US-China Law Review, May 2023, Vol. 20, No. 5, 215-226
doi:10.17265/1548-6605/2023.05.003

Legal Regulation of Unfair Application User Agreements in China

LAN Zihang
Macau University of Science and Technology, Macao, China
LUO Yichen
Nanjing University of Information Science and Technology, Nanjing, China
YAN Yanru
Macau University of Science and Technology, Macao, China

With the increase in the content and specialization of user agreements, the vast majority of users seldom, if ever, read the user agreements of mobile applications. In the face of absolutely strong application providers, users are forced to accept user agreements out of necessity, which leaves an opportunity for application providers to stipulate unfair terms, and in the long run, users will fall into rational indifference to the defense of unfair user agreements. In order to solve the above problems, this paper proposes that for online platforms with a large number of users and a dominant position in the market, they should convert most of the contents in the application agreement into the legal provisions of the model contract, and display only the terms that the users are able to choose and those that modify the model contract when entering the application. Among the invalid blacklists in the model contract, the law should add new clauses that explicitly prohibit the set-off of uncertain liquidated damages in format contracts, unnecessary authorization of personal information, format jurisdiction, and unlimited copyright licenses to adequately protect the rights and interests of vulnerable users. In addition, the law should grant users the right of withdrawal and a certain degree of refusal in case of substantial obstruction, in order to balance the position and interests of application providers and users. Finally, the law should establish a public interest litigation system and a pre-censorship system to build a final line of defense for a comprehensive review of the fairness of user agreements.

Keywords: format terms, user agreement, model contract, invalid list

Introduction

Background and Significance of the Topic

Based on the data presented in the *Mobile Internet Research Report*, it is observed that in the fourth quarter of 2021, Chinese netizens had an average of approximately 65 mobile apps installed per person (Zhao, 2022).

LAN Zihang and LUO Yichen—Co-first authors: These authors contributed equally to this work.
LAN Zihang, Master's degree, research assistant, Faculty of Law, Macau University of Science and Technology, Macao, China.
LUO Yichen, Master's degree, research assistant, School of Law and Public Affairs, Nanjing University of Information Science and Technology, Nanjing, China.
Corresponding author: YAN Yanru, Master's degree, Faculty of Law, Macau University of Science and Technology, Macao, China.

Furthermore, the user agreements and privacy policies associated with these apps contained over one million words. Consequently, it would require a minimum of 65 hours to peruse these agreements in a cursory manner, let alone thoroughly evaluate the implications of granting or relinquishing one's rights. Due to the arduous nature of user agreements, a significant majority of users, almost 70 percent, have a tendency to seldom or never peruse them (Wang & Xiao, 2022). In instances when a significant majority of users have not familiarised themselves with user agreements, operators of mobile applications tend to incorporate clauses that unjustly encroach upon the legal rights of the user. In practical application, it is worth noting that certain users may possess an awareness of the inequitable conditions inside user agreements. However, their agency to address such concerns is limited, as non-compliance with the user agreement renders them unable to utilise the mobile application.

The user agreement of the mobile application is a non-negotiable contract that is reused and pre-drafted. This aligns with the characteristics of a format contract as defined in Article 496(1) of the Civil Code of the People's Republic of China. Article 497 of the Civil Code outlines the conditions that render a format contract void, aiming to safeguard the rights and interests of the accepting party. Nevertheless, despite these provisions, a considerable number of unjust terms within format contracts persist, which have the potential to encroach upon the lawful rights and interests of users. Notably, there is a scarcity of court rulings invalidating mobile application format contracts, and users rarely resort to legal action to protect their personal information, copyrights, and other rights against such contracts.

Addressing the issue of inequitable user agreement terms in the aforementioned mobile applications and balancing the interests of network service, providers and users hold considerable importance in safeguarding the lawful rights and interests of the 930 million consumers utilising the 3.02 million mobile applications (Wang, 2021). Moreover, it serves to foster and protect the sound and sustainable growth of China's mobile application market.

Literature Review

When defining and clarifying the readability of the application's user agreement, Zhang Yusheng believes that the user agreement is too long, and even if it is bolded or highlighted in red, it is still difficult to prompt the signer function of the format contract; therefore, the essential terms should be listed separately (Zhang, 2022). Wu Xie believes that the user agreement should be made more accessible and graphical in order for users to consent to it voluntarily (Wu, 2021). Tang Qi believes that the user agreement is dense with concepts, lengthy sentences, and nonstandard language, and that the dissemination of information should be improved so that users can effectively read and accept the user agreement (Tang, 2021). The aforementioned scholars have performed a comprehensive and detailed analysis of the obstacles for users to read and agree to the format terms, but they have not solved the problem of the legal obligations of the party providing the format terms, and there are only formal suggestions, which Internet Service Providers (ISPs) can adopt or not, and they tend not to adopt them in practise, so the problem of substantive obstacles for ISPs to prevent users from reading and agreeing to the user agreement remains unaddressed.

In the face of a number of issues that may be caused by unfair user agreements, Hu Anqi argues that, a format list system should be adopted to resolve the issues. The provider of application format terms serves as both a network service provider and a network order manager, and the platform's autonomy may exceed the

scope of private law. Therefore, a moderate legal paternalism (Hu, 2019) should be adopted to correct the deviation of users signing format contracts and to enumerate the contents of unjust format clauses in accordance with the abstract standard of the principle of honesty and credit (Hu & Li, 2019).

Other scholars have also proposed their own solutions. Yao Lili believes that in order to balance the interests of network service providers and users, user education should be bolstered and a third-party organisation for contract evaluation should be established (Yao, 2016). Yi Hailing believes that industry associations should play a regulatory role and the third-party public interest litigation system should be strengthened in order to safeguard the rights of users in application format contracts (Yi, 2020). Lin Xuxia believes that the conditions of the user agreement should be expressly specified, and that the network operator should not unilaterally and indiscriminately modify or terminate the agreement (Lin, 2012). Liu Shaojun argues that unjust clauses in user agreements should be revocable or modifiable, but not absolutely invalid (Liu, 2018). Wang Jianyi argues that a specific criterion for regulating the content of universal format contracts beyond individual cases should be whether the contract's intent is compromised (Wang, 2014). The aforementioned solutions for the resolution of format contracts are still imperfect and vague, and they do not respond to or conduct in-depth research on the rational indifference of users in practise, how the law protects the user's right of refusal, and how to streamline the content of user agreements in terms of content, which is crucial for preventing unjust user agreements.

Due to the abundance of user agreements and their accessibility, numerous academicians have conducted empirical research on user agreements to analyse their problems and proposed solutions. Hu Li concludes, based on more than 40 examples, that user agreements should consider the dual requirements of form and content and adhere to the principles of limited authorization and restriction of monopoly standards (Hu & He, 2021). Wang Hongxia contends, via an example study, that the obligations of application providers should be mandated to increase, that users should not be required to bare an unjust burden of proof, and that a free and no-cost launching mechanism should be established for users (Wang & Yang, 2016). Liu Songtao concludes, based on an analysis of the user agreements of 50 online platforms, that the disparity between the contracting status of online platform operators and consumers, as well as the contradiction between the format of online user agreements and the necessity of consumption, has resulted in the existence of unfair user agreements (Liu, 2020). Current empirical research on user agreements is insufficiently numerous and unrepresentative, failing to classify various types of application user agreements, which is not conducive to elucidating particular issues and proposing effective solutions.

In light of the relative backwardness of China's regulation of user agreements, some scholars have suggested that China should draw on the legislative and practical experiences of other countries to better the protection of consumer rights in China from a comparative law perspective. According to Wang Anran, we should learn from Germany's experience and use generalised rules, rigid rules, and flexible rules to determine whether a format contract is invalid or voidable for infringing on the rights and interests of users in an unjust manner (Wang, 2022). Yao Lili believes that the validity of the user agreement should be determined by whether it satisfies the obligation of reasonable notification, and she cites U.S. precedent to establish the notification judgement standard (Yao, 2017). Deng Zhiwei believes we should learn from Germany's black, white, and grey format contract review standards, and examine grey clauses on an individual basis (Deng, 2021). These scholars have made significant contributions to the introduction of other countries' legal systems, but they have not combined the specific

conditions of China with a perfect norm of an unfair user agreement applicable to China; thus, additional research on Chineseization is still required.

Research Purpose

This paper endeavours to examine three primary concerns that exhibit logical recursion.

(1) What are the existing instances of unjust infringements of users' rights in application user agreements?

(2) In what manner should the legal framework effectively respond to the issue of inequitable user agreements?

(3) What specific provisions within the user agreement of the application programme should be expressly forbidden by legislation?

To address the aforementioned issues, this study aims to implement the subsequent research initiatives:

(1) Comparative analysis of legal systems: This study examines the legal frameworks of mainland China and other jurisdictions characterised by robust and effective regulation of application user agreements. By drawing upon their governance practises, the paper aims to analyse and propose a legislative framework that aligns with China's specific national circumstances.

(2) Research on law and economics: This paper examines the phenomenon of reasonable indifference among individuals when it comes to asserting their rights against unjust format contracts, taking into consideration the economic costs associated with the legal system and the principle of the tragedy of the commons.

(3) The study of legal doctrine: The study of legal doctrine involves the examination of legal matters within the framework of the current legal system. It aims to provide a coherent and systematic interpretation of these matters in order to accommodate societal progress and the evolving times. This study aims to address the issue of inequitable user agreements within the current legal framework by exploring methods of interpretation derived from the pre-existing contractual clauses of the Chinese Civil Code, as opposed to introducing supplementary legislative amendments.

Characterizing Application User Agreements

Substantial Impediments to Reading User Agreements

In contrast to offline format contracts, user agreements exhibit a surplus of content and necessitate a significant investment of time and effort from all users in order to peruse them. This places a considerable strain on users and presents a large impediment to their comprehension and assimilation of the user agreements. The operators of the application exploit the aforementioned legal loophole to intentionally augment the content of the format contract and insert superfluous clauses, thereby impeding users from comprehending the user agreement.

Furthermore, it should be noted that the user agreement exhibits a high degree of specialisation, thereby disregarding the reading comprehension capabilities of the general populace. It is worth mentioning that the majority of application user agreements pose challenges even for legal experts, let alone individuals lacking formal legal education. While the user agreement functions as a legally binding contract and naturally incorporates a significant amount of legal jargon, it is crucial for application operators to consider that the user agreement will be accessed by a vast number of average users. Consequently, it is essential to prioritise clarity and comprehensibility for users while ensuring the accuracy of the agreement. Deliberately employing complex language in the user agreement by the provider can present a significant hindrance for users attempting to comprehend its contents.

Simultaneously, user agreements often incorporate text that is characterised by small font sizes, densely packed content, light-colored fonts, and other readability challenges. These design choices are intended to create obstacles for users in comprehending the agreement's contents, thereby increasing the likelihood of users unknowingly consenting to the terms. Consequently, this facilitates the inclusion of unfair provisions by the party seeking to exploit the format contract.

The Obligatory Nature of Concluding User Agreements

The user agreements pertaining to apps exhibit a tendency towards homogeneity, even across distinct categories of user agreements. If the user does not agree with a widely applied term, the user cannot "vote with his feet" because there is no app format contract on the market that fairly allocates responsibility. In contrast to the negotiable nature of traditional offline format contracts, wherein recipients have the ability to engage in bargaining and select different companies if dissatisfied with the terms supplied, app user agreements lack such alternatives.

Typically, applications adhere to a "licence prior to usage" framework, wherein users must consent to the terms outlined in the user agreement in order to access the app. Failure to agree to certain provisions within the user agreement will result in the user being unable to utilise the application. In certain instances, individuals are compelled to utilise specific applications due to their prominent or monopolistic market position. This compulsion arises from the necessity to employ these applications for various aspects of life, such as education, employment, and personal affairs. Consequently, users are obliged to acquiesce to the terms and conditions imposed by these applications, which may be perceived as overpowering. From this perspective, the act of signing the user agreement can be seen as having a certain level of coercive nature, which becomes more pronounced as the market dominance of firms increases.

Rational Apathy Regarding User Agreement Rights Defense

Some scholars have suggested that the problem of unfair user agreements can be solved by strengthening education and publicity for users in order to raise consumers' awareness of the protection of personal information and the responsibility to dispose of their rights, but in practice, this measure has a limited effect, which is due to the fact that the cost of suing for invalidation of unfair format contracts is too high for consumers, who are more likely to be rationally apathetic when defending their rights to the format contract of the application. Format contracts usually stipulate that the place of jurisdiction for disputes over format contracts is the company's location, which is a major taxpayer in the area, and local courts are prone to harbor cases. At the same time, application users are scattered throughout the country; according to the civil litigation principle of "plaintiff accommodated to defendant", if users want to sue the application format contract in court, they need to spend a lot of time, energy, and money to go to the company's location to sue, and also bear the risk of losing the lawsuit after spending the above high cost. If the lawsuit is successful, the result of the judgment is favorable to all users, and these users do not need to spend any cost to ride on the fruits of the rights of a small number of people; according to the economic principle of the tragedy of the commons, the user tends to hope that other people can help them to defend their own rights, and they are sitting on their own to enjoy the benefits, so consumers in the establishment of economic rationality in the defense of the rights of the indifference are unlikely to improve the situation through publicity, education, and other methods.

The Party Providing Format Contracts Has Greater Strength

The offline format contract typically involves direct interpersonal communication, allowing the party responsible for providing the contractual terms to clarify any uncertainties regarding said terms. While there may be potential for modifications to offline the format contract, the user agreement, functioning as an application format contract, lacks flexibility for such alterations. Consequently, users encounter challenges in reaching out to the party responsible for the format terms to seek clarification on said terms. The power dynamics between contract signatories in applications are significantly more skewed compared to typical offline format contracts, with online service providers holding a position of utmost advantage.

The provisions outlined in Article 498 of the Civil Code pertain to the interpretation of format contracts. These provisions may be relevant in situations where the number of signatories to a contract is limited offline. However, when considering the user agreement contract for an application, the number of signatories involved is typically substantial. Consequently, the legal professionals employed by the company to draught the format contract for the application will likely adopt a more comprehensive approach. As a result, the interpretation of such contracts will be more distinctive, reducing the likelihood of disputes arising. Alternatively, even a minor error has the potential to result in significant financial ramifications. An individual user is likely to possess limited influence when confronted with a formidable application corporation, and the principle of favourable interpretation proves ineffective.

Institutional Construction of Application User Agreements

Simplification of the Content of Format Clauses

According to Article 497 of Chinese Civil Code, a standard clause is void under any of the following circumstances: (1) existence of a circumstance under which the clause is void as provided in Section 3 of Chapter VI of Book One and Article 506 of this Code; (2) the party providing the standard clause unreasonably exempts or alleviates himself from the liability, imposes heavier liability on the other party, or restricts the main rights of the other party; or (3) the party providing the standard clause deprives the other party of his main rights. This provision is too broad, resulting in application providers frequently exploiting its ambiguity and lack of specificity to gain an unfair advantage. If the determination of invalidity of the format terms still needs to be decided by the court on a case-by-case basis, then, except for the contents explicitly prohibited by laws and administrative regulations, the application provider can exclude the user's main rights because of the user's rational indifference, and only clear and direct provisions of the law can realize the protection of the user's rights in the format contract.

The application agreement is far more than the traditional form contract one-to-one contract signing, involving the number of people which can reach one billion people such as WeChat on their own important rights of the collective unconscious disposition, beyond the party autonomy and the scope of private law, but belongs to the major public interests. This provides a legitimate basis for the law to intervene in contracts that traditionally fall under the category of autonomy. The law cannot expect application service providers to take the initiative to protect users' rights and interests. Terms such as "exclusive", "irrevocable", "worldwide", "perpetual", "sublicensable", and "free licensing" are common in user agreements, but there are few limits on the rights that users can authorize to application service providers, and therefore a mandatory external force should be required in order to urge application service providers to regulate themselves.

In the case of online platforms that possess a substantial user base and hold a prominent market position, it is advisable for them to incorporate the majority of the application agreement's content into the legal provisions of a standardised contract. By doing so, the law can establish predetermined terms within the form contract of the application agreement, thereby alleviating the burden on users (Wang & Liu, 2022). In the context of a predominantly homogenised user base (Hu & He, 2022), it is imperative to consider the conditions and regulatory requirements surrounding the utilisation of contracts. Specifically, during the implementation of a user agreement, it is essential to provide users with the ability to select and modify terms within a standardised contract, rather than burdening them with the responsibility of reviewing the entirety of the contractual provisions. From a perspective centred on Germany's black-white and grey-list system, it is recommended that the inclusion of blacklisted and whitelisted terms in the legal provisions of the model contract be mandated. Conversely, terms falling within the grey-list should be subject to user confirmation. For instance, terms that necessitate users to refrain from generating or disseminating rumours or false information should be incorporated into the state's standardised application form contract template. Consequently, these terms would no longer require explicit prompting during the application process, as it becomes the responsibility of the state to disseminate this information to the public. Furthermore, it is recommended that the judicial interpretation or opinion of the Civil Code incorporate more precise and explicit provisions regarding the statutory invalidity of form contracts. These provisions should address issues such as uncertainty regarding the ownership of agreed-upon liquidated damages offset, unrestricted permission to utilise user-generated content copyright, unnecessary information collection, and other significant authorizations outlined in the format terms. In the event that it becomes necessary to alter the user's consent, it is imperative that such modifications are clearly delineated to ensure the user's autonomy in making an informed decision. Simultaneously, there is a need to limit the grey-list of form phrases that necessitate individualised judgements for revocation, while also establishing an unambiguous, non-contentious, and all-encompassing whitelist of form terms. This approach aims to strike a balance between the concerns of users and Internet Service Providers (ISPs).

In the case of apps with a limited user base and lacking market dominance, it is advisable for the government to implement random inspections in accordance with the standard user agreement. Furthermore, applications that employ non-compliant form contracts should be mandated to remedy such agreements.

Public Interest Litigation and Pre-censorship System

To address the issue of users' apathetic attitude towards the rights associated with format contracts, it is imperative for procuratorates and third-party consumer associations to assume their respective responsibilities by initiating public interest litigation against any improper infringement of users' rights and interests resulting from application format contracts. Currently, the scope of public interest litigation in China is restricted to national and provincial consumer associations. This limitation hampers the regulation of numerous small and medium-sized online platforms with regards to their contractual formats. The national and provincial consumer associations possess limited resources and can only target the larger platforms, thereby neglecting the need to protect the rights of consumers on a broader scale. It is imperative for our country to expand the entities eligible to initiate public interest litigation, including other consumer organisations, in order to safeguard the rights of consumers.

The current public interest litigation system plays a significant role in safeguarding user rights and interests. However, its initiation process is challenging, and it struggles to comprehensively address all application form contracts. Consequently, it is recommended that China's government focus on implementing a pre-examination system for user agreements as a future development direction. This system would involve granting the Internet Information Office and other relevant institutions the authority to review and approve form contracts before they are made available to users. The objective of this pre-examination process would be to identify and prevent any undue prejudice to user rights and interests, thereby establishing a robust framework for large platform user agreements. To clarify, it is recommended that the implementation of a public interest litigation system for user agreements on major platforms be prioritised, followed by the gradual establishment of a pre-examination system for form contracts by the Internet Information Office. Indeed, the simplification of the form contract has resulted in a significant reduction in its content, retaining only the sections that users can select and the portions that modify the model contract. Consequently, the burden on state authorities to assess the contract has been comparatively diminished.

Substantive Impediments Contracts May Be Voidable

The court is obligated to grant the user's request for rescission of the application format contract due to the fact that the party responsible for providing the contract has effectively hindered the user's comprehension and awareness of the terms and conditions specified in the pertinent format contract.

If significant obstacles exist, it is advisable to grant the user the ability to revoke rather than outright declaring the form contract as invalid. This allows the user to retroactively acknowledge the contract at any given time, thereby safeguarding the autonomy of the party involved. The contract would only lose its effect if the user actively revokes it, thus ensuring a balance of interests between the network service provider and the user.

Article 496(2) of the Civil Code states that if the party providing the form clause fails to fulfil its duty of reminder or explanation, causing the other party to fail to pay attention to or understand the clause in which it has a material interest, the other party may assert that the clause does not constitute the contract's substance. From this article, the principle of material obstruction of user agreement can be derived. If the party providing form terms materially obstructs the user from reading the user agreement, the party is deemed to have failed to fulfil its duty of reminder and explanation. However, the substantive obstruction rule is inconsistent with the focus of the preceding article, so the relevant judicial interpretation should be used to expand the interpretation and purpose of the new form of substantive contract obstruction.

The following requirements must be met for the privilege of revocation for material obstruction.

(1) The party providing the form clause has acted in bad faith or there is a verifiable basis to presume that it has acted in bad faith, with bad faith including willfulness or gross negligence.

(2) There must be a causal relationship between the network service provider's substantial obstruction of the user's ability to read the user agreement and the user's failure to read the user agreement, which must be close to the user legally. The review criterion for "substantial" is the medium standard.

(3) There is substantial obstruction of harmful behaviour, and as a consequence of the user's failure to read the terms of the user agreement, the network service provider is responsible for proving the user's reading time.

Granting Users the Right to Refuse

In instances where an application has achieved a substantial number of downloads and has established a dominant position in the market, it is advisable to provide consumers the option to utilise the programme without being compelled to consent to certain terms and conditions of the agreement. In instances where a software product has attained a prominent market position and an individual is compelled to utilise it, it is imperative to afford the user the prerogative to decline its usage. The utilisation of WeChat software is widespread, with a substantial user base. In the event that individuals decline to adhere to WeChat's prescribed terms of usage, they will be unable to avail themselves of its services. Consequently, this may lead to significant disruptions in the individual's daily life, necessitating their acquiescence to the aforementioned terms. In instances where individuals are limited to either accepting or declining the standard offline terms and conditions, it can be argued that users lack the ability to exercise their refusal rights, particularly in cases where these terms are employed by a significant portion of the population and are associated with a quasi-monopoly or dominant market position. Hence, it is deemed suitable to impose limitations on user actions within the application based on the specific prohibitions set by the user, employing a precise and tailored approach, rather than employing a uniform policy when the user expresses disagreement with certain conditions.

In the competitive market context, platform firms that are not monopolised or have lower levels of monopolisation will persistently adapt and modify their platform rules. This proactive approach enables them to progressively align with the evolving needs and expectations of users. In order to maintain a harmonious and self-regulating society, it is argued that legal intervention may not be necessary. However, when it comes to monopolistic application programmes, achieving a balance between user and platform interests through market competition becomes challenging. In such cases, additional legal coercion may be required to ensure that the platform provides format terms that encourage self-discipline and prevent significant harm to user rights and interests.

List of Invalid Format Clauses

Prohibition of Set-Off of Liquidated Damages for Indeterminate Format Contracts

In the event that an online user's account is disabled and frozen due to a violation of the terms and conditions outlined in a form contract, it is worth considering whether the said contract can include provisions asserting the platform's ownership over the assets associated with the user's account. In the event that an online game is prohibited due to a breach of the terms and conditions outlined in the form contract, it is customary for the rechargeable coins and virtual assets, such as equipment and skins, to be inherently ascribed to the platform. Numerous platforms specify in their user agreement that the liquidated damages and account property outlined in the standardised contract are mutually agreed upon for offsetting purposes. However, the precise amount of liquidated damages remains ambiguous, and the certainty of the account property is subject to variability. The underlying assumption of the offset is that the magnitude of the debt is unambiguous and uncontested. In the event of property uncertainty, the absence of offset conditions implies that the network service provider is not obligated to include format terms in the user agreement to offset liquidated damages. The inclusion of such a "liquidation" clause may lead to the misappropriation of the user's virtual property, potentially resulting in significant losses and detriment to the user's interests. The inclusion of default liability and beneficiary clauses

in form contracts, which pertain to both the role of a referee and an athlete, might result in the exclusion of the user's fundamental rights and interests. Consequently, it is necessary to deem such clauses as invalid.

Prohibition of Unnecessary Authorization of Personal Information

To mitigate the risk of excessive power being granted to the party responsible for the form clause, it is advisable to implement a mechanism for authorising important personal information in the form of a "temporary list". This entails that authorization can only be requested when the information is needed, and once the intended use is completed, the authorization should be promptly revoked. Additionally, any blanket authorization granting irrevocable access to personal information should be rendered invalid upon accessing the application. The inclusion of an irrevocable authorization of personal information as a prerequisite for accessing the application should be deemed an improper provision. In order to ensure the expression of permission, any modifications made to general personal information during the operation of the application programme should be subject to the user's approval. It is important to note that without obtaining the user's consent, the provisions pertaining to such modifications cannot be considered effective. The determination of whether the authorisation of information is essential in our country will be based on the criterion of contractual purpose. Additionally, a stringent examination standard will be implemented for the authorization of personal information. This will be carried out by using the proposed universal rational group as the judgement group.

Prohibition of Format Jurisdiction

Format jurisdiction forces users to accept dispute resolution methods that are unfavorable to them, such as arbitration and jurisdictional bodies, erodes the user's right to choose jurisdiction, increases the cost of defending the rights of consumers, such as high travel costs, and adds to the jurisdictional burden of the user, thus excluding the user's main rights. China should legislate to invalidate the jurisdiction of format contracts, and for those applications that have a large number of users and have formed a monopoly, it should adopt the legislative provision of "the defendant accommodated to the plaintiff" for format contract disputes. And for those who are less, not enough to form a monopoly in the industry for the application, if the user is more dispersed, it should be still used "the defendant accommodated to the plaintiff" jurisdiction; if the user is more centralized, for example, concentrated in the scope of a province, then it should continue to apply the original "the plaintiff accommodated to the defendant".

Prohibition of Unlimited Copyright Licenses

Currently, as stipulated in the user agreement, the copyright authorization granted to the network service platform by the user is global in scope, free of charge, capable of being sublicensed, and cannot be revoked. The detrimental impact of these exploitative practises, which disadvantage users without their awareness, should be subject to critical evaluation by legal authorities. It is anticipated that a significant number of users will express objections if they are deemed to have comprehended and consented to the aforementioned terms. Consequently, it is recommended that the government incorporate provisions in the development of standardised user agreements, rendering unrestricted copyright licencing clauses void. Other copyright authorization provisions should be placed in a category of questionable validity, affording online service platform creators the freedom to decide whether or not to accept them.

Conclusion

A significant proportion of mobile app users exhibit a tendency to rarely or infrequently peruse the user agreements associated with these applications. Furthermore, they display a lack of motivation to pursue legal action against user agreements that infringe upon their personal information and copyright protections, sometimes due to a perceived sense of apathy or indolence. In light of the aforementioned context, the present essay undertakes an examination of the inequitable nature of agreements between app users and providers. It further explores the manner in which the legal system should approach the issue of unjust user agreements, employing a comparative law framework, legal philosophy, and legal economics as analytical tools.

This study presents an analysis of the user agreement of the programme, highlighting its distinguishing qualities when contrasted to the typical terms included in form contracts. I. Significant barriers to understanding the user agreement: The excessive amount of content, high level of professionalism, and presence of other malevolent elements pose major difficulties to comprehending the agreement. The act of signing the user agreement form contract is obligatory. The user agreement can be characterised as requiring "prior authorization for usage" due to its significant level of monopolisation and standardisation. Consequently, users are unable to exercise their freedom to choose alternative options and are compelled to accept these oppressive terms. II. The rational indifference towards the defence of user agreement rights: Due to the considerable expenses associated with legal defence of rights and the relatively low likelihood of achieving a favourable outcome, individuals often resort to opportunistic behaviour by relying on the efforts of others in safeguarding their rights. III. The party that offers the form clause holds a position of greater influence. The contractual arrangement exhibits a significant power asymmetry between the entity responsible for drafting the form clause and the user, with the online service provider holding a position of utmost dominance.

This study further examines the necessary framework that should be implemented to address the aforementioned challenges pertaining to application user agreements. In the case of network platforms that possess a substantial user base and hold a prominent market position, it is advisable to transform the majority of the application agreement's contents into legally binding provisions within a standardised contract. Consequently, only the provisions that users can select and those that modify the model contract should be displayed during the application process. This approach aims to streamline the content of the contractual clauses, sparing users from the burden of reading through the entirety of the form contract. In order to effectively safeguard the rights and interests of vulnerable users, it is imperative for the law to introduce additional provisions within user agreements that explicitly prohibit certain invalid blacklists. These blacklists should specifically address the set-off of uncertain liquidated damages in form contracts, unnecessary authorization of personal information, format jurisdiction, and unlimited copyright licences. By incorporating such clauses, the law can ensure enhanced protection for users who may be susceptible to exploitation. Furthermore, it is imperative for the legislation to confer upon users the entitlement to withdraw and exercise a reasonable level of refusal in instances where significant hindrances arise. This measure is crucial in order to maintain equilibrium between the positions and interests of application providers and users. In order to ensure a full evaluation of the equity of user agreements, it is imperative to construct a public interest litigation system and a pre-vetting system. These mechanisms would serve as a last safeguard, so enhancing the overall efficacy of the review process.

References

Deng, Z. W. (2021). Research on the review mechanism of network service user agreement (Master thesis, Hebei Normal University, 2021). doi:10.27110/d.cnki.ghsfu.2021.000493

Hu, A. Q. (2019). Research on legal regulation of internet service format terms (Doctoral dissertation, Anhui University, 2019). Retrieved from https://kns.cnki.net/KCMS/detail/detail.aspx?dbname=CDFDLAST2019&filename=1019142650.nh

Hu, A. Q., & Li, M. F. (2019). An empirical study on judicial regulation of standard clauses in network platform user agreements. *Northern Legal Science, 13*(1), 53-62. doi:10.13893/j.cnki.bffx.2019.01.005

Hu, L., & He, J. H. (2021). UGC authorization terms in network user agreements: Realistic vision and normative setting—A sample of user agreements of 40 network platforms in my country. *Social Scientist, 36*(12), 125-131. Retrieved from https://www.zhangqiaokeyan.com/academic-journal-cn_social-scientist_thesis/0201298810590.html

Hu, L., & He, J. H. (2022). Empirical research on user data authorization mode in internet user agreements—Taking 40 internet platform user agreements as samples. *Hebei Law Science, 40*(10), 160-180. doi:10.16494/j.cnki.1002-3933.2022.10.009

Lin, X. X. (2012). On the legal regulation of agreements between network operators and users. *Science of Law (Journal of Northwest University of Political Science and Law), 30*(5), 138-145. doi:10.16290/j.cnki.1674-5205.2012.05.006

Liu, S. J. (2018). Re-discussion on the regulation of the effectiveness of contract standard clauses. *Social Sciences in Guangdong, 35*(5), 237-245. doi:10.3969/j.issn.1000-114X.2018.05.027

Liu, S. T. (2020). Research on the regulation of mandatory authorization of network user agreements (Master thesis, Southwest University of Political Science and Law, 2020). doi:10.27422/d.cnki.gxzfu.2020.000324

Tang, Q. (2021). Research on the readability of mobile internet application user agreement text (Master thesis, Wuhan University, 2021). doi:10.27379/d.cnki.gwhdu.2021.000975

Wang, A. R. (2022). Research on the validity review rules of mobile internet application user agreement (Master thesis, Shanghai Normal University, 2022). doi:10.27312/d.cnki.gshsu.2022.001040

Wang, P. Z., & Xiao, P. H. (2022). "I have read and agree"? Seventy percent of respondents admitted that they rarely or never read the app user agreement. *China Youth Daily*, 2022-03-31(010). doi:10.38302/n.cnki.nzgqn.2022.001177

Wang, M. (2021). Analysis of the development status of China's mobile application (App) market in 2021: The number continues to increase. *Zhiyan Consulting Network*, August 30, 2021. Retrieved from https://www.chyxx.com/industry/202109/972025.html

Wang, J. Y. (2014). Review and reconstruction of the content control standards of standard clauses—Also discussing the principle of fairness as a case of justice. *Beihang Law Review, 5*(1), 12. Retrieved from https://www.cnki.com.cn/Article/CJFDTotal-NBTX202209031.htm

Wang, J. H., & Liu, W. Z. (2022). "I have read and agree..." What are the "pitfalls" of the app user agreement that you have not read? *China Science and Technology Fortune Magazine, 25*(3), 73-74. doi:10.3969/j.issn.1671-461X.2022.03.035

Wang, H. X., & Yang, Y. J. (2016). Legal regulation of internet platform abuse of standard clauses—Taking 20 internet user registration agreements as samples. *Journal of Shanghai University of Political Science and Law (The Rule of Law Forum), 31*(1), 46-55. doi:10.3969/j.issn.1674-9502.2016.01.007

Wu, X. (2021). Research on the irrationality of mobile app user agreement. *Youth Journalists, 81*(14), 117-118. doi:10.15997/j.cnki.qnjz.2021.14.057

Yao, L. L. (2016). Legal regulations on network service agreements. *Science Technology and Law, 28*(6), 1058-1068. doi:10.3969/j.issn.1003-9945.2016.06.004

Yao, L. L. (2017). The judgment of the validity of user agreements from judicial cases of American courts. *Journal of Shanxi Agricultural University (Social Science Edition), 16*(6), 71-76. doi:10.13842/j.cnki.issn1671-816x.2017.06.012

Yi, H. L. (2020). On the user rights guarantee of China mobile social program user agreement (Master thesis, Shanghai Normal University, 2020). doi:10.27312/d.cnki.gshsu.2020.000802

Zhang, Y. S. (2022). App user agreement "weight loss" is a win-win measure. *Ningbo Newsreport, 41*(9), 67. Retrieved from https://www.cnki.com.cn/Article/CJFDTotal-NBTX202209031.htm

Zhao, L. X. (2022). Have you really read the app user agreement and privacy policy? *People's Post and Telecommunications*, 2022-04-29(007). doi:10.28659/n.cnki.nrmyd.2022.001265