

Consent or Non-Consent: A Question in Chinese Laws

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Abstract

Consent is one of core concepts in the Chinese privacy and personal data protection legal system that is still under construction. Although without a comprehensive and dedicated law, Chinese legal matrix on privacy and personal protection principally requires that a data subject’s consent be acquired before collection, use, process and transfer his/her person data. The principle of consent, however, is subject to a couple of exceptions and challenges both in law and practices, particularly under the national economic strategies on development of big data and Internet of things (IoTs).

Approved by Li Keqiang, the prime minister, in September of 2015, the State of Council printed and published “The Outline of Promoting Big Data Development” to systematically deploy big data development works. It predicted that until the year of 2020, China’s big data market will reach 822.881 billion RMB. Therefore, big data industry in China no matter under global economic trend & technology improvement opportunities, or under main deployment of national strategy & gradually demands of

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enterprises’ application and consumption application, will become the biggest focus in next ten years. In current internet area, application of big data has been widely used, especially for enterprises. Enterprises have become main bodies of most big data applications. Compared with international leading IT and internet enterprises, Chinese enterprises have later beginning of big data; however some enterprises still continually invest this blue sea market and have good development trend, including Baidu, Tencent, Alibaba and other internet giants; Huawei, Inspur, Zhongxing, CDG, Neusoft, Yongyou, Kingdee and other domestic leading enterprises. All of them covering data collection, data storage, data analysis, data visualization and data security, have become represented enterprises with ability to achieve big data in China. Furthermore, a batch of domestic big data companies in the preliminary stage such as Shuyun, Miaozen System, SequoiaDB, Qiniu and etc. they depend on big data tools to provide innovative plans and to promote technology development according to market demands. As a result, so-called “big data exception” that enables the use, process and transfer of the anonymized personal data without consent has been crafted in the relevant laws on data protection. The exception to consent for big data industry could dilute or even bypass the personal data protection that is yet to be fully developed.

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In China, the IoT is benefiting from both government support and productive partnerships between companies from different sectors. China is developing its own distinctive and vibrant IoT, combining its enviable economies of scale with innovative new devices and services that meet the specific needs of Chinese consumers and companies, in which household appliances, packaged goods, clothes, medical devices and much more besides would be connected to the Internet via smart chips and capable of sensing and sharing information has been just around the corner. There are already more things connected to each other in China than in any country, with the numbers set to skyrocket further. It forecasts that overall market for IoT kit of various forms in China will rise from \$193 billion last year to \$361 billion in 2020. With more and more devices and services collecting, processing and communicating the users’ data on the Internet unnoticeably, compliance with the principle consent has been ironically metaphysical rather than practical. It’s a tough question for China whether data protection should be, to some extent, sacrificed for the economic purpose of IoT development.