Reasons for Big Data's " Unfair Treatment " and Legal Countermeasures

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Abstract

Although the phenomenon of big data "unfair treatment" is suspected of price discrimination, price fraud and other illegal activities, it is actually the result of enterprises' excessive use of users' online platform data. From the perspective of "unfair treatment", further researched the data collection problems behind "unfair treatment" and the operating status of Internet companies. Research has found that the company's compulsory claims and user portraits have seriously violated users' right to know, to choose, and to privacy. To achieve this, it is necessary to put forward a countermeasure mechanism for enterprises to use user data reasonably and legally from the legislative, technical and enterprise level.

Keywords

Big data; Unfair treatment; Price discrimination; Pricacy protection.

1. Introduction

"If you book the same hotel room on the same online platform at the same time, the price of the new user will be lower than that of the old user. On the same route, using the same taxi software, iPhone users and Android users will pay the price There are significant differences. An online travel platform will give new users a certain number of coupons so that they can enjoy more discounts than old users, etc. These phenomena are what consumers call big data "unfair treatment."

"Unfair treatment" is not a proper term or a generally accepted concept in the normative sense. However, in practice, many people blindly and erroneously follow the trend, calling some phenomena that do not belong to the "big data eradication" as "big data eradication". Because this kind of information is widely disseminated, people have a lot of misunderstandings about this concept. The author believes that the frequent occurrence of big data in today's society mainly refers to the fact that in a specific network environment, the same platform provides the same product or service in the same time period, and old users pay more than new users.

2. The Legal Attributes of "Unfair Treatment" and Price Discrimination

Due to the inherent hysteresis of the law, it is impossible for everything to be regulated and restricted. As a new situation and new problem in practice, big data is still a blank in the field of legislation. However, many experts and scholars attribute it to price discrimination and price fraud. However, its legal attributes are still controversial in academic circles.

2.1. "Clearing Familiarity" and Price Discrimination in Economics

In traditional economic theories, price discrimination means that manufacturers require different prices when selling the same product to different consumers, or set different prices according to consumers' purchases. This pricing method of manufacturers is called price discrimination or differential pricing [1]. It can be divided into three forms: the first level of price discrimination, Second-level price discrimination and third-level price discrimination.

The first level of price discrimination is also called complete price discrimination. It means that a monopolistic manufacturer sets a different sales price for each unit of goods according to the reserved price of each consumer, so that the producer can occupy all the consumer surplus and maximize the profit. change. Price discrimination was almost impossible in the general environment of the past, but in today's "Internet+" era, conditions have been created for this phenomenon. Preference is analyzed, and the pricing is "tailor-made" accordingly to realize that everyone has a different price. This is the specific manifestation of price discrimination. Therefore, according to the above definition, the "killing" of big data is an act of price discrimination in the economic sense, but it is not completely equivalent to price discrimination in the legal sense. [2] As mentioned earlier, the "killing" of big data is a special price discrimination in today's society. Price discrimination is indeed contrary to the principle of good faith and common ethics, but whether it touches the legal aspect is worthy of further study.

2.2.   Whether It Belongs to "Price Discrimination"

According to the provisions of Article 7 and Article 14 Paragraph 5 of the "Price Law of the People's Republic of China" (hereinafter referred to as the "Price Law"): Operators should follow the principles of fairness, lawfulness and honesty in pricing. Where business operators provide the same goods or services, they shall not discriminate in price against other business operators with the same trading conditions. It can be seen that the differentiated pricing of Internet platforms for different users obviously violates the legislative spirit of Article 7 of the "Price Law", but Article 7 of the "Price Law" only has the meaning of a statement or claim, and there is no clear assumption of legal responsibility. Regulation. Moreover, Article 14 of the Price Law restricts operators from being the subject of price discrimination. If there is no express provision in the law, it does not constitute a crime, and this article does not apply to price discrimination between business operators and consumers.

The "Anti-Monopoly Law" stipulates: "Business operators shall not, without justifiable reasons, give different treatment to transaction partners with the same conditions when the transaction price and other transaction conditions are the same." In practice, there are many forms of differential treatment, of which price discrimination is the most common. However, the "Anti-Monopoly Law" mainly regulates operators (including government agencies, industry organizations, etc.) and requires one of them to have a dominant market position. Therefore, the author believes that the "killing" of big data is not a legal "differentiated treatment" behavior. First of all, the companies that implement the behavior of "unfair treatment" need to be recognized as having a dominant market position, which limits the scope of subjects and only applies to some companies with a large market share, while the "unfair treatment" of enterprises without market dominant position is obviously It is not treated differently. Secondly, the emergence of "differential treatment" is the result of some companies' abuse of market dominance to restrict competition. If some companies implement differential treatment due to factors such as supply and demand, seasonal changes, or market management strategies, reasonable price adjustments can be made. In summary, the nature of "unfair treatment" needs to be strictly distinguished from the subject, behavior, and legal cause and effect. Once the basic elements of the "discriminatory treatment" in the law are not met, the Anti-Monopoly Law cannot regulate it.

2.3.   Whether It Is Price Fraud

According to Article 14 of the "Price Law" and the National Development and Reform Commission's interpretation of the "Regulations on Prohibition of Price Fraud": "Business operators shall not use false or misleading price methods to induce consumers or other business operators to conduct transactions with them." The "Consumer Rights Protection Law" also stipulates that consumers have the right to know, the right to choose, and the right to fair transaction. In order to increase the transaction volume, the Internet platform treats different

users who consume the same product differently (mainly due to factors such as price differences) without the user's knowledge, making old users based on long-term usage habits and trust, and even loss Complete the transaction with the platform under the selected situation. In the author's opinion, this kind of behavior should constitute price fraud in the legal sense and at the same time cause damage to consumers' rights and interests. The specific analysis is as follows: First, from the perspective of objective behavior, different price policies are implemented, and at the same time the obligation of notification is violated; second, from the subjective aspect, operators directly and deliberately commit fraud in order to achieve higher profit transactions With the acquisition of more new users, it does not hesitate to conceal the real situation, such as old users' transaction prices, transaction margins and other aspects; third, from the point of view of the damage consequences, it misleads ordinary consumers and makes them lack of comparison and Suffer unnecessary property losses under the selected circumstances. Finally, there is a legal causality between tort and damage.

3. Types of Collected Information and Typical Problems

The basic technology of big data can be summarized as "collection, storage, calculation, access" four words. The so-called "unfair treatment" incidents mainly occur in two aspects: calculation and access [3]. It can be seen that the collection of user data by enterprises is beyond the scope of general reasonable purposes, and the data collected beyond the authority has become the first step of "unfair treatment" technology. In the early stage, companies continue to collect user data, whether on the platform or through third-party "collision" sharing, and try to expand the scope of data collection, including general, sensitive, necessary or non-essential, in order to achieve better good user positioning. Then, the company staff will analyze the users on the platform one by one based on the data obtained in the previous period, and give them personal labels such as "art girl", "purchasing power", "old users", and "potential users". This process is commonly known as "user profile." Finally, in the process of trading with the platform, the user is not an unfamiliar individual. The platform has mastered the user's consumption characteristics and payment ability in the previous data analysis stage, thereby determining the nature and price of the goods provided. In the process of the "unfair treatment" incident, a user platform has a high consumption frequency, and of course it will be posted on the old user platform. The platform will therefore conclude that these users have long-term consumption habits and will not lose without special reasons. Therefore, when providing goods or services, the platform will not specifically give preferential policies, and these users will not perceive the slight premium of the goods. Therefore, compared with new users, old users are obviously treated unfairly. It can be seen that the completion of "unfair treatment" is closely related to the previous data collection. Without a large amount of data to locate users, companies cannot accurately grasp the personal characteristics of users, nor can they distinguish user characteristics to treat users differently.

3.1. Types of Information Collected:

3.1.1. Geographical Location Information

Internet companies use the location information of the location service opened by the user to classify and learn the market information around the area where the user appears, and establish a user location and market positioning model. For users in a small area of the physical store, the price of the goods will rise to a certain extent due to the price comparison and the difficulty of purchasing the goods. For consumers in the "rich district" of high-end shopping malls, the price of luxury goods will also increase to a certain extent.

3.1.2. Consumption and Browsing Records

Internet companies use user consumption and browsing information to model users' purchasing power and purchasing propensity. For consumers with strong spending power or consumers who are eager to buy a product, the system automatically increases the price of these users or these products.

3.1.3. Social Information

By analyzing the relationship between users' social media and platform accounts, Internet companies divide users into social groups. Adjust prices in groups to ensure that prices in the social circle are displayed simultaneously to prevent users from anti-detection of "unfair treatment" behavior.

3.2. Typical Problems in Data Collection

3.2.1. Compulsory Claims

That is, the user's introductory period, which is more criticized, such as the "APP compulsory claim for rights" issue. There are many forms of compulsory claims. For example, when a user wants to use a certain APP, the authorization terms or user agreement will usually appear on the interface before logging in. Only when the user reads and agrees to the terms of service can the user officially enjoy the services of the platform. When the user chooses to refuse, he will become a guest of the platform. In fact, most of these agreements contain overlord clauses, which mostly involve exemption or limitation of liability or permission to use users' private information. However, human cognitive abilities are often limited by objective time and space, calculation and memory abilities, resulting in decision-making errors such as hindsight bias, excessive optimism, and loss aversion [4]. Therefore, the compulsory authorization for these excessive infringements of user rights is obvious. Awareness of discomfort can also give the heart a full sense of security through self-adjustment. At the same time, users will also have an unpleasant experience during use. When the user is browsing the web page information, the page will automatically jump out of the geographic location, read the call log, or open the authorization permission of a certain APP. If it has a strong correlation with the provided service, you can understand this type of behavior. Without the slightest relationship, it makes people feel that the platform side Suspected of excessive collection of user information.

3.2.2. Accurate Recognition

By sharing user information between platforms, accurate advertising to them has become a headache for many users. The author has also had similar experiences. When I opened a social chat platform for the products browsed or collected on an online shopping platform, I could see in a conspicuous position that the products viewed on the online shopping platform were on hot sale or discounted promotions. This type of refined marketing model is the application of user portraits. The platform labels users based on the collected user data, such as the user's age, gender, education level, hobbies, brand preferences, purchasing power, etc., so that each user becomes Unique individuals in the network environment, and then push personalized services for them to meet the private demands of users. It's okay to carry out precision marketing through portraits of users, but there should be corresponding restrictions. Services between different platforms should be limited to the internal space of the platform, otherwise users are very likely to receive on a platform that is not related to the functions of the platform. Service.

4. Big Data "Unfair Treatment" Coping Strategies

4.1. Respect Users' Right to Know And Choose

The main damage of big data is that some old users have suffered unnecessary property losses. In order to understand the occurrence of the results, an in-depth analysis of the operation of

the network platform is required. The author believes that, first of all, when online companies use big data to provide services for user portraits, they fail to fulfill their reasonable obligation to inform users, leading to asymmetric information between platforms and users. Because this platform has established long-term trust, old users always think that they are enjoying the most favorable or high-quality services, but the facts are quite different. Some platforms deliberately conceal the true status of the remaining goods or services from old users and give new users the right to preferentially choose; or apply preferential policies to new users at premiums to old users to attract users. The weak position of the old users in the information asymmetry has allowed the platform to unscrupulously infringe the old users' right to know. Second, the right to know is the prerequisite for the right to choose. When the right to know is blocked, old users cannot compare, identify or choose goods or services. If informed in advance, users can decide whether to purchase goods or accept services. In this case, the user makes a choice, which does not constitute "unfair treatment." This shows that the old users also indirectly lose their right to choose.

From the consumer's point of view, consumers must first learn to protect their rights. When purchasing goods, try to shop around and choose the right price. This can effectively avoid "big data killing", and the system can identify consumers as price-sensitive, reducing consumers' "killing" consumers. probability. Secondly, we should pay attention to the protection of personal privacy, which is also an important method to solve the problem of "unfair treatment". For issues that arise in the era of big data, such as photos, communication records, positioning and other important solutions that can expose personal privacy, they should be retained as little as possible for mobile App access, and their consumption records, express orders and other information should be protected. Third, if the phenomenon of "unfair treatment" is discovered, the evidence should be preserved and reported to the relevant departments to protect their own rights and interests and expose the enterprise's dishonest behavior.

4.2. Determine the Protection Limit of User Privacy

The Facebook scandal and the "acquaintances" listed above have highlighted the importance of user privacy in the era of big data. Internet companies are the masters of big data, and users are the original owners of data. Users can enjoy the service by transmitting some necessary private information, which is acceptable. However, if companies use this private information to conduct transactions without the user's knowledge, or even seek excess profits, it constitutes an excessive infringement of user privacy. For users, the subjective purpose of revealing privacy is to conduct transactions through the platform, and this type of transaction is known to the user and is chosen by the user. If the platform uses the privacy to deceive users to facilitate transactions without the user's knowledge, which violates the user's subjective will, it constitutes an invasion of privacy. More importantly, using the privacy provided by users as a tool to exchange benefits with other platforms to obtain huge profits, this kind of behavior without user authorization and permission is an excessive infringement of user privacy.

Infringement of user privacy is reflected in practice as improper and lack of specific operations of the enterprise. Therefore, it is necessary to regulate it. First of all, the principle of user authorization must be fully implemented. Many platforms improperly process and resell the user's personal information for secondary use only through the user's initial authorization, resulting in a mismatch between the initial authorization and subsequent use requirements. The new authorization is both a respect for users and a source of legitimacy for platform operations. Secondly, the platform's collection and use of information should follow the principle of "purpose limitation" and "legitimate necessity". Legal constraints. Third, it is necessary to establish an emergency response plan for the information leakage crisis to take precautions. The anonymity and high-speed dissemination of the network environment are difficult to ensure the absolute security of user information [5]. With a preparatory plan, it is

convenient to limit the crisis to a controllable range, so that it will not be difficult to end the Facebook scandal.

4.3. Formulate Specific Information Protection Laws

In terms of the state, the intervention of public power factors is an effective guarantee. For example, at the legislative level, more stringent responsibilities are imposed on operators, punishments are increased, and the burden of proof is reversed. Only the invisible hand of the market and government, the combination of macro-control can promote the healthy, sustained and orderly development of the entire Internet economy. Improve the existing laws, clarify the criteria for "illegal price discrimination", and protect the rights and interests of consumers. At the same time, it is necessary to regulate the use of big data information and strengthen consumer privacy protection. In the era of big data, the boundaries of data are more blurred, the existing problems are more complicated, and the protection of network information security is more difficult. Although big data legislation is the general trend, the international community has no consensus on the formulation of big data-related laws [6].

5. Conclusion

In the era of mobile Internet big data, the optimization of algorithms and precise portraits really allow us to enjoy the most intimate and convenient services. However, the large number of "unfair treatment" incidents have shown us the dark side of big data: excessive infringement of user privacy, damage to users' right to know and right to choose. In this regard, we should rationally face the value and nature of data. What we need to pay attention to is not the data itself, but the subjects of data operations in the Internet environment, and delineate a reasonable amount for these subjects in the application methods and applicable permissions of user information. Scope is our top priority. Only in this way can we better protect the basic rights of users and let us better meet the baptism of the information revolution.

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