

Legal Governance System of Illegal and Harmful Information on Internet and Its Perfection

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Abstract: China has initially established a complete legal system for the governance of illegal and harmful information on the Internet, but there are still some problems, such as the unstable governance system, the unclear and proper specific governance rules, and the incomplete legal responsibility of network operators. Under the background of comprehensively promoting the rule of law, we must raise the governance of harmful information on the Internet to the level of rule of law; In view of the characteristics of the Internet's harmful information, such as the concealment of its transmission mode, the immediacy of its transmission time, the trans-boundary of its transmission space and the universality of its audience, the governance should follow the path of "comprehensive governance according to law". Facing the ever-changing network environment, its governance means should also be constantly adjusted. The management of harmful information in the Internet depends not only on the progress of computer science and technology, but also on the strong protection of law. It is an inevitable requirement of building a civilized and harmonious network environment to clarify the scope of harmful information on the network from legislation, take multiple measures simultaneously, and carry out governance for harmful information on the network. We should further consolidate and upgrade the status of the National Network Information Office, clarify the rules of illegal and harmful information governance, try out the hierarchical governance system of information content, further straighten out the legal responsibilities of network service providers, implement their security management obligations in information content, and improve the legal governance system of illegal and harmful information on the Internet in China as a whole. To effectively supervise and manage the spread of network information, it is necessary to regulate the harmful information on the Internet from the legal level, not to make the network world an "extra-legal space", and to make the network world run on the track of the rule of law.

1. Introduction

Building a network power and maintaining Internet security are major strategic issues that the party and the government have paid great attention to in recent years[1].The major decision to comprehensively advance the rule of law has provided principles and basis for The construction of cyberspace security and information-based rule of law in China. This shows that the Internet and network security occupy an important position in the political and social life of our country. The explosion of information in the Internet age has made "consumption information" through the Internet an indispensable part of the public's daily life[2].The promulgation of the Cybersecurity Law in 2016 is a peak in the history of China's network legislation, and in the field of legal regulation of illegal and harmful information on the Internet, it also means that the long-standing problems of low legislative level, inconsistent content, and lack of coordinated subjects have begun to be solved [3]. Looking at the current situation of Internet governance in China, the judgment of the connotation and extension of harmful information on the Internet has not yet reached the level of unification at the level of the legal system, and there are also deficiencies such as non-uniformity and unscientific governance in practice. In order to achieve effective governance of online information content, it is necessary for us to carefully sort out China's network information content regulation system, find out the crux of the problem and improve it in a targeted manner.

2. China's Internet information content legal governance system

2.1. Initially formed a stable definition model

Generally speaking, there are two definitions of illegal and harmful information on the Internet in China's laws and regulations: the Measures for the Administration of Internet Information Services promulgated by the State Council in 2000 and the Cyber Security Law promulgated in 2016. In recent years, China's judgment of the range of harmful information on the Internet follows the strict to wide interpretation, and more and more information categories are included in the range of harmful information. Although China has formulated the Network Security Law on network security, it does not clearly determine the scope of harmful information on the network. The Measures for the Administration of Internet Information Services preliminarily defined the "nine prohibitions" with different standards in the field of administrative regulation. Since then, the regulations, rules, etc. formulated to regulate the network have mostly similar provisions on illegal and harmful information on the network. Comprehensive treatment of harmful information on the Internet according to law must be based on law. By combing the above existing clauses, we can find that the harmful information on the Internet in China can be divided into political categories, criminal categories, rumors categories, infringement of private rights categories and so on. We should abide by the Constitution and laws, observe public order, respect social morality, and not endanger the network security, or use the network to engage in activities that endanger national security, honor and interests.

2.2. Clear the information content governance obligations of network service providers

"Decision of the Standing Committee of the National People's Congress on Safeguarding Internet Security" clearly stipulates that "units engaged in Internet business should carry out activities according to law, and when they find illegal and criminal acts and harmful information on the Internet, they should take measures to stop transmitting harmful information and report it to relevant authorities in time". At this stage, we should focus on formulating special laws for the Internet. Specifically, we can formulate the Internet Security Management Law and Internet Information Protection Law, etc. The effective enforcement of the law is the embodiment of the real life of the law. Even if there is a relatively complete and systematic network legislation, if it cannot be effectively implemented, it will be a dead letter. In addition, according to the Measures for the Administration of Internet Information Services, "the records of Internet information service providers and Internet access service providers should be kept for 60 days, and provided when the relevant state authorities inquire according to law". Strengthen the risk awareness of Internet enterprises, operate in good faith, and take effective measures in time when toxic and harmful network information is found, such as blocking and disconnecting links. If you are aware of the serious situation, you should report it to relevant departments in time. It is also necessary to establish a network information security complaint and reporting system, publish information such as complaints and reporting methods, and timely accept and handle complaints and reports related to network information security.

2.3. An effective path to network harmful information governance

In recent years, almost every year, the government has organized more or less special rectification. The traditional way to solve public problems mainly depends on the government. With the global change of public governance mode, a new social management mode, which is different from the traditional government control mode, has emerged.

It advocates that the government should take the helm to coordinate the interaction among public departments, markets and social organizations, so as to build a public management platform with the goal of "good governance". A perfect system of laws and regulations is an inevitable need to standardize social behavior and build a legal society, and it is also an important foundation of network information supervision system. Effective network information supervision must be based on a sound legal and regulatory system. If such a network environment is not purified, it will undoubtedly have extremely negative influence on the healthy growth of the majority of young

netizens. Although the Internet is a virtual platform, netizens' online behavior is a realistic behavior, and netizens should be responsible for their own behavior. In real life, it is difficult for people to see immoral and uncivilized phenomena as concentrated as those on the Internet, because most members of society are subject to the internal constraints of morality. It's different online. In the eyes of most netizens, the Internet is an anonymous public space. You can do whatever you want, and no one else will know. Therefore, many people indulge their online behavior. A person who accepts moral constraints in real life will lose moral constraints in cyberspace and make all kinds of uncivilized actions. Therefore, to curb the above problems, it is ultimately up to netizens, especially young netizens, to improve their personality, literacy and social responsibility awareness. Everyone who accesses the Internet should realize that any act of making and spreading harmful information on the Internet may endanger the healthy development of the whole network. The whole society should establish correct network ethics, actively guide netizens to improve their network literacy, and then purify the network environment.

3. Problems existing in the legal governance of network information content in my country

3.1. The specific governance rules are still unclear and appropriate

Based on the analysis of the "Cyber Security Law" and the "Administrative Measures for Internet Information Services", there are three main problems in my country's specific governance rules for illegal and harmful information. First, it blurs the boundary between "illegal" and "violation of morality". In terms of form, my country's legislation on network security and network harmful information governance has already reached a certain number and scale, and has formed a relatively systematic level and system. But in fact, my country's legal basis for harmful information governance still presents a state of insufficient supply. Although morality and law are the same rules for adjusting human society, they are a broader and more volatile value evaluation, and the two should not be confused. Second, the legislative terms are inaccurate and the restrictions are too broad. Accuracy is the first requirement of the law. There is no specific legislation on harmful information, and the governance of harmful information is confused with relevant legislation such as network security maintenance, network intellectual property rights, and protection of reputation rights. legal basis. If all information that violates the law is identified as prohibited information, then freedom of speech will essentially lose its constitutional barrier against the country's legislative power. Third, it violates the principle of legal reservation. Although Article 8 of the Legislation Law does not explicitly enumerate freedom of speech, from the principles of constitutional law and the bottom line of this article, restrictions on freedom of speech should also follow the principle of legal reservations.

3.2. The legal liability setting of network operators is not complete

The "discovery" of network operators includes three situations: (1) notification by the competent administrative department; (2) learning through complaint and reporting channels (including notification by the infringer); (3) active discovery through manual review and other means. It is necessary to strengthen publicity and education to the general public, so that the general public realizes the harm of harmful information on the Internet, and consciously resists harmful information on the Internet. my country's legislation is also unclear on when network operators should enjoy liability immunity for their own management behaviors. On the one hand, it leads to the fact that the decision of the network service provider to manage the information content is final once it is made, and it is difficult for the user's rights to be relieved;

4. Suggestions on improving the legal governance of network information content in China

Internet governance is a long and difficult process. If we want to fundamentally control the spread of harmful information on the Internet, we need to make joint consideration and efforts from the legal level, the regulatory body level, the industry autonomy level and the netizens' public level to achieve results. The following suggestions are put forward from the following three levels.

Legally, it is necessary to improve the system and promote the convergence and unification of existing laws and regulations. Use the law to further clarify the overall leadership function of the National Network Information Office. It should be made clear by law that the competent departments of various industries only play a role in assisting the National Network Information Office in network governance. Secondly, we should further enhance the legal status of the National Network Information Office and enrich its law enforcement means. In terms of network information security rules, the Network Security Law needs to be connected with the Decision on Strengthening Network Information Protection.

Administratively, it is necessary to clarify the division of responsibilities of regulatory authorities and standardize their regulatory models. It is necessary to clarify the powers and responsibilities of management departments, and avoid the phenomena of contradictions, repeated punishments or governance gaps in Internet supervision and governance. Effectively supervise and manage the Internet within the scope of their respective duties.

The industry itself should strengthen its self-discipline ability and give full play to public power. It is necessary to clarify the specific rights and responsibilities of service providers as the responsible subjects, formulate their own regulatory rules and processing standards, and form a complete and rigorous operation process for the discovery, identification, investigation and punishment of harmful information, so as to make it efficient and standardized in its own supervision. In addition, although the legislative design of criminal responsibility and tort liability is basically appropriate, the court should still pay attention to be as cautious as possible in the determination of criminal responsibility.

5. Conclusion

With the transformation of China from a "network power" to a "network power", network security and health have become an important goal of China's Internet and even the entire information industry development strategy. The convenience brought by the Internet also hides some potential dangers, and the comprehensive treatment of harmful information on the Internet in accordance with the law to create a good network atmosphere and a healthy and positive network environment requires the joint efforts of legislation, law enforcement, and international judicial cooperation. The governance of harmful information on the Internet is bound to be a complex and long-term process, which requires legal guarantees, technical guarantees, and even more market supervision and social supervision. Comprehensive management according to law is the only way to deal with harmful information management. Comprehensive management in accordance with law shall be guaranteed by a sound legal, technical, and institutional foundation, comprehensively employing all kinds of legal means, and jointly advancing through multiple channels of state control, market entity self-discipline, social supervision, and international cooperation. Among them, it is necessary to use law and technology as the basis for support, the efforts of legislators, law enforcers, and adjudicators themselves, and still more to awaken the people's sense of resistance through propaganda and education on the law. Only by exerting efforts and taking multiple measures at the same time can we build a harmonious, civilized and safe network environment and make the Internet better serve our lives.

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