

The Legal Dilemma of Privacy Information Protection on the Online Ride-Hailing Apps Based on the Case of Didi Chuxing App

Bo Feng, Sijie Wang, Aina Chen and Yunuo Sun

School of Law, Yangzhou University, Yangzhou, China

Abstract

With the dividends brought by the development of modern networks, online ride-hailing app have been rapidly integrated into people's lives. This paper will take the Didi Chuxing Taxi app as an example to reveal the current situation of infringement of consumers' personal information by most online ride-hailing platforms through its appearance of facilitating users and creating economic benefits, and analyze the legal risks that may exist when the platform obtains users' information and the legal problems faced by both parties, with a view to further solving the legal dilemma of personal information protection of online ride-hailing platforms.

Keywords

Tort liability; Online ride-hailing app; Personal information protection.

1. Introduction

Currently, the rise of online ride-hailing platforms has brought great convenience to people's daily life. However, while its operation mechanism creates huge economic benefits for developers, there are a large number of phenomena that infringe on the rights and interests of consumers' personal information. How to make up for the deficiencies of existing laws and regulations on personal information risk prevention and improve the existing regulatory system is worth further exploration.

2. The Causes and Consequences of the "Didi Chuxing Incident" and the Current Situation of the Operation of the Online Ride-Hailing Platforms

2.1. Event Review

DiDi Inc. went to the U.S. and listed on the New York Stock Exchange on June 3, and its market capitalization quickly soared to more than \$800 billion after repricing the offering at \$14. The good times didn't last long, and on July, China's National Security Review Office issued a notice about the launch of cybersecurity verification work on DiDi Inc. On July 7, in view of the serious illegal and irregular access to user information by DiDi Inc.'s Didi Chuxing Travel App, China's State Network Information Office issued a relevant notice requiring its removal from all platforms and app malls. On July 7, the Didi Chuxing Travel applet was removed from WeChat and Alipay. On the 9day of July, it was verified that a number of apps under DiDi were found to have serious violations of collecting user information and were urgently taken down by major app stores. Didi Chuxing was requested by the relevant departments to strictly follow the laws and regulations of China, increase the rectification efforts with reference to the corresponding standards, and fill the imperfect loopholes so as to be able to effectively protect the personal information security of its audience users.

On July 16, the State Internet Information Office, together with the Ministry of Public Security, the Ministry of State Security, the Ministry of Natural Resources, the Ministry of Transport, the General Administration of Taxation, the General Administration of Market Regulation and other

departments stationed at DiDi. As of now, the investigation of DiDi is still ongoing. DiDi has also become the first company to be publicly implemented a network security review since the introduction of the "Network Security Review Measures".

2.2. The Current State of Operation of Online Ride-Hailing Platforms

Like other online ride-hailing platforms, DiDi is an Internet company that relies heavily on users' personal information data to cash in on their personal information. Upon investigation and research, the operating model of such online ride-hailing platforms is roughly as follows.

First, relying on the company's big data analysis technology and artificial intelligence analysis technology, we analyze user behavior and travel data to improve the efficiency of the work of online ride-hailing drivers and facilitate user travel. At the same time, subsidies and discounts are used to attract more new users and improve the stickiness of the existing user base. Subsequently, based on the above data collected in the early stage, they will build our own data processing system to enrich the data application scenarios and improve product intelligence, and also significantly improve the utilization rate of data analysis to achieve platform operational intelligence and improve the efficiency of data use to achieve company decision-making efficiency. After adopting the above model, the operation cost will be greatly reduced and the whole company will be in high-speed operation, so as to achieve the ultimate purpose of data realization.

Secondly, the services provided by online ride-hailing platforms are not only limited to car hailing and taxi-hailing. For example, in addition to its core business of taxi hailing, other related derivative businesses include car rental, same-city freight transportation, car charging, car maintenance and repair, and car refueling, among others. According to the data collected, DiDi is even developing businesses in association group buying, financial services and takeaway delivery. The four core strategies set by DiDi for the future include the promising industry blue ocean of shared mobility platform, automotive solutions, electric mobility and autonomous driving. The promotion force within the online ride-hailing platform varies, but the only thing that is certain is that the core of its power is still the personal information of users. It is no exaggeration to say that the personal information of users is the lifeblood of such companies.

3. Risks of Obtaining Personal Information by Online Ride-Hailing Platforms

According to the CCA's opinion report, personal information leakage ranks third among the top ten issues that consumers are most concerned about in relation to the online ride-hailing chaos, behind only safety hazards and unfair competition. Driven by related interests, inadequate supervision and imperfect laws, the issue of information protection of online ride-hailing is also different from that of personal information protection in general cyberspace. When acquiring users' personal information, there are many risk problems in online ride-hailing platforms, mainly including the following aspects.

3.1. Excessive Collection of Non-Essential Data

In the Internet era, personal information has an incalculable commercial value. Especially in the blue ocean of the industry driven by the amount of personal information collected and data intelligence, the companies involved in the industry, in pursuit of rapid expansion to capture a larger market share, tend to excessively collect consumers' personal information and do not seek consumers' consent or lead them to provide their own private information through improper means, thus violating consumers' personal information rights. For example, when registering for an account, most online ride-hailing platforms collect basic information from new users such as name, phone number, third-party payments, and real-time location. In the initial "Personal Information Protection and Privacy Policy" of the Didi Chuxing app, for

example, the personal information that must be collected in order to open the app properly includes the user's facial recognition characteristics, ID card number, bank card number, and cell phone recording and video permissions. The personal information required to be collected under this agreement is completely beyond the daily needs of Didi Chuxing as an online ride-hailing app. In contrast, once this personal information is leaked or misused, it can easily cause problems to the users' daily life, or even cause property or personal injury.

3.2. Too Clear "User Profile" Brings Inconvenience to Consumers' Lives

Today, with the continuous development of information technology, the big data analytics industry is thriving day by day. Many online ride-hailing platforms combine big data analytics technology to deeply process users' private information without users' permission, so as to infer information that users have not provided, such as address, spending power, personal preferences, etc., in order to draw a complete and detailed "user portrait", which can be used to improve the construction of platform intelligence and personal advertisement. But for individual users, the more detailed the "user profile" is in the hands of third parties, the greater the hidden danger.

3.3. The Leakage of Dynamic Monitoring Information Raises User Safety and Security Issues

The dynamic information generated by consumers when using the online ride-hailing apps will also be monitored and recorded by the platform's backend. When a user initiates a taxi order online and receives travel services offline, it is inevitable that his or her location as well as communication and travel information will be disclosed to the platform. If the platform's internal information management personnel improperly handle the personal information of users due to factors such as backward management equipment and shortage of professional skills, the personal information of users will not be strictly secured and will likely be stolen by unscrupulous elements and sold for some unjustified interests of their unlawfully obtained personal information of users, thus adversely affecting the personal and social stability of users.

3.4. Illegal Sale of Personal Information to Third Parties Poses a Security Risk

In the online ride-hailing market, which company has more personal information of users means it has the opportunity to seize more market share. Driven by interests, many companies with ulterior motives will illegally provide or sell user privacy to third parties without the users' knowledge, commercializing the large amount of personal information resources they have, forming a more complete industrial chain and seriously threatening the security and the stability of society.

Didi Chuxing then clearly states in the Personal Information Protection and Privacy Policy that users' personal information will be shared with Didi Chuxing's relevant business affiliates and partners under certain circumstances. Article 24 of the Personal Information Protection Law of the People's Republic of China (Draft) provides the following provisions on the obligations of personal information processors in such cases, which clearly states that when providing personal information to a third party, the personal information processor shall inform the individual of the identity, contact information, purpose of processing, manner of processing and type of personal information of the third party, and obtain the individual's consent. At the same time, the third party is required to handle personal information within the scope of the above-mentioned provisions, and if there are changes, the user must be informed again and consent must be obtained. According to the relevant provisions of the draft, the relevant behavior of DiDi is already suspected of serious violations of the collection and use of personal information. This news was also confirmed by the Internet Information Office on July 4, 2021.

Although China's legislation has made provisions for such large-scale information security leaks, due to the light penalties and high threshold of conviction for damaging personal

information security in China's laws and regulations, coupled with the public's weak awareness of personal information security protection, it is still common for online platforms to illegally sell users' personal information and bring about security incidents, which not only easily provokes social panic, but also is not conducive to the smooth development of the cause of human rights protection in China.

3.5. Data Algorithms Trigger Price Discrimination

Price discrimination usually refers to the provider of goods or services in the same class, the same quality of goods or services to different recipients, the implementation of different sales prices or charges, in essence, price differences, which is commonly referred to as the use of big data advantage "kill familiarity".

In reality, many online ride-hailing companies are taking advantage of data algorithms to varying degrees to develop personalized pricing standards for consumers at different levels. Take the Didi Chuxing platform as an example, based on its powerful big data algorithm and database of users' personal information, it has drawn a data portrait covering all aspects of users' gender, age, lifestyle and income. With this, Didi Chuxing is able to accurately grasp its users' willingness to pay, accurately calculate the prices different consumers are willing to spend on their daily commute, and form a set of operational mechanisms that can be dynamically adjusted at any time. The company's usual solution is to introduce different charging methods and let consumers choose the price that suits them, thus achieving the purpose of tiered charging. Didi Chuxing even launched the "Flower Piggy" App, through promotion modes like getting allowance by sharing, receiving ¥100 from the platform everyday and adopting fixed price model, it provides an alternative for users with low spending power and expands the range of audience users. This will lead to a huge difference in the amount of orders paid by the two platforms for the same user, who gets on and off at the same starting point. This also makes the "Flower Piggy" App with a very low compliance rate, but still can achieve rapid growth of travel business. However, there is no doubt that this price discrimination also invariably affects the distribution of personal income, thus intensifying social division and causing conflicts and confrontation.

4. Inadequacy of the Existing Legal Protection

4.1. Interim Measures for the Management of Network Booking Rental Car Operation Services

Article 2 of the Provisional Measures, in its Chapter 1 General Provisions section, clearly stipulates the rules that should be observed for the operation of online ride-hailing services, providing a legal guideline for online ride-hailing platforms. At the same time, with regard to the protection of personal information, the first paragraph of Article 27 of the Interim Measures also clearly stipulates that the relevant companies and their employees must strictly comply with the relevant laws and regulations in the field of network security and information protection in China, and that the personal information collected from users for normal operation and the user profiles generated by the platform algorithm are only to be used in mainland China, kept for a period of no less than two years and are strictly prohibited from being leaked.

However, a mere textual interpretation of the Interim Measures is still not convincing enough. To reach a more convincing result, higher-level laws and regulations are needed to decide on the issue. At the same time, the Interim Measures continue to treat online ride-hailing platforms as traditional taxi operating platforms, and some of the regulations lack innovation.

4.2. Civil Code of the People's Republic of China, Personality Rights Part

The Civil Code of China clearly stipulates that "personal information of natural persons is protected by law", indicating that "personal information of natural persons" is the object of protection of rights and interests. At the same time, personal information is clearly defined and the basis of the right to claim is established, giving public remedies to those whose personal information has been violated. This is a great help to the protection of personal information, as it is no longer necessary to seek the intervention of public authority afterwards, but can be self-remedied. Secondly, the necessary constraints on information processors are fully reflected in Article 108, which requires them to take the necessary measures to ensure the security of users' personal information, and to promptly remedy any problems and report them to the relevant authorities.

Although the relevant provisions of the Civil Code strengthen the protection of the right to personal information, it does not set up specific provisions to regulate online ride-hailing service, leaving the key provisions that can be used as a direct basis for infringement cases.

4.3. Civil Code of the People's Republic of China, Tort Liability Part

Through the linkage of Article 1194 and Article 1195, the Tort Liability Part combats the infringements of network users and network service providers who infringe the civil rights and interests of other people, and also gives the right holders a remedy to protect their rights and interests, such as notifying the network service providers to take necessary measures like removing, blocking and disconnecting links.

However, it cannot be ignored that the world of information technology and networking is fast-changing, many providers of network services nowadays take the advantage of their easy access to collect personal information, which poses a great threat to users' personal information and requires further legal efforts to regulate these infringement phenomena.

4.4. Personal Information Protection Law of the People's Republic of China

As the first special regulation on the protection of personal information in China, Personal Information Protection Law of the People's Republic of China makes various breakthroughs in terms of topicality, localization and practicality. Its provisions regarding the rights and interests of natural persons to personal information are shown to the public for the first time, expanding the basis of legality for handling personal information. At the same time, the relevant rights and obligations of personal information handlers are also clearly defined. Through the structure of the regulations, an interview system for the supervision of personal information protection was also created, and the related mechanism is also more perfect. Of course, with the progress of the times, more new issues will emerge to be solved, and the Personal Information Protection Law will need to be improved in the future judicial practice.

5. Countermeasures and Recommendations

Li Xiaoming, Vice Minister of Transport, had pointed out at a joint meeting of seven departments in 2016 that the relevant government departments should increase their supervision in response to the current safety issues related to online vehicles. At the same time, local governments should continuously improve their management structures and relevant enterprises should fulfill their responsibilities in order to form a conscientious situation of shared governance by multiple parties. It is not difficult to see that government supervision is very important, while self-discipline management by enterprises is also essential.

5.1. Strengthen Government Regulation and Improve Internal Self-Discipline of Enterprises

Since the overseas industry has started earlier than China, China can consider setting up a governmental oversight body for online ride-hailing services in the future, taking into account the relevant overseas practices. In September 2013, the Public Utilities Commission of California, where the app was founded, formulated rules for the regulation of online ride-hailing services and recognised the legality of online ride-hailing services. The rules place a number of ride-hailing platforms, such as the Uber app, under the umbrella of "transportation network companies" (TNCs). The rules prohibit them from disclosing information to third parties in circumstances other than those provided for by law. Moreover, it is stipulated that the personal information of consumers is monitored by the TNC in collaboration with the Internet personal information protection authorities. In contrast to this simple and effective measure, the current management mechanism of China's online ride-hailing platforms is a little more rudimentary and confusing. The regulatory and personal information protection system for China's online ride-hailing operations was initially set up with a view to a multi-departmental approach and joint management, but the responsibilities of the various departments are not clearly delineated, which in effect leads to a low level of cooperation and close cooperation between the various departments under the current management system. Based on this, China can follow the relevant foreign systems and establish a governmental regulatory body for online ride-hailing service, so as to provide integrated management of the online ride-hailing platform in terms of capital audit, operation supervision and information protection.

At the same time, we should also set up a set of regulatory mechanisms that are based on our national conditions and that work effectively. This mechanism should cover ex-ante, in-ante and ex-post regulation, in order to further enhance the protection and expand the scope of protection. Among them, ex ante regulation is the most lacking and most urgent aspect in China at present. Ex-ante regulation can also be called preventive regulation. It can control the possibility of leakage of users' personal information at the source. Online ride-hailing platforms often neglect the protection of users' personal information for the purpose of maximising profits. Therefore, the government needs to formulate and supervise the implementation of the relevant norms on information protection in advance. In addition, the government can also set up a filing system. Make it mandatory for companies to file with the regulator in advance before collecting users' personal information and clarify the type of such information and the specific use of it once acquired. Only after the regulator has approved consent can the collection of information continue. The regulator may also conduct regular or occasional spot checks on the retention of user information on online ride-hailing platforms in the course of regulatory enforcement. Punitive measures should be imposed on companies that violate the relevant regulations or perform poorly.

In addition, it is also extremely necessary to strengthen the internal self-discipline and industry supervision of online ride-hailing platforms. Within the enterprise, the behavior of its internal members can be restrained by formulating corresponding reward and punishment mechanisms. It is also possible to track and review the working ability of registered drivers in real time by conducting regular assessments and skill tests. If necessary, regular training can be provided to employees to regulate their behavior. On the website of the external monitoring online ride-hailing platform, the company can show the actual operation in detail to the public by means of public announcements. The public display of violations can be accompanied by public recognition of excellent behavior, which will not only serve as an incentive and warning, but also promote positive competition among platforms.

5.2. Improve Relief Procedures and Provide Practical Protection

When a user's personal information is leaked, the relevant rights protection agency should actively assist in responding to it. On the one hand, they can inform users of their right to seek remedies and specific practices; on the other hand, they can provide certain advice and assistance to users. In this way, the situation that users give up their rights due to the difficulty of defending their rights will be greatly reduced. For those users who have difficulty in proving their rights, the burden of proof can be reversed. The defendant should bear the burden of proof without fault, to prove that they have not violated the user's information security or have assumed the necessary information management and protection obligations. This approach can significantly improve the enthusiasm of users to defend their rights and improve judicial efficiency.

The online ride-hailing platform should take confidentiality measures for the relevant information and strengthen the protection of user privacy. For example, setting up risk tips on the platform page so as to warn users in time before they provide any personal information and make monetary transactions. When the user's rights are violated, they should take the initiative to contact and actively assist in solving the problem, and provide the user with a way to remedy their rights.

5.3. Strengthen the Awareness of Users' Personal Information Security Protection

In this age of open and free Internet, we do not have complete control over our personal information. Therefore, we should be more cautious about the issues related to personal information. For example, when registering for an account on a platform, you should read the privacy agreement in detail and understand the types of personal information that the platform requires to collect and the scope of its use. It is also important to learn more about personal information protection and to take online transactions seriously. We also need to improve our own alertness and ability to defend our rights to prevent personal information from being stolen by unscrupulous people with ulterior motives without our knowledge. When consumers' personal information is infringed by others, they should remain calm. At the same time, they should promptly contact the relevant online platform or government regulatory agency and ask them to take measures such as deletion and correction to actively defend their legitimate rights, and not to back down. If the loss has been incurred, then the problem can be solved by means of negotiation. If necessary, we can also go to court.

6. Conclusion

Now, the Personal Information Protection Law has been introduced. The Ministry of Industry and Information Technology has also recently taken down apps that failed to rectify the situation, signalling that the protection of personal information is being given due attention. The protection of personal information is not a trivial matter, and it is an issue that needs to be considered in the long term by all sectors of society. The online ride-hailing service is a new industry oriented to personal information, and it is more sensitive than the traditional industry in terms of expropriation of users' personal information. Therefore, it is not advisable to be too absolute in the protection of personal information. How to grasp the scale of the issue will require the legislator to optimize and improve the regulation in the future judicial practice, in order to achieve a balance between the protection of user information and the healthy development of the industry.

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