

The Judicial Dilemma of the Right to Be Forgotten in the Digital Age and the Shift to Localization Paths

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ABSTRACT

Digital technology endows information with the technical characteristic of permanent storage, giving rise to the social governance challenge of "digital stigmatization." Foreign General Data Protection Regulation (GDPR) constructs a normative system for the right to be forgotten, centered on physical deletion and simultaneous cleanup across the entire network. This paradigm presents a structural contradiction with China's current civil rights framework and public law governance logic. An analysis of typical personality rights judgments such as the "Ren Jiayu v. Baidu case" and the current doctrinal application of Article 47 of the Personal Information Protection Law reveals that claims related to being forgotten in China's judicial arena are facing multiple normative obstacles: the principle of legality in civil rights creates a closed loop in judicial logic; existing deletion rights norms only apply to illegal actions, failing to address the personality infringement caused by the loss of relevance value of legally published information over time; and a complete transplantation of foreign deletion paradigms would also generate multiple institutional contradictions in terms of freedom of speech protection, digital technology adaptation, and the legitimacy of private entity regulation. This paper abandons the binary debate of "transplantation or rejection," employing functionalist comparative law as its analytical tool to propose a localized normative construction path that replaces deletion with data sealing. It rejects the core of foreign data erasure systems, focusing instead on severing identifiable links and implementing tiered restrictions on queries. It leverages existing public law systems in China for sealing minor offense records and public security violation records to achieve normative integration. Based on this, following a gradual legislative logic, it outlines a tiered institutional construction scheme extending from the criminal public domain to the general digital private domain, complemented by tiered interest balancing benchmarks and tripartite hearing and review procedures. Within the framework of current legal interpretation, it achieves systematic protection of digital personality interests, forming a digital amnesia normative system that differs from the EU's and aligns with the foundation of local rule of law.

KEYWORDS

Right to be Forgotten; Right to Deletion; Archive Model; Balancing of Interests; Digital Personality.

1. INTRODUCTION OF THE PROBLEM

In 2014, the European Court of Justice completed the judicial confirmation of the right to be forgotten in the Google Spain case, which was later solidified by Article 17 of the General Data Protection Regulation, forming a normative paradigm with the complete deletion of data and simultaneous cleanup by third parties as its core [1]. In 2015, the Ren Jiayu v. Baidu case became a landmark case in China's judicial system that touched on the interest of being forgotten. The court, based on the interpretation of the principle of legality of civil rights, rejected all the parties' claims on the grounds that the current law does not establish the right to be forgotten as an independent right type, which laid the foundation for the conservative judgment of similar disputes thereafter[7].

After the promulgation of the Personality Rights section of the Civil Code and the Personal Information Protection Law, the personal information protection system has become increasingly complete. However, the number of civil claims to eliminate negative information from the past and break free from digital identity labels in the digital field continues to increase. From market entities demanding to shield past business disputes, to released prisoners hoping to erase the traces of their criminal records across the entire network, to ordinary civil subjects requesting to remove their youthful misconduct, the demand for forgetting of information subjects has formed a large-scale judicial supply gap. There has long been a divergence of paths at the academic level: some opinions advocate establishing an independent right to be forgotten through legislation and fully transplanting the EU deletion rules to fill the relief gap; while other doctrinal interpretations believe that the deletion right in Article 47 of the Personal Information Protection Law is sufficient to cover all digital personality protection needs, and there is no need to construct a separate system [4]. Both of these arguments have theoretical limitations. The former ignores the inherent value conflict between the foreign paradigm and China's system of freedom of speech, open archives, and criminal record management. The latter separates the application field boundaries of the deletion right and the right to be forgotten, and cannot respond to the normative gap of continuous degradation of personality after the expiration of the validity period of legally disclosed information.

Existing research has largely focused on binary value games, failing to fully explore the normative connection value of local public law institutions that preserve records. This paper uses functionalist comparative law as an analytical tool to demonstrate the theoretical consistency of preservation as a path to the localization of the right to be forgotten. It dismantles the structural normative obstacles in the current judicial arena layer by layer, and builds a progressive institutional structure based on a hierarchical governance logic. This opens up applicable channels between two normative fields: records generated by public power and information on the internet, providing a local normative solution for the protection of personal dignity in the digital age.

2. MULTIPLE STRUCTURAL OBSTACLES TO THE JUDICIAL APPLICATION OF THE RIGHT TO BE FORGOTTEN

2.1. Judicial Closed Loop and Discretionary Abnormalities under the Principle of Legal Rights

China's civil rights system adopts a statutory construction model. The types and contents of personality rights and property rights are all explicitly stipulated by the statutory law. The judiciary shall not create new civil rights through law-making. This interpretation position constitutes the underlying support of the judgment logic of the Ren Jiayu case [4]. The court did not completely deny the parties' claim for the peaceful interests of digital personality. It only delineated the normative entry point for the claim of rights and required the parties to seek relief based on the right of reputation, general personality rights or the right to delete personal information. At the case level, judges need to make a substantive weighing of the necessity of protecting the forgetting claim. However, at the system level, a logical closed loop that is difficult to break through is formed: the legislation is difficult to assess the actual protection needs of the forgotten interests due to the lack of unified judicial practice; the judiciary is unable to form a stable and unified judgment standard due to the lack of written rights norms. The protection expectation of digital personality rights is in an uncertain state.

Meanwhile, the lack of hierarchical and standardized judicial benchmarks for balancing interests at the case-by-case level, coupled with excessive discretionary space leading to inconsistent judgments in similar cases, has resulted in problems such as inconsistent judgments in similar cases. In judicial practice, there is no unified doctrinal standard for considering the timeliness of information, the identity of the subject, and the weight of public interest. There is no stratified distinction between

ordinary individuals and public figures, minor criminal records and serious prior criminal convictions, and commercial archives and private statements. Furthermore, there is a lack of standardized evaluation of the harmful consequences of algorithmic aggregation amplifying identity stigma. The balance between personal dignity and the public's right to know has long been subject to subjective judgment.

2.2. The Doctrine Boundaries of Article 47 of the Personal Information Protection Law

Article 47 of the Personal Information Protection Law is the most similar provision to the right to be forgotten in foreign laws, but there is an essential difference in the preconditions for the application of the two regulations. Article 17 of the General Data Protection Regulation covers two situations: illegal processing of information and legal information that has lost its relevance value. Its core regulation is the dynamic dissolution of the relevance between data and the subject. All situations in which the right to delete is applied in China are based on the premise that the information processing behavior is illegal, breach of contract, or exceeds the scope of authorization. It only provides a basis for the right to delete data that does not have a legal basis at the source . [5]

Regarding the core normative scenario of the right to be forgotten—where the initial public disclosure of information is entirely legal, but the information loses its connection to the subject's reality over time, and continued searching and dissemination would lead to personal degradation and social exclusion—Article 47 fails to provide a valid basis for a claim. Even with an expansive interpretation, extending the semantic reach of deletion to logical removal methods such as deindexing and anonymization, two regulatory obstacles remain: First, the deletion scenarios listed in the article are a closed enumeration, failing to provide a catch-all application for information that has lost its timeliness or has no continuing value; second, the obligated parties defined in the article only include information processors who directly collect and store information, failing to include search engines, web crawlers, and third-party reposting platforms within the regulatory scope, thus failing to constrain the reality of information's unlimited cross-platform dissemination.

2.3. The Structural Contradiction between the Extraterritorial Deletion Paradigm and the Domestic Legal System

Even with the addition of an independent right to be forgotten through legislation, the EU-style complete deletion norms are still difficult to integrate into the local legal order, and the three institutional conflicts objectively exist. First, there is a conflict of legal interests. The rule design of completely deleting original web pages and cleaning up links across the entire network is very likely to compress the institutional space for news archiving and public opinion supervision. Under the premise that China has not yet formed a refined hierarchical interest balancing rule, it is easy to trigger a continuous confrontation between personality rights and freedom of information [1] . Second, there is the failure of norms at the level of digital technology. Blockchain distributed storage has the technical attributes of being tamper-proof and fully replicable. Physical deletion is not feasible at the technical level. Forcibly imposing deletion obligations will put the platform in a long-term compliance dilemma [8] . Third, there is the deficiency of the legitimacy of private subject regulation. The EU has handed over the review power of forgetting applications to Internet platforms. The platforms essentially assume a judicial ruling function. China's current administrative supervision and judicial review mechanisms are lacking. There is a lack of a balanced procedure for the publisher's defense and the participation of public interest representatives. Unilateral review is very likely to give rise to two extreme results: the chilling effect of expression or the lack of personality rights relief [6][3] .

3. THEORETICAL JUSTIFICATION FOR THE SEALING-IN MODEL AS A LOCALIZATION PATH

3.1. The Normative Core and Institutional Advantages of the Sealing Model

The term "sealing" used in this article differs from the institutional logic of physical deletion outside the territory. Its core principle is to sever the identifiable link between individuals and negative information through technological processing and legal regulation, achieving a forgetting effect through tiered retrieval restrictions, anonymization, and keyword de-indexing. Compared to the deletion paradigm, the sealing model has four advantages: First, it adheres to the principle of proportionality, preserving original news, court documents, and historical archives intact, only blocking name-based retrieval channels, achieving a dynamic balance between personal dignity and the public's right to know; second, it adapts to new digital carriers such as blockchain, eliminating the need to contend with immutable technology, achieving a standardized effect simply by setting access controls at the retrieval port; third, it optimizes the legitimacy of the adjudicating body, with judicial organs and administrative regulatory departments at the core of the sealing decision-making body, weakening the unilateral discretionary power of commercial platforms; and finally, it highly aligns with the public law reform direction of modernizing the governance of minor offenses in my country, forming an institutional linkage with the sealing of juvenile offenders' prior convictions and minor violations, mitigating the social exclusion effect brought about by digital criminal records.

3.2. The Normative Commonality Between the Right to Seal and the Right to Be Forgotten

From the perspective of comparative law, the original prototype of the right to be forgotten was the criminal record forgetting rule created by the French and German judiciaries. Early cases did not require the destruction of the original criminal case files, but only restricted the public's access to relevant records. The core value was to help ex-convicts complete their resocialization. Sealing was the initial means of realizing this right [2]. The EU digital deletion paradigm is only a derivative form of the system after the development of the Internet, and is not the only normative expression of the right. The core functions of the two are completely unified, both of which are committed to eliminating the solidification and degradation of personality caused by permanent digital memory. The only difference is the means of information processing. Using sealing as the localized realization path of the right to be forgotten in China does not deviate from the value origin of this right. It is just adjusting the normative realization method according to the local legal order, which has doctrinal legitimacy.

3.3. The Normative Practice Basis of the Local Seizure System

The sealing of records is not merely a theoretical concept; my country's existing public law norms have formed a complete set of practical examples, providing a normative foundation for the extension of digital private domain sealing rules. At the criminal law level, in 2022, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued the "Implementation Measures on Sealing Criminal Records of Minors," which clearly stipulates the addition of sealing marks to electronic files and prohibits external platforms from scraping them; the Third Plenary Session of the 20th CPC Central Committee proposed establishing a sealing system for minor criminal records of adults; and the 2025 revision of the "Public Security Administration Punishment Law" adds rules for tiered sealing and targeted querying of public security violation records. At the industry standard level, the "Information Security Technology Personal Information Security Specification" incorporates logical deletion and non-searchability into compliant handling methods, providing technical support for sealing methods such as de-indexing and anonymization. The sealing practice in the public law arena has formed a stable operating

mechanism, possessing the potential for institutional extension to ordinary online personal information.

4. THE LOCALIZATION SYSTEM CONSTRUCTION OF A LAYERED AND GRADUAL APPROACH TO THE SEALING MODEL

Based on the existing normative resources of public law, and following the legislative logic of extending from the special public domain to the general private domain, the localized digital forgetting normative system will be gradually built in three stages: short-term, medium-term and long-term.

4.1. Short-term Construction: Strengthening the Digital Linkage Standards for Sealing Public Domain Past Records

Taking the sealing of minor criminal and public security violations as a breakthrough point, the system aims to improve the standardized connection between offline sealing and online digital space. It defines the applicable boundaries of sealing in a tiered manner, differentiating between serious crimes, minor crimes, and minor offenses: records of crimes endangering national security and serious violent crimes will be permanently made public; minor crimes involving sentences of three years or less imprisonment, detention, or probation will automatically trigger sealing upon completion of the statutory probation period; and records of crimes committed by minors will be directly sealed. Simultaneously, it adds the obligation for search engines, credit reporting agencies, and commercial databases to collaboratively seal records. After a judicial organ makes a sealing ruling, it can notify all information processors to block name-related search entries, and impose administrative penalties on entities that refuse to comply in accordance with the Personal Information Protection Law. It strictly limits the entities that can access sealed information; only judicial case handling and specific confidential industries can access it through legal procedures, prohibiting enterprises from bulk searching of criminal records, thus eliminating identity discrimination in employment and education.

4.2. Mid-term Construction: Extension of the System of Hierarchical Anonymous Sealing of Judicial Documents

To address the issues of revisiting past cases and causing secondary infringements on personal identities due to the online publication of court judgments, a time-limited anonymous document sealing mechanism has been established to balance judicial transparency with the protection of digital identities. Cases are handled in tiers based on their public nature: major corruption cases and cases endangering public safety are fully published; for ordinary civil disputes and minor criminal judgments, parties can apply to the court to remove their names, ID numbers, and other identifiable information after the statutory limitation period for case closure has expired. The original documents will not be removed; only keyword search channels for names will be blocked. Search engines must simultaneously filter corresponding links to eliminate the persistent stigma associated with the parties' identities, preserving their historical research and industry reference value.

4.3. Long-term Structure: Written Legislation for the General Network Information Sealing

Based on the judicial and regulatory practice accumulated by the first two types of sealing systems, the revised Personal Information Protection Law adds a special section on general information sealing, extending the sealing rules to all legally publicly available online personal information. It clarifies the legal application conditions for sealing: the purpose of information processing has been completely lost; the time limit has expired and it has no substantial connection with the subject's current life; continued disclosure will cause serious damage to personal dignity; and the party

concerned has legally withdrawn the consent to the information release. At the legislative level, de-indexing, anonymization, access restriction, and retrieval filtering are uniformly defined as the legal implementation methods of sealing, expanding the interpretation range of the deletion right in Article 47 [5], and at the same time, search engines, crawler service providers, and AI training subjects are all included in the scope of sealing obligations, and are subject to the collaborative obligation of cross-platform synchronous filtering.

5. SUPPORTING MECHANISMS FOR THE LOCALIZED SEIZURE SYSTEM

5.1. Hierarchical Dynamic Interest Measurement Benchmark

To mitigate the drawbacks of subjective judicial discretion, a progressive three-tiered review standard is established as a unified adjudication norm. The first tier is the timeliness review of information, setting a value decay period based on the type of information: 2 years for private life information, 5 years for civil and commercial disputes, and 3 years for minor criminal records. Exceeding the statutory period presumes a reduction in the public interest of the information. The second tier is the hierarchical review of subjects, prioritizing the personal interests of ordinary natural persons, allowing industry operators to apply only for the sealing of irrelevant past information, and allowing public officials and entertainment figures to claim only the blocking of irrelevant private information. The third tier is the reverse review of public interest, assigning differentiated weights to major public events, historical archives, commercial information, and private matters, prioritizing the protection of the right to know for information on major public issues, and prioritizing the protection of the digital personality's peace of mind for negative private information.

5.2. Tripartite Pre-Hearing Review Procedure

Correct the legitimacy flaws of unilateral rulings by commercial platforms and construct a balanced pre-hearing procedure. After the information subject submits an application for sealing, the platform shall notify the original information publisher within the statutory time limit. The hearing procedure shall involve the participation of the information applicant, the original publisher, and the public interest representative of the archives or media [6], and conduct evidence presentation and debate on the degree of personality infringement and the value of information circulation. The platform shall issue a written reasoned decision based on the hierarchical measurement benchmark and regularly publish the general review standards; if the applicant or publisher has any objection to the disposal result, they may apply to the Internet information supervision department for administrative review or directly file a civil lawsuit on personality rights.

5.3. Compliance Obligations for Differentiated Digital Technologies

Based on the technical characteristics of the storage medium, hierarchical sealing obligations should be established. Centralized websites and social media platforms must implement name-based search de-indexing mechanisms; blockchain operators are obligated to destroy keys and set up search blacklists, and original on-chain data can be retained, but targeted searches using natural person identity keywords are prohibited; AI large-scale model service providers must establish parameter forgetting mechanisms and must not crawl sealed information to generate related negative inference content; commercial web crawlers and credit reporting companies must build sealed information filtering databases and are prohibited from crawling and publicizing restricted-access criminal records and old negative records.

6. CONCLUSION

The permanent storage nature of digital media disrupts the natural decay of traditional social memory, giving rise to new risks of personality infringement through digital stigmatization. The multiple obstacles to the right to forgetting in China's judicial system stem not merely from legislative gaps, but from a structural misalignment between foreign deletion paradigms and the domestic legal system, public law governance of criminal records, and information disclosure system. Direct transplantation would trigger multiple conflicts of legal interests and technical compliance dilemmas. The sealing model transcends the binary opposition of "delete / not delete," using restrictions on retrieval and severing of identity connections as core means to perpetuate the core value of the right to be forgotten in reshaping digital personality and achieving individual resocialization. Simultaneously, it leverages existing public law systems for sealing records of minors and minor offenses to achieve systemic integration, possessing a solid practical foundation and doctrinal consistency.

By establishing tiered archiving regulations based on a gradual legislative logic from the public to the private sphere, coupled with stratified interest balancing benchmarks and tripartite hearing procedures, comprehensive protection of digital personality interests can be achieved within the existing legal interpretation framework. The construction of local digital amnesia regulations does not need to blindly follow the EU deletion paradigm, nor does it need to get bogged down in the conceptual debate over the independent establishment of the right to be forgotten. It only needs to focus on archiving-a system tool adapted to local conditions-and gradually improve public domain digital linkage rules, extending them to general online information. This will achieve a dynamic balance between personal dignity, the public's right to know, and the value of historical archives, forming a digital personality protection regulatory system with Chinese characteristics.

REFERENCES

- [1] Li, X. Q. (2026). The origin, evolution and latest development of the right to be forgotten. *Legal Studies*, (3), 136–146.
- [2] Zhang, J. W. (2026). From pursuing deletion to actual preservation: the localization of the right to be forgotten. *Journal of Nantong University (Social Sciences Edition)*, 42(2), 26–37, 167.
- [3] Zhan, H. X. (2026). Reconstruction of China's minor crime record sealing system in the digital age. *Journal of Southwest Jiaotong University (Social Sciences Edition)*, 27(1), 32–46.
- [4] Huang, Y. Y. (2025). Considerations on the introduction of the right to be forgotten in my country in the era of big data. *Journal of Harbin University*, 46(2), 63–67.
- [5] Du, M. Q. (2024). Jurisprudential justification and normative construction of the right to be forgotten in the digital age. *Journal of Guizhou University (Social Sciences Edition)*, 42(5), 34–46.
- [6] Cai, P. R. (2019). Reflection and reconstruction of the right to be forgotten system. *Tsinghua Law Journal*, 13(5), 168–185.
- [7] Ding, Y. X. (2018). The Chinese context and judicial development of the right to be forgotten: starting from the first case of the right to be forgotten in China. *Legal Research*, (4), 27–39.
- [8] Liu, W. J. (2018). The right to be forgotten: traditional elements, new context and balancing of interests. *Legal Studies*, 40(2), 24–41.