

On the Main Forms of Cyber Crime and Criminal Law Countermeasures in the New Economic Era

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Abstract: Under the condition of information society, the network has become an indispensable and important part of social production and life. The network studied in this paper mainly refers to the Internet. At present, the development and application of the Internet in China shows many characteristics, such as "rapid development, rapid expansion of scale, increasing number of mobile Internet users, high number of young Internet users, continued popularization of the Internet to vulnerable groups with low education and low income, and the change of Internet use behavior from entertainment to consumer business". Further clarify the path of judicial identification of network pyramid selling crimes, expand the scope of the subject of network pyramid selling crimes, clarify the criminal responsibility of network service providers, clarify the jurisdiction of network pyramid selling crimes and other countermeasures and suggestions, in order to better solve the problems related to judicial practice of network pyramid selling crimes. Network crimes are becoming increasingly serious, so it is necessary to prevent network crimes legally and administratively. This paper summarizes the characteristics of cyber crime and puts forward some preventive measures against these characteristics.

1. Introduction

At present, the number of Internet users in China has reached 731 million, which is equivalent to the total population of Europe[1]. With such a huge number of Internet users, although we have enjoyed the convenience and rapidness of the information age and experienced the scientific and technological achievements brought by internet plus, it is undeniable that some junk information such as fraud, pornography and gambling still fills the Internet, and all kinds of negative information have become the cancer of the Internet[2]. "With the rapid development of the Internet, the number of network users has also increased geometrically, creating an electronic virtual space for network users, collectively referred to as the fifth space. Some people call it Sebo space, which is a new spatial concept different from territorial land, airspace, territorial waters and floating territory"[3].

Generally speaking, at present, the development of the Internet in China is characterized by its high speed, wide range and many users. The virtual network society is gradually infiltrating into all aspects of the real society, all strata and groups[3]. These characteristics have brought new challenges to the management of the Internet. Scientists can't simply regard computers and networks as criminal tools, but they should be aware that in some situations, they may also become criminal objects. For example, hackers attack the target network, threaten the network security, spread illegal information, and cause users' information leakage, which is a typical criminal activity with computer network as the object of crime[4]. Definition of the concept of network pyramid selling crime and its present situation

2. High intelligence

The computer is the product of the development of modern social science and technology, and the computer network crime is accompanied by the high-intelligence crime. As a by-product of the information society, computer network crime is a typical intelligent crime[5]. To commit this crime, one must have computer professional knowledge, know the operation of computer and the defects

of network system, and cut the population, so as to escape the security barrier of computer system and obtain the password to open the network system. Cybercrime is to use computer technology, such as programming, development and maintenance, or its special status as a provider of Internet services and application systems, to commit acts that infringe upon the legitimate rights and interests of others. According to the statistics of European experts in combating cyber crime, the world loses 400 billion dollars every year due to cyber crime, which is shocking.

In the period when mobile phones are widely used, the phenomenon of using mobile phones to transmit information for illegal and criminal activities is very prominent. Mobile phones not only facilitate people's communication, but also provide convenient conditions for criminals, especially gang criminals, to engage in illegal and criminal activities[6]. Mobile phone surfing the Internet, combining mobile phone with network, has given birth to new types of crimes, and brought greater difficulty to public security organs in detecting and solving crimes. For the theft, damage and illegal occupation of computer hardware facilities, although the object of crime is computer, in this situation, the essential attribute of computer is the same as that of general property, so we should follow the processing flow of general property, and convict and sentence according to established objective facts and specific circumstances[6]. First of all, compared with traditional forms of crime, cyber crime has the characteristics of low cost, wide spread and fast spread. For example, popular social software such as WeChat and QQ, which are widely used now, have a much lower transmission cost than traditional paper media, and the information they carry can be delivered to any corner of the world in a few seconds according to the wishes of the communicators[7]. Another major feature of cyber crime is that it is highly interactive, flexible and difficult to obtain evidence. Typical judgment documents as research materials are shown in Table 1.

Table 1 Typical judgment documents as research materials.

Case No.	Accused person	Charge of prosecution	Defend charges	Sentence charges
(2015) Punishment of Ejiang Mausoleum Chuze No.00114	Wang Mouyi	crime of fraud	Help information network criminals Crime of criminal activity	First trial: crime of fraud Second instance: uphold the original judgment.
(2016) New 0203 Chu No.151	Ding moumou	Crime of illegal business operation; Destroy public telecommunication facilities Commit crime	Help information network criminals Crime of criminal activity	Crime of illegal business operation; isturb Random radio communication tube Crime of managing order
(2016) Joan 9003 Punishment No.586 at the beginning; (2017) Joan was sentenced to 97 years in prison. No.74	Fu moumou	Destroy computer information Systematic crime	Help information network criminals Crime of criminal activity	First instance: damage calculation Crime of information system; Second instance: illegal control Computer crime

2.1. It is difficult to judge the network marketing crime.

One is the question of crime and non-crime. The boundary between online pyramid selling and online direct selling is blurred, and it is very difficult to determine the nature of online pyramid selling cases. Criminals can commit crimes at any time and on any computer network terminal without causing any damage to the information carrier of computer hardware, or even leaving any trace, so criminal acts are not easy to be found, identified and detected. Most of the crimes committed by computer criminals are hidden, and this concealment is not only reflected in the crime

itself, but also in the result of the crime. Legal interpretation is a "re-"definition of criminal law. In recent years, with the development of the Internet, the state has also issued a series of judicial interpretations on cyber crimes, which have played a certain role in combating cyber crimes[8].

However, judicial interpretation is not a law after all, and it is different from the legal hierarchy of criminal law. The relevant provisions are too vague, and the crackdown is not strong enough, which has great limitations. Due to different understanding angles, different scholars in various countries or even within a country also show the situation that "different people have different opinions, and different people have different opinions"[9]. The following mainly expounds the understanding and definition of the concept of cyber crime in the academic circles of domestic law, and at the same time briefly lists the expressions of the concept of cyber crime in other countries. As for the loss of virtual property, the author thinks that because virtual property has the same monetary value as traditional property, it should enjoy the same legal protection rights as traditional property. According to the relevant provisions of China's newly promulgated Civil Code, in practical application, virtual property should be placed on the same status as traditional property for treatment.

3. Difficulty in obtaining evidence

3.1. Cybercrime subject

The subject of cyber crime is diverse. People of all ages and occupations can become the subject of cyber crime, even those without high computer professional knowledge can become the subject of cyber crime. At the same time, under the trend of the gradual commercialization of network applications, enterprises and legal persons may become the main body of network crimes, which is a kind of unit body, by using the network to engage in illegal activities for profit, endangering the legitimate rights and interests of others[10]. Some scholars believe that the act of stealing and destroying computer network equipment is actually the act of destroying computer information network. Therefore, it is suggested that the act of physical destruction should be added to the act of the crime of destroying computer information system. Types of cyber crimes are shown in Figure 1.

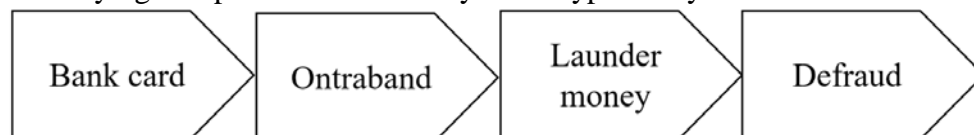


Figure 1 Cybercrime

At present, the prevailing view is that this kind of behavior should be investigated for criminal responsibility for the crime of theft and intentional destruction of public and private property. If the network equipment is stolen and destroyed, and its internal storage data is infringed, it should be punished by combining several crimes or investigated for criminal responsibility by implicated offense. The situation of network pyramid selling crime is complicated. The author believes that the participants in network pyramid selling cases should be distinguished again, and divided into general participants and active participants. I also agree with the view that the general participants in network pyramid schemes should not be investigated for criminal responsibility, because they are themselves "victims" and do little harm. However, I think that in network pyramid schemes, in addition to the conviction and punishment of organizations and leaders, the active participants should also be investigated for criminal responsibility. At present, the use of electronic evidence can't be used as the only evidence. Unlike fingerprints, if you get fingerprints, you can be convicted as the only evidence. Electronic evidence also needs appropriate circumstantial evidence, physical evidence, documentary evidence and electronic data evidence to form an evidence chain, which cannot be used independently. Judging from the specific work of the network police, it is indeed difficult to obtain evidence.

3.2. Expand the network and spread the scope of the criminal subject

When the behavior of active participants in online pyramid selling constitutes other crimes, they

should be punished for several crimes. The second is to calculate the "virtual point" reasonably. The author thinks that the calculation of "virtual point" should be divided into two parts. One is the virtual dot with real-name personnel, and the registered personnel really exist. In this case, we should fully consider whether the actor's behavior can promote the scale and level of network marketing activities, attract more people to participate because of his behavior, promote the development of network marketing activities, and profit from it. If the answer is yes, the "virtual point" should be counted in the number of online pyramid schemes. Formulate special anti-computer crime laws. This anti-computer crime law should directly address the characteristics of computer crimes, including civil, administrative and criminal aspects, and form a complete legal system.

First of all, we should improve the computer crime provisions in the current criminal code, increase the crime of illegally using computer storage capacity, expand the scope of criminal objects of the crime of illegally invading computer information systems, and include the computer information systems in the social security field as the criminal objects of the crime of illegally invading computer information systems. The subject of network crime is the general subject, but most of them have certain computer knowledge and skills. Subjectively, they are intentional and take active destructive actions. As the network plays an increasingly important role in politics, economy, culture, trade and other aspects of today's society, the harmful consequences of network crime are generally more serious. Cybercrime is a new type of criminal activity, which is the inevitable outcome of social informatization and networking. The study of cybercrime, including the definition of cybercrime, should be closely related to the background of the times and social conditions. Cybercrime is a dynamic concept. With the continuous advancement of the national "Three Networks in One" project, the connection between TV, mobile phones and the Internet is getting closer and closer, and the connotation and extension of cybercrime will also be extended and changed to some extent.

4. Conclusions

Under the new situation, the network pyramid selling crime cases are becoming more and more complicated, and various new problems are faced in the process of punishing the network pyramid selling crime, which needs constant adjustment in judicial practice. The existing laws, regulations and relevant judicial interpretations are not perfect enough to regulate the crime of online pyramid selling, and some new cases of online pyramid selling are difficult to judge accurately with the existing laws and regulations. There is a long way to go to punish cyber crime. China's criminal law is clear in order, reasonable in chapters and distinctive in features, which provides a sufficient legal basis for judicial organs to punish cyber crimes. To solve the problem of jurisdiction disputes, so as to effectively punish the criminals of online pyramid selling and better prevent the occurrence of online pyramid selling crimes, it is an inevitable trend for the younger age of online crimes, but the criminal law can't play a strong binding role on this.

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