

在隐私保护与经济效率之间摇摆的个人数据

——产权化是好的归宿吗？

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(摘要) 个人数据作为数字经济中最为特殊的调整对象, 既是一种具有巨大潜在经济价值的资源, 又与隐私存在着天然的不可切分的“血脉”联系。个人数据价值的特殊分布和实现途径导致市场主体的行为受到其影响而不断调整, 其法律体系设计必须要考虑经济效率与个人隐私的平衡。产权化作为个人数据隐私化框架下最重要也最具有影响的回应, 试图用财产规则将个人数据的控制权从“法律空地”归还给数据主体, 并通过自我决策权与市场机制内生个人偏好来实现个人数据的保护。但数据主体理性的有限性、个人数据的公共利益属性、交易市场的信息不对称性以及财产规则下的自由转让等都注定单一的方案很难实现个人数据治理体系复杂而多元的法律目标, 更好的回应是形成综合立体、协调完善的个人数据治理体系。

(关键词) 个人数据; 隐私权; 经济效率; 数据治理; 法律规制

Abstract: As the most specific object to be regulated in the data economy, personal data is not only a resource with significant potential economic value, but also has a natural and intrinsic "bloodline" tied to personal privacy. Since the unusual distribution and realisation way of personal data value lead market players to constantly adapt their behaviour depending on their position and interests, the legal regime for personal data must be designed to balance market efficiency with personal privacy. Propertization, one of the most important and influential responses to the privacy framework for personal data, seeks to return the control of personal data in 'legal limbo' to the data subject by property rules. In theory, property rules can use self-determination and market mechanisms to internalise individual preferences and protect personal data. However, the limited rationality of data subjects, the public interest in personal data, the information asymmetry in the trading market, and the free transfer under property rules, etc. are predestined to make it difficult for a single solution to fulfil the complex and multiple objectives of personal data governance. To face this challenge, the better response is to build a comprehensive, sophisticated and effective system of personal data governance.

Key words: Personal data; Privacy; Economic efficiency; Data governance; Legal regulation

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