

Research on the Legal Risks of Government Data Openness and the Path of Rule of Law Guarantee in the Context of Big Data

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Abstract: In the era of big data, the opening of government data has become an inevitable trend. During the process of opening government data in China, influenced by traditional administrative management thinking and restricted by the current relevant legal system, there are still problems such as the absence of relevant legislation for the opening of government data, the lack of a unified licensing system, and the imperfect mechanism for the integration of government and enterprises. These issues have led to the fact that the actual effect of the current opening of government data has not reached the expected results. Under such circumstances, the author intends to explore the practical difficulties in the utilization of government data opening and propose a legal guarantee path, with the aim of promoting the construction of the rule of law for government data opening in China, guiding data opening practices, and promoting economic development and social progress.

Keywords: The Era of Big Data; Openness of Government Data; Real Legal Risks; The Path of Rule of Law

1. Formulation of the Issue

With the rapid development of social data and the deepening of the digital economy, the government has also carried out government data openness in government affairs, which has attracted widespread attention. In October 2022, the report of the 20th National Congress of the Communist Party of China once again emphasized the importance of "accelerating the development of the digital economy and promoting the deep integration of the digital economy and the real economy"[1]. It is worth noting that the original open government information has been transformed into a requirement for open government data. The distinction between the two concepts is not clear to the public. The open government information system revolves around the public's right to know and the government's obligation to open, while open government data changes the relationship between the government and citizens from a supervisory relationship to a collaborative relationship, in order to fully tap the value of data and jointly solve social problems [2].

In fact, open government information is a unilateral act of the government, and if it is released in accordance with the prescribed method, it will be regarded as the fulfillment of the requirements of its duties, and there is a lack of positive interaction between the government and the public. Information disclosure is the premise of open government data, because the basic connotation of government data is collected, processed and stored by the government on behalf of the people in the course of performing its duties, so it has the characteristics of public attributes. In addition to the right to know, the public has the right to participate in a series of processes after data openness to achieve effective use of data. The first step in the chain of data flow is disclosure, followed by sharing, analysis, mining and utilization. One of the effective ways to improve the credibility of the government is to open and integrate the use of government data resources as much as possible.

Worldwide, other countries and regions have also conducted a lot of research on government data openness. Robinson and other researchers argue that the government, as the publisher of the data, makes the data available to the public for free, so that the public can use and redistribute the

data into creative information products with usable value [3]. Open data also ensures transparency for the government. Hoffmann believes that data openness can not only improve the efficiency of government work, but also enable the public to use data to refine information and provide guidance for their own decision-making after data openness [4].

At this stage, China's government data opening process, by the influence of traditional administrative thinking and the current relevant legal system limitations, facing many practical difficulties, resulting in the current government data opening did not achieve the desired results. Therefore, in this case, the author intends to explore the big data background of government data open utilization of the reality of the dilemma and its rule of law safeguard path, to further promote the construction of the rule of law of China's government data openness, to guide the practice of data openness, and to promote the economic development and social progress, has important practical significance.

2. Status of Laws and Regulations on Government Data Openness

The Data Security Law, promulgated in June 2021 and officially implemented on September 10, 2021, for the first time provides for the opening of government data at the level of national laws, clarifies the opening principles of "justice, fairness and convenience for the people" and the requirements of "timely and accurate" opening, and briefly elaborates on the open data directory and open platform. The Data Security Law has created legal conditions for maximizing the opening and use of government data, and China's government data openness practice and local legislation have also come out of the dilemma of "no law to follow". At the same time, the Data Security Law focuses on ensuring data security, and only makes principled provisions on data openness, and its core systems and specific norms need to be built and improved through other legislation at the national level. The Law of the People's Republic of China on the Protection of Personal Information, which was enacted immediately after the Data Security Law, regulates the processing activities of personal information, aiming to protect personal information while fostering its reasonable utilization, and has become an important link in the framework of the rule of law on the opening up of data in the era of big data. In addition, the Regulations of the People's Republic of China on the Disclosure of Government Information, as the main legislation on the disclosure of government information in China, also provides a legislative reference for the construction of the system of open government data to a certain extent [5].

3. Legal Risks of Government Data Openness

3.1 Weaknesses in Laws Related to Open Government Data

First of all, from a macroscopic point of view, the opening up of government data is a comprehensive issue that involves not only the management, use and opening up of data, but also the procedures and scope of data opening, which requires reasonable institutional arrangements. The principle provisions in the Data Security Law can only guide the current data opening work and make broad overall arrangements, but they are overstretched to face the actual problems in the practice of data opening. The general provisions do not better solve the problems faced in practice, and obviously cannot meet the needs of digital utilization and development in the era of big data, and the use of government data has to be refined by subsequent legislation.

In addition, from the point of view of local legislation, most local governments will regulate the openness and sharing of government data together, and choose to introduce corresponding regulations on data openness and sharing and regulations on big data promotion to raise awareness of data openness and strengthen data openness. However, after comparison, it is not difficult to find that the legal norms of various places are formulated with different standards, and the contents of the norms are different, and the quality is also mixed. With the deepening of the demand for and attention to open government data, all kinds of local laws and regulations will only increase, and the drawbacks of decentralized legislation will be gradually exposed, which is not conducive to the standardization of open government data.

3.2 Non-uniform Licensing System for Open Government Data

Generally speaking, the restriction of users after the government opens the data is realized through the licensing system. Data licensing can regulate the reuse of government data, and is a necessary measure to guarantee the orderly flow of data and promote the adoption of data development. By signing a contract or reaching an agreement between the data subject and the data user, the rights and obligations of both parties can be further clarified to promote the orderly opening of data and reduce disputes over data utilization.

As a whole, China has not adopted the type of intellectual property license common in the international arena, but has chosen to regulate the use of data separately. Except for Zhejiang Province, the website statements and service agreements of the rest of the platforms cannot be called a data opening license system, but merely have certain licensing attributes. Most of the existing agreements try to stipulate the rights and obligations of users, platform disclaimers also have privacy protection provisions, but such agreements do not provide for the breach of contract responsibility of the user's violation of the use of data, which is similar to the abstract normative statement rather than a license agreement [6]. Horizontally, the service agreements or website statements of the open platforms do not adopt a unified standard and format, and the user agreements of each region are different, and the formulation of the agreements is not standardized. Meanwhile, although some provinces provide links to other websites on their open data platforms, they have established a disclaimer in the user agreement, i.e., "due to the different content and privacy strategies of each website, the platform will not be responsible for the consequences caused by this". Due to the lack of uniform data use norms, the requirements for users vary from place to place, which in essence again creates barriers to interregional data openness and sharing, is not conducive to interprovincial data flow and connectivity, and hinders the utilization and redevelopment of data.

3.3 Government-Enterprise Integration Promotion Mechanism to be Improved

From the viewpoint of data utilization practice, there are many shortcomings in the cooperation between the government and enterprises. The two types of resources, government data and social data, are relatively scarce in terms of integration and cooperation. From the perspective of data market prosperity, different kinds of data can stimulate the vitality of data, complement each other's advantages, and have important economic value. In practice, there are many differences between government data and social data in terms of data subjects and data types, so there is little integration. In fact, from the perspective of corporate interests, companies that develop data will only collect more government data or allow the government to open up as much data as possible, but will not take the initiative to share the data they hold or develop with the government unless a cooperation agreement is reached between the government and the company. The integration of government data and social data can stimulate the data vitality of both sides, promote data circulation and data development, and deeply explore the potential data value. Therefore, there is still much room for exploration of government data and social data in accelerating data fusion and interoperability and promoting data docking.

4. Rule of Law Guarantee Path for Government Data Openness

4.1 Clarify and Refine the Relevant Provisions on the Open Use of Government Data

First, government data liberalization requires a supporting system for the protection of privacy and secrecy. Government data openness is not the unconditional liberalization of all the resources at its disposal, and there must be a supporting, tiered and graded approach to the handling of data involving State secrets, commercial secrets and personal privacy. The Open Government Information Ordinance establishes the principle of treating disclosure as the norm and non-disclosure as the exception. The opening of government data should follow the same principle. Because the open part of the original data, the public use to refine the information and value, reduce the cost of the government's own organization and refinement, more should be in the protection of privacy and

confidentiality under the premise of as far as possible for the open; open data involves personal privacy, to do to follow the lawfulness, legitimacy, necessity of the three principles. The government collects citizens' data and opens the data to comply with legal procedures and ensure that it is used for legitimate purposes; when opening the data, it should depersonalize the part involving privacy to ensure security; for the damage to the rights caused by the government's faults, the citizens also have the right to obtain remedies.

Second, government data platforms should provide license agreements for open data authorization, clarifying the rights and obligations between platforms and users. The subject of data utilization should abide by laws and regulations, comply with network service agreements and related procedures, not infringe on national interests and the rights and interests of third parties, and not use the data for unlawful purposes. In compliance with the above provisions, users enjoy non-exclusive, non-discriminatory and free use of government data. Based on the purpose of data management, the open data platform has the right to request users to provide feedback on data use, to require users to cooperate with the supervision and inspection of the relevant departments, and to publicize violations and infringements of the subject of data use.

4.2 Establishment of a Nationally Unified Opening Platform for Data

Unifying and coordinating government departments, integrating data platforms across departments and regions, and making data interconnected require a nationally unified open data platform. The achievement of Japan, a latecomer to open government data, proves the importance of setting up a national-level open platform to oversee the integration of all local platforms. Such a platform does not replace local platforms, but rather serves more as an indexing repository. Its existence will reduce the difficulty of access for users, simplify the search process, and make the data of each website match each other, achieving unification and standardization. Under the unified open platform, data from various government data platforms will be linked using a unified data caliber. The unified platform will use Internet technology to integrate and manage various types of data, create a data resource integration directory, adjust and optimize data classification, set an open schedule, and optimize and update data in a unified manner [7].

4.3 Promoting the Establishment of a Government-enterprise Fusion Mechanism for the Opening Up of Government Data

The opening up of government data is a long-term process and requires long-term support in terms of human and financial resources, but in terms of technology, it is far from enough to rely entirely on the government's own ability to solve the problem. The purpose of open government data is also to provide resources for public use, and the voice of the public should not be ignored. Therefore, it is necessary to promote public participation and multi-dimensional collaboration. In terms of technology, the "crowdsourcing model" can be used to rely on socially competent enterprises to deal with technical problems; data collection can be entrusted to individuals in the community, with the help of social forces and the government to collaborate in the collection. In terms of funding, enterprises can be attracted to invest through the bidding method stipulated by law, so that they can join in the construction of the data platform, and with their financial and technical strength, the economic value of data can be deeply excavated for value-added utilization. In terms of promoting public participation, we can actively organize open data technology competitions, open data exhibitions, and provide open data knowledge lectures to attract public interest and stimulate public participation. It is also necessary to improve the evaluation system of the open data platform and make timely responses and positive improvements to the public's opinions and suggestions.

5. Conclusions

In the future, the type of government data openness will cover all aspects of society, and will face more and more problems, which is both an opportunity and a challenge. The government is the developer of the resource, enterprises and research institutions are the utilizers and processors of the

data, and the public is the enjoyer of the benefits of data development. At the same time, the continuous development of data will further stimulate market demand. The public's needs are passed on to the government through participation, which stimulates the government to expand its openness and brings more opportunities for enterprises. Open government data is to achieve such a virtuous ecological cycle. The ecological cycle of open data is also inseparable from the establishment of the concept of openness. The future government and citizens should set up the concept of openness and sharing, government administration in accordance with the law, improve the function configuration, active participation of citizens, legal utilization, and jointly promote the release of data energy.

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