

Research on Cybercrime Helping Behaviour of the Network Platform With the Case as Example

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ABSTRACT

This paper is a research on cybercrime helping behaviour of the network platform. We aim to explore the legal regulation about the network platforms which work as the network service providers under the background of the Amendment IX to the Criminal Law. At the same time, this paper proposes two problems that should be analyzed emphatically when the platform involves cybercrime helping behaviour, namely the recognition of 'be fully aware' and the behaviour of helping. We hope that this article can provide a certain academic reference for judicial trial, and provide some help for other legal scholars in the study of such issues.

Keywords: *providing aid for commission of information crime, be fully aware, the Obligation of Information Network Security Management Crime, cybercrime helping behaviour.*

1. BACKGROUND

Xianquan proposes that there is no doubt the combination between Information network technology and criminal conduct which encroaches on rights directly is the typical form of crimes in the Information age [1]. With regard to information criminal activities, scholars offer different ideas of the criminal standard that fits the platforms, which can be summarized as follows:

The first thought is that network platforms can be as the subject for taking the Criminal Law responsibility. According to Wangyuan, the subject concerning Information Criminal concludes network access service providers, network platform service providers, and network content and product service providers [2].

The second thought is that network platforms can't be the subject for taking Criminal Law responsibility. Xianquan thinks the subject that implements International Criminal actions can't get the conviction and sentencing [3]. Hongbing thinks the network platform service providers don't take responsibility to review the information in advance and control it every

time [4]. Instead, they only take responsibility to delete this information after being told. Mingkai believes that the action of providing Internet technology supports doesn't encroach on the legal interest, for it can't apply to the Criminal Law [5].

In addition, Rongrong thinks the establishment concerning Providing Aid for Commission of Information Network Crime is to make the Criminal Law be stricter, which is similar to persons' expectation [6]. These thoughts are so valuable that help us to find the answer about whether network platforms are the subject for taking the Criminal Law and whether they ought to be. However, now aid for the commission of Information network crime actions is more and more. We must study further to find the answer.

2. CASE INTRODUCTION

2.1. Basic fact

In 2016, A suffered from an occasional disease. After going to various hospitals, A was being told that there was little hope to cure it. Then A knew the hospital

C through B company's search engine. But the answers which in front of the search results page is that B company charges a fee and makes the order of the list. A went to the hospital and inquired the doctor D of the hospital, and was told that C hospital has a treatment method that can treat the occasional disease. Therefore, A decided to be treated in hospital C. However, the treatment that Dr. Ding said could treat the disease is actually a treatment that has long been obsolete in western countries because of its low efficiency. After the treatment in C hospital, A died in the next year.

2.2. Analysis of Company B's Behavior

According to the analysis of the above case, it can be obtained that after the B company, which served the search engine, changed the order and put the C hospital in front of the list after receiving the promotion expense of C hospital. And that behaviour directly leads to that A received the promotions from the hospital C. Company B's role, in that case, is that of a search service provider who providing search engine results to patient A. B's behaviour changes the order of search results that should be directly related to the relevance of the user's search terms.

2.3. The Analysis of the Causality between Company B's Behavior and A's Death

Under the guidance of the principle of necessity of the criminal law, in order to avoid the expansion of punishment scope, we adopt the theory of equivalent causation as the basis of judgment instead of the equivalence theory which is the most common theory in jurisprudence (the conditional theory).

There are three prerequisites for the judgment of using theory of equivalent causation in Company B's behaviour. (1) Whether the behaviour of B company caused the risk of which is prohibited by the society. Company B's behaviour is to provide search results promotion for the medical industry, and the search results are only caused by the user's search behaviour. And to think about the motivation for users to search, according to the ordinary people's thinking judgment, the vast majority should search for curable results for their own illness or their relatives' illness. However, B company didn't actually investigate whether the hospital has a truly effective means to cure the disease, it only provided search results promotion for the hospital C according to the C hospital's First-class Hospital at Grade 3 qualification. Obviously, there is a risk that this behaviour will lead to the invalid treatment, the delay of effective treatment timing and even make the progression of the disease. So, is the act of providing search promotion a risky act, but the advantages outweigh the disadvantages? This paper believes that the answer is no. The risk of company B's act of providing search results

promotion for the hospital C's unproven treatment methods is significantly higher than the benefit. Therefore, the actions of Company B caused risks prohibited by society. (2) Does the danger exist within the professional's business scope? The answer is definitely no. (3) Is the behaviour of Company B the act of perpetrating?

The act of perpetrating can be divided into two types: the direct act of perpetrating and the indirect act of perpetration. The direct act of perpetrating means that the perpetrator directly commits the criminal act stipulated in the criminal law. The indirect act of perpetration means that the indirect guilt use of others as tools of crime [7]. The B company's behaviour may violate the crime of refusing to perform the obligation of information network security management which under Article 286 of the Criminal Law and the providing aid for commission of information net crime which under Article 287.

Then, let's judge the equivalent causation relationship of Company B and A patient death.

(1). Factual causation. Making factual judgments of causality, what needs to be based on the conditional theory.

"If there is no former, there is no latter" which means regarding the occurrence of specific results, it is impossible to imagine that all the conditions that do not exist are the causes of the results [8]. Then we need to investigate if there is no search promotion behaviour of B company, whether there will be a situation in which patient A will miss the opportunity of treatment and die at the end. The answer is no.

So, factual causation has been established.

(2). Intervention factors. Are there any intervening factors in this case? I think the answer is no. The reason is that company B's search promotion behaviour has a high probability of causing patients to go to the hospital for treatment. This is also the purpose for the hospital to purchase the search promotion from B company.

Therefore, there have an equivalent causation relationship between Company B and A patient death.

3. ANALYSIS ABOUT THE POSSIBILITY OF THE CASE IDENTIFIED TO BE PROVIDING AID FOR COMMISSION OF INFORMATION CRIME

3.1. Subject analysis of the case

In this case, in the process of seeking medical treatment, someone A (the patient) was told that he had a faint hope of being cured, so he had to resort to the network. However, due to the spatial nature of network activities, the persons who provide the information may not know each other, may not in the same city or one at

home country and the other abroad. Objectively, there is a strong hidden relationship between the implementation behaviour and the assistance behaviour. Subjectively, the meaning of contact of the accomplice is uncertain or ambiguous. Therefore, in judicial practice wherein the principal offender is not present in the case, it is impossible to determine whether the helper constitutes a joint crime.

3.2. Analysis of the cognizance of knowing violation

As for knowing violation, it is supposed to judge whether the knowing violation exists when the actor has this kind of cognition, rather than infer the existence of knowing violation when the actor lacks knowledge and cognition. The search engine of company B pushed hospital C to the first place without any advanced knowledge of it. Its main purpose is to help A treat the disease. It harbors a benevolent intention, but it is not informed that this kind of treatment has been eliminated, so it's a mistake made without advanced cognition.

3.3. Analysis of serious circumstances

This kind of behaviour does more harm than the implementation behaviour. The target of the network crime is the majority of network users, or "one to many" infringement. This kind of infringement is aimed at a variety of legal interests, which is established for the infringement of civil rights, social public order and many other legal interests. For the principal offender or accomplished offender receiving lighter or mitigated punishment, the treatment mode of extremely light punishment is not consistent with the social harmfulness of such behaviour. Which cannot achieve the unity of crime, responsibility and punishment, and cannot respond to social concerns.

Secondly, in the absence of specific judicial interpretation, it is supposed to grasp the "serious circumstances" from the establishment of websites, the number of published information, the number of visits, the number of groups, and finally from the harmful consequences of the act. For example, in this case, it has been verified that the victim died indirectly due to Internet search, so the illegal use of information network can be considered as "serious".

For the identification of helping the information network activity crime, it is necessary to take the behaviour of the helping object as the premise of the crime. In the case that the behaviour of hospital C is only identified as a crime, it is supposed to identify the behaviour of company B as helping the information network activity crime.

To sum up, the behaviour of company B should be identified as contributing to information network activity crime.

4. ANALYSES OF THE POSSIBILITY THAT PLATFORMS CAN BE THE SUBJECT OF REFUSING TO FULFILL THE OBLIGATION OF INFORMATION NETWORK SECURITY MANAGEMENT CRIME

<The Criminal Law of the People's Republic of China> regulates Refusing to Fulfill the Obligation of Information Network Security Management Crime has these elements: network platform service providers refuse to fulfill the obligation and refuse to correct, which contributes to illegal information spread massively or users' information leak or criminal cases' evidence loss. In my opinion, platform B's actions don't fit these elements, and my analyses concerning the subject of criminal, prerequisites, the harmful behaviors, and actions' seriousness are as follows.

4.1. Analyses of the subject of criminal

<The Criminal Law of the People's Republic of China> regulates that when. Platform B is an AI company based on Internet technology, providing help for users to search for information. <Cybersecurity Law of the People's Republic of China> regulates that Network operators shall, when conducting business operations and providing services, abide by laws and administrative regulations, respect social morality, observe business ethics, have good faith, perform the cybersecurity protection obligation, accept supervision by the government and the public, and undertake social responsibilities, which makes higher demands to network platform service providers without a doubt and can negate Hongbin's thought. We can't reduce the criminal requests only because the subject is a platform.

4.2. Analyses of the prerequisites

The prerequisites conclude: whether the subject can realize the illegality and harmful of its actions and whether there exists lower crime. Sen thinks that if we can exclude the possibility that action subjects are confused or don't know the illegality, we can recognize that the matters are evident [9]. For example, network technicians provide service to criminals and get complaints or administrative penalties, which can be identified as known. In addition, Yanhong thinks if the action subjects lead to illegal information to massive spread, even network users know the fact, and we should recognize that the matter is clear [10]. Platform B's standard of Ad Sorting is the money, which is the target of public criticism. Tacitly agree the fake hospital and even Ad for them, can be recognized as know with no

doubt. However, only to satisfy the known element is not enough. The reason that the action of platform B is illegal is based on fake hospital's fraudulent medical treatment. It can be defined as an aiding network crime. Refusing to Fulfil the Obligation of Information Network Security Management Crime is a typical network crime, not aiding crime. B's action doesn't satisfy the elements of the prerequisites.

4.3. Analyses of the harmful behaviors and actions' seriousness

In this case, the fake hospital that B advertised provides unfair medical means and makes A die unfortunately. It is more in line with <Interpretations of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in Handling Criminal Cases Involving Crimes of Illegally Using an Information Network or Providing Aid for Criminal Activities in Relation to Information Network>: the fake hospital has earned illegal gains more than 10000 yuan. And it makes the death of A, which can satisfy the serious circumstance's standard. Refusing to Fulfil the Obligation of Information Network Security Management Crime preferred to prevent Information leakage.

4.4. Analyses of the controversial focus concerning network platforms' management obligations.

Whether network platforms have management obligations and where the obligations' boundaries are, is the controversial focus concerning Refusing to Fulfil the Obligation of Information Network Security Management Crime. I think platforms have responsibilities, but its' limits let platform B isn't the subject of this crime. Yanhong thinks that the matter of informing the platform's illegality is regulatory authorities, not users and network platform service providers only take responsibility to the information informed illegality [11]. The court should focus on information's illegality. We agree with her thought. It is platform obligations' boundary that regulatory authorities order to correct. In many judgments, we can also find the conclusion.

In summary, B is not the subject of Refusing to Fulfil the Obligation of Information Network Security Management Crime.

5. CONCLUSION

First, the recognition of 'be fully aware' regarding the determination of knowing, the standard must be uniform. Whether it is the perpetrator's subjective knowing or the presumption of his knowing, certain rules must be

followed. For platforms that may violate providing aid for commission of information crime, the main point is to judge whether the person who provides criminal help has a knowing obligation.

Just like the example in this case. Company B, in accordance with the current law, has a clear obligation on whether the C hospital that provides search promotion for its treatment methods is effective, and has the responsibility to review whether it has requested false propaganda copy.

Second, the behaviour of helping. In this case, for the recognition of helping behaviour, although the criminal law filed is still controversial whether the search promotion behaviour can be identified as an advertisement. But for B company's search and promotion behaviour, the pertinence of its audience should be stronger than the general advertising promotion. The possibility of causing the infringement of legal interests is far more than the general advertising promotion. Therefore, according to the basic concept of "being clear and decisive", the behaviour of search promotion should be punished even more.

REFERENCES

- [1] Xianquan (2015). On the Criminal Liability of the Abuse of Information Network Technology: Understanding and Application of Relevant Provisions of the Amendment IX to the Criminal Law. Tribune of Political Science and Law.
- [2] Wangyuan (2017). The Crime of refusing to fulfill the obligation of information network security management. China legal Science.
- [3] Xianquan (2015). On the Criminal Liability of the Abuse of Information Network Technology: Understanding and Application of Relevant Provisions of the Amendment IX to the Criminal Law. Tribune of Political Science and Law.
- [4] Hongbing (2017). The applicable space of crime of refusing to fulfill the obligation of information network security management. Political Science and Law.
- [5] Mingkai (2016). Understanding and Application of The Amendment IX to the Criminal Law of the People's Republic of China—The Providing Aid for Commission of Information Network Crime. Political Science and Law.
- [6] Rongrong (2020). The Analysis of the Criminal Regulations of "Ca nong" Behavior-- From the perspective of the application of The Providing Aid for Commission of Information Network Crime. Legal System and Society

- [7] Yu (1991). Law Dictionary China University of Political Science and Law Press
- [8] Zexing (2020). Criminal attribution and imputation: An investigation focusing on the modified condition theory. Law review.
- [9] Sen (2018). On the Application and Restriction of the Crime of The Providing Aid for Commission of Information Network Crime. Criminal Law Review
- [10] Yanhong (2016). Criminal Law Boundaries for Freedom of Speech in the Online Era. Social Sciences in China
- [11] Yanhong (2016). Criminal Law Boundaries for Freedom of Speech in the Online Era. Social Sciences in China