the meaning of the standard terms, the obligations of explanation, the determination of effectiveness and the method of interpreting the terms. Compared with the provisions in the contract law, the civil code has strengthened the responsibility for the provider of standard terms, that is, it

has added the provisions of major interests. At the same time, according to the provisions of the contract law on "cancellation can be requested", in the contract part of the civil code, the parties have the right to claim that the contentious clause should not be included in the contract. In addition, the situation at the time of invalidity has also been refined, with "unreasonable" as the constraint, which plays the role of a bottom line clause.

In China's consumer protection law, the "standard terms" of business operators are limited, including the duty of business operators to draw attention, the obligation to explain and the invalidity of the terms. In addition, Article 25 of China's consumer rights and interests protection law stipulates the "cooling off period" and "no reason to return goods" for consumers, which makes up for the current legal defects in China in a sense. In addition, as for the standard terms of electronic contract, the Maritime Code stipulates the circumstances of invalidity of the standard terms of the contract of carriage: invalidity in violation of the provisions of Chapter 4 and invalidity of the terms that exempt the carrier from legal liability. The insurance law also stipulates the content of the validity of standard clauses.

A. Deficiencies of China's Current Legislation

With the development of society, the defects of the standard clauses in electronic contracts become more and more prominent. Consumers' information, privacy, security rights, the right to be respected and the complexity of standard terms are issues that cannot be ignored at present. However, China's current laws and regulations lack corresponding legal norms for the standard terms in electronic contracts. At present, there are some defects in the regulation of the standard terms of electronic contracts in Chinese law:

First, China's current standard terms of electronic contracts lack relevant laws and regulations, and national legislation to regulate them. The standard terms in the electronic contract are part of the contract, but the existing laws and regulations in China have certain defects in the contract itself and the content of the standard terms. For standard terms, we can refer to foreign legal provisions and make detailed provisions in the civil law. For standard terms in electronic contracts, we can regulate them through the e-commerce law or the consumer rights and interests protection law, and there is no need to regulate them through special laws.

Second, the current legal provisions are relatively general, especially with regard to the standard terms in electronic contracts. At present, there is no final conclusion, and the academic community believes that the content of the current law is not clear. In addition, from the perspective of civil law, the connotation of the fairness principle that the parties to the electronic contract should abide by is unclear, the extension of the operator's duty to draw attention and the delivery time are unclear.

Third, it is difficult to protect the rights and interests of consumers. In the signing of electronic contracts, operators often put the standard terms in a place that users can't detect and express them in vague language, which makes it difficult to protect the rights of consumers. In addition, for the three types of electronic format terms, consumers can only choose

general acceptance or generalized negation. In the web browsing contract, there is a case where the user will lose the right to use the website if he rejects some protocols. This obviously infringes the user's right of free choice.

B. Legislative Suggestions on the Standard Terms of Electronic Contracts

In the terms of electronic contract, corresponding provisions are made for the content of specific format terms. The regulation of the content of the standard terms is mainly to exclude the terms that violate the principle of good faith. Article 496 of the civil code has improved the regulation in a sense, so that the parties can exclude the litigation clause from the contract, thus strengthening the application of relevant provisions in China. In terms of content management, the German model can be adopted, that is, the form of "blacklist" and "gray list" can be used to list the defects in the effectiveness of the standard terms. According to the seriousness of the imbalance of rights and obligations in the standard terms, they can be divided into "blacklist" which is invalid from the beginning and "gray list" which should be subject to reasonable discretion.

The relevant provisions in China's "blacklist" should be article 497 of the civil code, but in judicial practice, the law is too general, and judges have great discretion in determining the nature of litigation provisions. Bringing the blacklist and gray list system into law can easily regulate the standard terms in electronic contracts, and also limit the discretion of judges. The typified and exhaustive examples are helpful for the judge to directly determine the invalidity of the clauses involved in the case according to the blacklist in the proceedings, and only make a specific analysis of the contents belonging to the gray list.

Protect consumers' right to know. Due to the non dialogic nature of e-commerce contracts and the influence of profit seeking by operators themselves, consumers' information rights are easy to be infringed. Therefore, it is very necessary to strengthen the information disclosure obligation, explanation obligation and attention obligation of the standard terms providers of electronic contracts. For e-commerce contracts, the laws and regulations of many countries have strictly regulated the information disclosure responsibility of operators. The operator should provide relevant important information to users timely and fully.

Clarify the application conditions of the principle of apparent unfairness. Article 496 of the civil law stipulates that the parties to the operator should weigh the relationship between rights and obligations on the basis of equality, but the meaning of this principle is not clear enough. If the provider of standard terms violates the principle of fairness, it will inevitably involve the judgment of apparent unfairness. However, there are different views in both domestic and domestic academic circles.

IV. ANALYSIS OF THE EFFECTIVENESS OF ELECTRONIC CONTRACTS CONCLUDED BY MINORS

According to the 46th statistical report on Internet development issued by the China Internet Information Center, by June 2020, the number of Internet users in China had

reached 940million, of which 3.5% were under the age of 10 and 14.8% were between the ages of 10 and 19. It can be seen that teenagers' learning, entertainment, consumption and other activities on the Internet can not be ignored by Chinese law. However, due to the virtual nature of the network itself, the number of lawsuits caused by teenagers signing electronic contracts for online consumption is increasing. If China's traditional legal system is adopted to solve the problem, it will conflict with the advantages of fast and convenient online transactions, which will greatly reduce the efficiency of online transactions. Therefore, it is of great significance to establish and improve the legal validity determination system of minors' electronic contracts to promote the healthy development of China's e-commerce.

A. Problems Existing in the Provisions on the Effectiveness Of Minors' Electronic Contracts

The first problem: the current regulation is inconsistent with the development of civil capacity of minors in the network environment. Civil capacity is an important standard to confirm whether the contract is effective or not, and its capacity is more mature with the improvement of people's living standards to a certain extent. Today, teenagers need more recognition of their civil rights and more freedom to participate in online activities to meet their increasing material and cultural needs.

The second problem: it is difficult to determine the true identity of the trading partner. Due to the virtual nature of the network itself, the identities of both buyers and sellers or multiple participants are in digital form, so it is difficult to judge the real situation of each other. Even in face-to-face transactions, it is easy to make people unable to distinguish the identity and age of the other party, let alone in the virtual online world. It is almost impossible to distinguish the real identity and age of the other party. If minors use their parents' accounts for transactions, even if the other party has carefully performed its obligations, it is impossible to know who is using this account.

The third problem: the fraud of minors in electronic contracts is not clearly defined. In China's current electronic contracts, the legal consequences of minors' fraud have not yet been clearly stipulated. If a minor intentionally trades in a false identity for entertainment or other purposes, then the legal agent of the minor has the right to refuse to recognize it, resulting in the invalidation of the electronic contract. This is tantamount to abusing the special protection given by the law to minors, leading to the asymmetry of rights and obligations, and violating the most important principle of honesty in the civil law.

B. Suggestions on Regulating the Effectiveness of Minors' Acts of Concluding Electronic Contracts

At present, the validity of minors' signing electronic contracts, whether handled according to the provisions of the general contract or by the method of complete exclusion, is not conducive to solving the actual problems, and it is too blind and careless. The actual situation is ever-changing, and the system needs to be improved, but there are also reasonable places. Between the protection of the interests of minors, the

protection of transaction security and the protection of the legitimate rights and interests of bona fide counterparts, we must proceed from reality and make a comprehensive evaluation on the whole.

With the development of e-commerce in China, the complexity of actual cases is increasing. The disputes caused by minors' signing of electronic contracts can be better solved by starting from various aspects. We should improve the technical level of electronic signature and electronic authentication, improve the corresponding legal system, and build a diversified mechanism for preventing and resolving electronic contract disputes on this basis. With the help of a third party to participate in and strengthen the review and confirmation of juvenile transactions, improve the stability of transactions. For example, in places where there are many problems such as online games, webcast, and virtual currency recharge, there should be an independent audit system, with professional personnel responsible for the substantive audit of the network protocol to ensure the security of the transaction. At the same time, the fair protection of consumers' rights and interests can also be achieved through the participation of a third party. In addition, under the existing legal provisions, a special mediation or arbitration institution can be established to solve the disputes arising from the signing of electronic contracts by minors, so as to alleviate the contradictions between the parties and improve the efficiency of dispute handling.

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