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Digital Dispute Resolution: The Construction of Multiple Collaborative Mechanisms

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Abstract

Mediation, notarization, arbitration, administrative adjudication, administrative reconsideration and litigation are the main methods to resolve contradictions and disputes in our country, and they should be organically integrated and coordinated with each other. As an emerging economic form, big data, as a data set, is more difficult to collect and process. At the same time, the larger the data set, the stronger its ability to combine with other industries, and the economic value will also increase. Once a digital dispute occurs, it will involve a wide range of interests for all parties. It is particularly important to establish a multiple collaborative resolution mechanism to solve digital disputes. By clarifying that data security is the primary value orientation to ensure the development of digital economy, courts should be the backbone and guide of multiple collaborative resolution mechanism in digital dispute resolution, while digital platforms and big data exchanges participate in pre-litigation mediation, and different mediation streaming procedures achieve multiple collaborative resolution of digital disputes.

Keywords

Digital dispute, Multiple coordination mechanism, Digital mediation.

1. Introduction

"Data Article 20" points out that security runs through the whole process of data governance, builds a governance model of government, enterprises, and society, innovates the way of government governance, clarifies the main responsibilities and obligations of all parties, improves the industry self-discipline mechanism, standardizes the market development order, and forms a governance pattern of data elements that combines effective market and government[1]. Digital disputes, as the manifestation of interest conflicts in the era of digital economy, have multiple complexities. Different digital subjects have different expectations on data, and different interest claims should be identified in the process of dispute resolution. In this process, it is necessary to build a multi-entity collaborative resolution mechanism of digital disputes, through the participation of multiple subjects in dispute resolution, the real interest demands of the parties are identified, and the technical support of digital platforms and big data exchanges is provided. Better give space to the development of the digital economy, in the current situation of "litigation explosion and fewer cases", the contradiction will sink, and multiple collaborative solutions to digital disputes.

2. There Is A Reasonable Basis for The Construction of Multiple Collaborative Resolution Mechanisms for Digital Disputes

Digital disputes involve various types of rights and include multiple subjects. Unlike other objects, data does not have clear property ownership, and a single data may describe the characteristics or appearance of an individual or something. However, the data mentioned in this paper refers to massive data that can be connected with each other, through which a single data or something that ordinary people cannot think of can be found. Big data that can even

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predict the direction of future development. At present, the judicial practice of digital disputes is mostly based on the Anti-Unfair Competition Law, but the relevant issues such as competition injury and the determination of market dominance have not been clearly resolved[2]. It is worth noting that not all digital disputes belong to the scope of economic law. For more digital disputes such as illegal use of data and algorithm discrimination, it is necessary to establish a multiple collaborative mechanism to resolve them.

2.1. There is a theoretical basis for multiple collaborative resolution mechanism of data disputes

The biggest difference between the era of digital economy and the era of agricultural economy and industrial economy is that it crosses the boundaries of time and space, making the centralized governance model under the background of physical economy face new challenges. As mentioned above, data has the characteristics of non-loss and non-exclusivity, which means that data needs to play its role through circulation and utilization. Rather than being owned by one person in isolation can produce utility. In this case, the most obvious is the emergence of digital platforms. With the expansion of economic scale and the progress of information technology, it is difficult to count the industries whose tentacles extend, and constantly innovate different business models or business models, forming a "multi-ring ecosystem". A digital giant is often involved in multiple business fields, and most of the cases of digital disputes handled by the judicial authorities at present result in the violation of the legal provisions of the Anti-Unfair Competition Law or the Anti-Monopoly Law. Such a decision is also controversial in the theoretical circle, so whether digital disputes belong to the scope of economic law regulation? Clearly this is not the case, and how should the court respond to infringements that do not satisfy subjective bad faith and abuse a dominant market position [3]? Digital disputes involve a series of rights such as the right to use, the right to profit, the right to license and transfer, including multiple subjects such as individuals, digital platforms, big data exchanges and even administrative organs, as well as data users, infringer, processor and other parties with complicated identities, which will inevitably give birth to a vibrant, multi-subject, resonant dispute resolution model [4]. Data is not as clearly defined as other objects, and under the trend of more biased data use, how to correctly resolve digital disputes is a problem that judicial organs must face. Through the analysis of social psychology, we found that in the highly legalized modern society, there is obviously a kind of social psychology that "many disputes cannot be handled by trial but expect to be handled by trial". On the one hand, "finding a legally correct solution is the first goal that mediation should implement", and on the other hand, we hope to "reduce the cost of finding a correct solution", thus giving birth to a kind of social psychology "Judgment mediation" with the advantages of both litigation and mediation. Data disputes are mostly manifested as data interest disputes, and mediation has universal applicability and wide application. As for the scope of application of pre-litigation mediation procedures, there are no specific provisions in relevant laws and judicial interpretations at present. The relevant provisions that can be referred to come from the "Operation Rules on Complicated and Simplified Sorting and Rapid Mediation of Civil and Commercial Cases (Trial)" issued by the Supreme People's Court in 2017, which stipulates 9 types of disputes that are suitable for mediation before trial after filing a case. However, the "backstop" clause also leaves some room for the judicial organs to conduct practical exploration, and also provides a way for the judicial organs to make use of the advantages of justice to carry out multiple collaborative solutions in the face of digital dispute resolution.

2.2. There is a practical demand for multiple collaborative resolution mechanism of data disputes

The dominant direction of the digital society is platform economy and sharing economy, which will not only cause profound changes in the economic field, but also have an important impact

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on the way of social governance. On the one hand, many digital economic platforms present the image of "bad children" of order destruction, and realize innovation in constantly breaking through the existing system and order; on the other hand, they are also the image of co-builders interacting with the government. It will gradually transform the huge benefits brought by the development of science and technology into the mutual empowerment and mutual shaping of the government and the people, which is the governance mechanism of the rising platform leadership and "soft and hard collaboration". The "multi-ring ecosystem" structure of the digital economy platform makes it possible to resolve digital disputes between platforms. At present, while developing the economy of the digital platform, rules of "self-empowerment" and "reward and punishment" have gradually emerged to restrict or constrain the workers and customers connected to the platform, forming a special interest relationship. In addition, in judicial practice, "smart justice" and "smart government" have also emerged, which regard network technology, digital technology and artificial intelligence technology as a kind of technical empowerment, and have been increasingly widely and deeply applied in their power operation process. These algorithmic decision-making and code regulation have formed a trend of power technicalization. It can be seen that in today's digital age, both the government and the platform have the orientation of technical regulation path, and continue to deduce and strengthen the governance logic of technology power and power technology [5].

3. Obstacles to the Construction of Multiple Collaborative Resolution Mechanism of Digital Disputes

In essence, digital disputes are the competition and utilization of data rights and interests by different subjects. In the case that the current legislation has not clearly stipulated the ownership and use of data, the problems of illegal data climbing, price discrimination by using data advantages and unfair competition of data occur frequently, and digital disputes enter the judicial level. At present, most courts have been criticized for their extensive use of the principle provisions of Article 2 of the Anti-Unfair Competition Law. In the absence of clear data value orientation, many courts are unable to choose other corresponding legal bases. In practice, digital platforms, as stakeholders, find it difficult to make fair dispute resolution solutions under the absence of supervision. Big data exchanges are difficult to play an effective role in digital dispute resolution due to their poor efficiency and small trading volume of on-exchange data circulation. Both the legislation blank and the interest conflict of data dispute related subjects in practice hinder the construction of multiple collaborative resolution mechanism of digital disputes to a certain extent.

3.1. The value orientation of multiple collaborative resolution of digital disputes is not clear

Data as a new object of rights exists, but also has interest value, is the so-called "all the world is for profit." The hustle and bustle of the world are all for profit, there are interests there are disputes, and the law, as a social code of conduct, must have corresponding regulatory measures for the object. For example, Article 127 of the Civil Code stipulates that civil subjects have a positive attitude towards data rights and interests, but data rights and interests are not directly regulated by the Civil Code, but are regulated by other laws. Obviously, with the rapid development of data utilization today, lawmakers choose to leave room for future legislation. The state has successively promulgated the Personal Information Protection Law and the Data Security Law to regulate data-related issues. But unfortunately, up to now, there are still no clear regulations on data-related disputes[6].

At the current judicial level, the regulation of data disputes relies more on the principle provisions of Article 2 of the Anti-Unfair Competition Law for judgment: that is, operators should follow the principles of voluntoriness, equality, fairness and good faith in production

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and business activities, and abide by the law and business ethics. The term "acts of unfair competition" refers to acts of business operators that, in their production and business activities, violate the provisions of this Law, disrupt the order of market competition and impair the legitimate rights and interests of other business operators or consumers. These provisions seem to reasonably restrict the competitive behavior in the use of data, but the over-general provisions lead to difficult identification and arbitrary judgment in data disputes, and a large number of principled provisions of Article 2 will lead to the destruction of free competition order and other problems. As the fifth factor of production, data is different from other traditional factors of production in that data needs to be combined with other related industries or economic forms to produce efficiency, which determines that data must be circulated and traded, rather than resting on its laurels[7]. At present, the value oriented propositions of data include security principle, effectiveness principle, interconnectivity principle, good faith principle, etc. When the court judges cases, what principle is the main, and how to choose and balance is a difficult problem that needs to be guided.

3.2. The multiple collaborative resolution mechanism of digital disputes is fragmented

On the one hand, the emergence of digital platforms has broken the order construction model of government management and judicial centralization under the traditional economy, and on the other hand, it is also gradually forming a trend of decentralization of digital platforms to formulate technical norms and rules. In this decentralized governance model, the norms formulated by the digital platform are a kind of "soft law", which has no direct binding force on other entities, and can only have an external effect when it involves the platform or the business. Transactions and circulation within the digital platform must comply with the norms established by the platform, which is a trend of decentralization, that is, when the data breaks the traditional governance, it reconstructs a new governance model - decentralization[8]. This center is launched around the digital platform, because it has a large number of data resources, although these data come from merchants and customers. However, data can only be presented with technical support, and in this regard, it seems more appropriate to resolve digital disputes through digital platforms. However, as an economic organization, it is obviously not feasible for digital platforms to solve digital disputes. Although digital platforms have innate technical advantages and negotiation ability in resolving digital disputes, digital platforms also have significant disadvantages, and these issues have to be legally regulated by the government or judicial organs. However, the big data exchange established by the government, as an intermediary organization of exchange trading, except for a few normal operations at present, its management and media functions are difficult to play their role in the case of small data transaction volume. How to make reasonable arrangements for the relevant entities of these data transaction circulation and data dispute resolution? To improve the digital disputes in the absence of legislation to explore a reasonable solution path has become a problem to be solved by multiple collaborative mechanisms[9].

4. The Realization Path of Multiple Collaborative Resolution Mechanism of Data Disputes

As mentioned above, the construction of multiple collaborative resolution mechanism of data disputes has the problems of unclear value orientation and practice fragmentation. It is worth noting that one of the purposes of the existence of law is to settle disputes. For data, ensuring data security is its first priority. Digital platforms and big data exchanges, as intermediaries of data circulation and transaction, have certain insights on data disputes. Meanwhile, contracts such as robots agreement established between digital platforms will also provide judicial guidance. Multi-party participation makes the resolution of digital disputes more professional

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and targeted, and the purpose of mediation is to efficiently resolve disputes. If mediation fails, then the judicial authorities need to consider how to better align the proceedings and design the system.

4.1. Advance digital dispute mediation

Digital mediation means that a dispute must be mediated before trial. In other words, digital mediation means that when both parties enter the court for litigation, both parties are informed of pre-litigation mediation, and the advantages of pre-litigation mediation, mediation members or organizations, and the effectiveness of agreement reached by mediation are explained to the parties. To guide the parties to the choice of pre-litigation mediation. The reason for compulsory mediation is based on the following reasons: First of all, most data disputes take the form of data interest disputes, mediation has universal applicability and wide application, mediation is not only carried out by civil organizations or associations, in fact, as a common dispute resolution mechanism, mediation is often used at the court level, such as pre-litigation mediation, mediation in litigation and so on. There are two reasons why so much emphasis is placed on the role of mediation in various systems: first, the primary function of making laws is to settle disputes, which coincides with the purpose of mediation, and even the difference between the role of law and the latter is only whether it has a coercive force. Secondly, as a means to resolve disputes, mediation has the advantages of short cycle, low cost, high efficiency and flexible handling methods[10]. Especially in the context of the digital era, data infringement problems and other types of disputes are frequent, which shows its vital role, and can reduce the cost of dispute resolution to the greatest extent.

In view of this, it is worth learning from some courts to make pre-litigation mediation compulsory. The courts guide the parties to pre-litigation mediation by sending the Notice of Pre-litigation Mediation and other documents to both parties for reading before litigation, and by introducing the time limit, venue, advantages and personnel allocation of mediation, etc[11]. The mediation period is set at 30 days. If the parties refuse to mediate or do not reach a mediation agreement within the prescribed time limit, enter the proceedings, the advantage of this approach is that the parties can conduct mediation, without entering the proceedings to their own interests litigation and the other party to consult. This practice has a natural priority in the field of digital disputes. Data, as a kind of intangible property, has the characteristics of non-exclusive competition and sharing, so that the interested parties can use it at any time and on any occasion without interfering with others. In the case of disputes, the interests of both parties can be sought to maximize the interests in the litigation. They will exaggerate their own losses and the gains of the other party. In this case, direct litigation is more likely to intensify the conflict between the two parties, while pre-litigation mediation gives both parties another institutional choice, which can identify the interest appeal center of both parties, and then solve the problem in a more targeted way.

4.2. Multiple subjects participate in digital dispute diversion

It is a naive fantasy to try to list all kinds of disputes and simply set rules for mediation. Good system design must be built on the basis of good supporting facilities. In today's modernization of the rule of law, people try to build a procedural system and dynamic adjustment system that can meet the diversified needs of social subjects, including negotiation, mediation, arbitration, litigation and other dispute resolution methods. The advantages of mediation are short time, low cost of rights protection, and full consideration of the interests of both parties. At the same time, the interests of disputes in modern society are becoming more and more clear. In combination with digital disputes, both parties always have a purpose in the use or crawling of a certain data, and the user's purpose is different, and their claims in litigation or mediation will be different, which can be roughly divided into: (1) The market, that is, attempts to obtain or maintain its exclusive market dominant position, does not allow unauthorized use, his purpose

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is more to stop the infringement, and requires compensation for losses; (2) Compensation, that is, to claim liability or pay for use, to inform other users or potential users to collect permission and pay fees, its purpose is to demand compensation, otherwise stop the infringement; (3) Obtaining the right to use, that is, obtaining the consent of a party to obtain the sharing of certain data, etc.

In the face of such problems, if the digital dispute enters the litigation process, in the case of uncertain whether it can be supported, the parties will put forward these claims and strive for their own interests to maximize, so in the litigation process, it will spend a lot of manpower, material resources and financial resources to deal with[12]. By providing the option of mediation, if the parties choose to mediate, a 30-day cooling-off period for mediation may give both parties a buffer opportunity. If mediation fails after weighing advantages and disadvantages, at least in this process, both parties will make clear their interests. At this time, we will save a lot of judicial resources through the litigation docking procedure when we are conducting litigation. First of all, the court takes the lead, classifies and summarizes the cases that flow into the court, involving illegal data crawling, illegal data use and other issues, and the professionals of the digital platform will mediate; By clarifying the interests of both parties, both parties can reach an agreement under the guidance of the court. However, due to the particularity of data, the court will also be overwhelmed when dealing with digital disputes. Due to the particularity and professionalism of such objects, judge mediation is sometimes ineffective. Compared with the traditional method of relying solely on judges to deal with complex and changeable digital disputes and contradictions, it is undoubtedly a better choice to absorb multiple subjects for mediation. The multiple subjects here include not only experts and scholars who have research on the data, but also industry and professional mediation organizations mentioned above for collaboration[13]. The collaboration here is a customized dispute resolution model based on the particularity of digital disputes and the roles of different subjects in digital disputes. The digital platform provides technical support for data transactions. When disputes enter the judicial level, the compulsory mechanism of digital dispute mediation is used. In the mediation stage, the court and industrial mediation organizations cooperate. Big data exchanges play the role of transaction organizers and compliance regulators, so when such disputes enter the court, big data exchanges should also provide corresponding technologies to cooperate with the court to conduct digital dispute mediation in the case of "clear responsibility", and because the data can be traced and identified, under the cooperation of such multiple subjects, The efficiency and success rate of digital dispute mediation will also be greatly improved[14].

5. Conclusions

In fact, the multi-subject resolution of digital disputes is practical and feasible, because most of the subjects of digital disputes have a high level of knowledge, coupled with digital disputes are not easy to identify, the cost of filing digital litigation costs, in addition to a few leading enterprises can carry out a war of attrition, most enterprises do not have such capital, so promote multi-subject participation in digital mediation. Both parties are active and voluntary. In particular, the court takes the lead, so that this mediation has the "quasi-judicial behavior" that other subjects mediation does not have[15]. For the identification of some cutting-edge issues in practice, the professionalism of the mediation subject can undoubtedly make the facts clearer and clearer, and the professional understanding of the judge on legal issues can better adapt to the optimal settlement of digital disputes. By absorbing practice subjects and professional organizations in the society, we can find legislative challenges brought by digital disputes in practice, and then better guide legislation.

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