

# AN APPRAISAL OF ORDINARY LAW PROCEEDINGS OF TAX COLLECTION UNDER CAMEROON'S LAWS

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## INTRODUCTION

Since human beings entered into the information age, data has brought great changes to the production and life of the whole society. People can now use mobile app for online shopping, enterprises produce and monitor automatically through intelligent systems, and social managers use artificial intelligence to catch criminals in public places, all of which are based on data.

The importance of data is not only because it has penetrated into every aspect of our daily life, but also because of its basic role in the social production—a new and special factor of production which contains great value. Because of this, China attaches great importance to the openness and utilization of data. On April 9, 2020, the CPC Central committee and the State Council issued the *Opinions on Building a More Perfect Market-Oriented Allocation System and Mechanism of Factors*, which clearly requires “to study and improve the nature of property rights according to the trading and industry self-discipline mechanism”, and to juxtapose data with traditional production factors such as land, capital and labor<sup>i</sup>. On May 18, 2020, the CPC Central Committee and the State Council issued the *Opinions on Accelerating the Improvement of the socialist Market Economic System in the New Era*, which once again emphasized the importance of “accelerating the cultivation and development of the data element market, establishing the data resource list management mechanism, improving the data ownership definition, open sharing, trading and circulation and other standards and measures, and giving play to the value of social data resources”<sup>ii</sup>.

The importance to emphasize the improvement of the definition of data ownership is based on the fact that data ownership is the foundation for data acquisition, data

opening, data transaction and data application in the era of digital economy. At present, the state and some local governments are trying to promote the legislation of data protection. However, because data involves individuals, enterprises, society and the state, and involves privacy, trade secrets, national sovereignty, division of property interests and many other factors, there are still many disputes on data right, especially on data ownership. This paper attempts to examine the concept of data right and its related concepts. At preliminary matter it is necessary to distinguish the concepts of “data” and “information”, which are related but not equivalent. Information is a kind of message, which is the object of communication system transmission and processing. It can be said that all the content of human society is kind of information, and the personal information in the civil law corresponds to the right of personality. While data is extremely objective, usually referring to the electronic form of information records. Data is not information itself, but the carrier of information, and information can be derived from data. The special feature of data is that it can be read, copied and processed to form a new data.

## **DIFFERENT UNDERSTANDINGS OF DATA RIGHTS/OWNERSHIP**

Data rights in the context of “data right confirmation” generally refers to the proprietary rights/ownership of data, that is, the ownership of the subject matter of data. There have been different views on this issue in the Chinese academic circles. Some scholars believed that the data right belongs to the data subject (including natural person, legal person, non-legal person organization, etc.), and they advocated that all data in the society are actually generated by each data subject in the process of production in life, so data belongs to each generation source, that is, each data subject has the natural ownership of the data generated by itself<sup>iii</sup>. This argument has been questioned. For example, when a natural person purchases goods on a website and gets distribution, does the shopping data, payment data and logistics data belong to this consumer alone? Does the large amount of data naturally generated in the business activities of a website have the nature of monopoly and ownership?

On the other hand, some scholars argued that data rights should be attributed to the state. In their opinion, data is a kind of public resource, which is an essential factor to

support the whole human production and life. Just like air, water and land, once data is generated and entered into the social field, it has a public attribute. Natural persons, legal persons and other organizations can only use these data resources, not absolutely possess them.<sup>iv</sup> But it is still questionable whether data is a type of public goods. If data is treated like water, air and other natural resources, can data still be developed and utilized freely? Under the market economy, if all kinds of active market subjects share, trade and develop data, aren't they acting beyond their authority? Nevertheless, if all data related activities cannot be carried out due to this reason, then this type of ownership system must be a constraint to the social development.

### **TRADITIONAL PROPERTY RIGHT THEORY FAILING TO SUPPORT THE DATA RIGHT CONFIRMATION**

The divergence on the data rights ownership is based on the traditional theory of property rights. Ownership is the concept of real right, which is based on the traditional Roman law. It stresses the absoluteness, exclusiveness and sustainability of rights. For instance, Article 544 of the French Civil Code stipulates that "Ownership is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by statutes or regulations."<sup>v</sup> Article 903 of the German Civil Code also states that "the owner of the property may dispose of the property at will to the extent that he does not violate the law or the rights of a third person, and others in the exclusion of all of the interference."<sup>vi</sup> Both of these two classical codes of traditional property theory emphasize the absolute occupation and exclusivity.

However the above theories are all about tangible property and even if they are joint possessed, their property rights and interests can be clearly divided due to their tangibility and uniqueness. This is different from data, characteristics of which are invisible and reproducible. Data cannot appear in tangible form, and due to its original diversity and its replicability, it is often controlled by multiple subjects. When applying the traditional property right theory to the data context, it is difficult to define the ownership of data, and once the data issue is putting into the vivid social practice, the dilemma to confirm the data right is occurred.

## **DATA OWNERSHIP IS A NEW TYPE OF “INCLUSIVE PROPERTY RIGHT”**

The special characteristic of data implies that data will correspond to multiple data subjects when it comes into being. The so-called “ownership” will change from “absolute ownership” to “relative ownership” and from being “exclusive” to “inclusive”, which is a subversion of traditional property rights.

Some have proposed for a kind of quasi real right for data ownership. However, based on the traditional theory of real right, the quasi-real right such as water right, fishery right, mining right and sea area use right, is a kind of private law with the attribute of public law. Indeed, it is the right to set up the possession without ownership, and the most significant feature of this type of right is the limited protection duration. If the protection duration of data ownership should be set, it is obviously inconsistent with social life. Moreover, the data subject does not have any “ownership” of the data. It is not appropriate to apply the quasi-real right model to data ownership. In fact, the development of any theories is not static. As Marx stated, “in the era of American history, ownership developed in various ways and under completely different relations.” As the ownership is established for the purpose of the use and profit of the property, it is a kind of social progress to boldly advance with the times and enrich the connotation and expression of the traditional property right in time when facing the contradiction between the ownership of the material and the demand.

The author believes that the ownership of the intangible material such as data must be double ownership or even multiple ownership. There is no “complete” right to the material, which is a new type of “inclusive property right”. That is, the data subjects, including natural person, legal person (including state organ) and non-legal person organization, simultaneously possess the data generated in production, life and social management. The data subjects (data right owners) can use, process the data and obtain property income from these activities without hindering the legitimate rights of others. Although the Civil Code of China does not specify the ownership of data, Article 127 of the Code stipulates that “if the law has provisions on the protection of data and network virtual property, such provisions shall be followed”<sup>vii</sup>. Therefore, we also look forward to the legislation on data ownership.

## LOCAL LEGISLATION OF DATA RIGHTS AND INTERESTS

Article 8 of the PRC Legislation Law clearly states that the content of the basic civil system is that the state retains the legislative power<sup>viii</sup>. At present, local governments are enthusiastic about data legislation. How to adjust the data right within the jurisdiction of local legislation is an issue worthy to be explored.

The author believes that local legislation can start from the perspective of “data rights and interests”, which is not the ownership of data, but a kind of “usufructuary rights” that is not traditional usufructuary rights. On June 29, 2021, the Data Regulation of Shenzhen Special Economic Zone was issued and will come into effect on January 1, 2022. A special feature of this Regulation is that natural persons no longer enjoy the right to their personal data; public data is no longer a new type of state-owned assets, and its data right therefore does not necessarily belong to the state or is exercised by the Shenzhen Municipal Government on its behalf. Moreover, it no longer stipulated that the main subject of data element market has the data right to its legally collected data and the data generated by itself. These amendments are appropriate as the ownership of data is indeed the legislative power of the state, and if the local legislation provides for it, it really violates the legislative authority.

So how to activate the market and release the vitality of data in response to the actual needs of society when the state does not make clear provisions on the ownership of data? The Data Regulation of Shenzhen examines the issue from the perspective of data rights and interests. In the legislators’ perspective, rights and interests are not rights, but interests protected by law. If the legitimate rights and interests are infringed upon, they can receive legal protection. The author argues that it is of great significance to design the system of data rights and interests. From the perspective of legal theory, this kind of data right is a type of “usufructuary right” but not traditional usufructuary right. The traditional usufructuary right emphasizes the right to “other people’s things”, which is a limited right established on other people’s things for the purpose of use and income in a certain range. On the contrary, due to the complexity of data itself, data is not “other people’s thing” to the data subject, but “multi people’s thing”. In order to promote social progress and social and economic development, data subjects are allowed to freely occupy, use and benefit from data without damaging the legitimate rights and interests of others. This kind of right is similar to usufructuary right, but it is not pure

usufructuary right because of the “inclusive right” to data. The premise of exercising such rights and interests is not to damage the legitimate rights and interests of other data subjects. Therefore, in the local legislation, it will be a good point for legislation to segment what situation and scope belong to “damage the legitimate rights and interests of other data subjects”. By setting the necessary legal norms and delimiting the red line of improper exercise, we can make clear the reasonable control of the data subject over the data, and process, trade and destroy the data legally and freely. Only in this way can we find the right way to encourage market development, protect personal information and trade secrets, and national security.

## ENDNOTES

<sup>i</sup> See *Opinions on Building a More Perfect Market-Oriented Allocation System and Mechanism of Factors* <<https://baijiahao.baidu.com/s?id=1663501481384538233&wfr=spider&for=pc>> 2020-04-09.

<sup>ii</sup> See *Opinions on Accelerating the Improvement of the Socialist Market Economic System in the New Era* <[http://www.gov.cn/zhengce/2020-05/18/content\\_5512696.htm](http://www.gov.cn/zhengce/2020-05/18/content_5512696.htm)> 2020-04-19.

<sup>iii</sup> See Zhuo Lixiong, ‘Data Carrying Right: Basic Concepts, Problems and China's Response’ (2019) 9 *Research on Administrative Law*, p 13.

<sup>iv</sup> See ‘Data is Power’ in <<https://xw.qq.com/partner/vivoscreen/20210714A0878Y/20210714A0878Y00?showComments=0&isNews=1>> 2021-07-14.

<sup>v</sup> Article 544 of the French Civil Code.

<sup>vi</sup> Article 903 of the German Civil Code.

<sup>vii</sup> Article 127 of the Civil Code of the People’s Republic of China.

<sup>viii</sup> Article 8 of the Legislation Law of the People’s Republic of China.