



On the Understanding and Application of the Crime of Illegal Use of Information Network

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Abstract. With the continuous development of the network in modern society, a new type of crime called cybercrime has emerged. The Criminal Law Amendment (IX) Article 29 newly created the crime of illegal use of information network. However, legal application of this crime is still controversial. The issues mainly include four points. The first one is the risk of becoming nominal due to ignore the understanding of this crime's attribute of helping behavior. Secondly, the interpretation of "illegal crime" has been broadened overly. Thirdly, it is easy to be confused with neutral online publishing behavior. Finally, the boundary between this crime and related crime is unclear. The reasons are the complexity of cybercrime itself and the lack of clarity in the legislation and judicial interpretation of new crimes. If the above problems remain unresolved for a long time, it will lead to the phenomenon of different sentences in the same case, or confuse the boundary between this crime and other crimes. A more serious situation would be to unduly restrict the freedom of the population to use the information network. Therefore, it is necessary to improve judicial interpretations of this crime. In order to achieve a reasonable and uniform application of this crime, this crime's attribute of helping behavior should be admitted and the constituent elements should be adopted a strict restrictive interpretation. Additionally, the scope of neutral online publishing behavior should be limited. Finally, distinction between this crime and related crimes reasonably is also necessary.

Keywords: The crime of illegal use of information network, Cybercrimes. Judicial application, Nominal

1 INTRODUCTION

Science and technology in modern society are developing continuously, our life is more and more closely connected with network information. However, cybercrimes are becoming increasingly rampant. In order to implement the criminal policy of "Fight crime early and nip it in the bud", the Amendment to the Criminal Law of the People's Republic of China (IX) (referred to as the Criminal Law Amendment (IX) hereinafter) added the crime of illegal use of information network.

There are also many controversies in academia about this crime. The main point of contention focuses on legal benefits, the interpretation of the constituent elements, and the distinction between this crime and related crime. For instance, the crime of fraud and the crime of helping information network crime.

Firstly, in terms of the definition of legal interests, the traditional mainstream theory holds that the legal benefit of this crime is the management order of information network security [1]. Those who damage the overall network security or other special information network security simply does not belong to the regulatory scope of this article. It is due to the uniqueness of cyberspace and the nature and legitimacy of punishment [2]. Many scholars also recognize this viewpoint.

Secondly, in the judicial practice area, the judge often adopts the expansionary interpretation about the interpretation of "illegal and criminal activities". The preparatory behavior of illegal activities always be included in the regulatory object of this crime. For example, professor Sheng Lang, a former deputy director of the Legislative Affairs Committee of the National People's Congress has said about this problem. He said that the illegal and criminal information clearly enumerated by the law includes releasing the information about the production or sale of drugs, firearms, obscene articles and other prohibited items, controlled substances or other illegal crimes [3]. In addition, the information of soliciting prostitutes, selling false certificates, gambling and pyramid selling is the "other illegal and criminal information" often identified in judicial practice. This view has also been adopted by many judicial practitioners, which has appeared in many judgment cases. However, in the academic circle, Professor Mingkai Zhang and many other scholars denied the above view. They thought that the position of interpretation of purposeful restriction should be taken. Only the preparatory behaviour of criminal activities can be included in the scope of the crime regulation.

As a new crime, it is bound to have many difficulties and arguments in the theoretical and practical circles. In addition, with the rising number of judgments on this crime, and the wide variety of types of behavior and crossover with many areas of the crime, there is bound to be confusion and inconsistency in its application. The Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Illegal Use of Information Networks and Helping Criminal Activities on Information Networks (hereinafter referred to as the "Interpretation") also fails to define the relevant elements in a detailed and comprehensive manner. This leads to unclear standards for the application of the law of this crime. It is difficult to match responsibility with criminal behavior.

This article is divided into five parts. The first part is the analysis of the current status about this crime in judicial determination area. Moreover, it illuminates the necessity to regulate it. The second part analyzes the current problems in the understanding and application of the crime of illegal use of information network in judicial determination. It includes virtualization, confusion, over-expansive interpretation, unclear boundaries between crimes. The third part is about the analysis of the causes of the above problem, which mainly includes two points. The fourth part is about four solutions to solve the above problems. The first solution is to broaden the understanding

of the behavioral attributes of this crime to prevent it from becoming nominal. Secondly, the scope of neutral online publishing behavior should be limited. The third solution is about strictly limiting the interpretation of "illegal crimes". Finally, the boundary between this crime and related crime should be clarify. At the end of the essay is the fifth part which is the conclusion about the research on this crime.

There are three main research methods in this paper. Firstly, the essay used the empirical research method to ask four questions. Secondly, the case study was used to analyze the current situation of judicial application of this crime. Thirdly, the essay used the literature research method to make some suggestion for the improvement of legal application by analyzing different scholars' views. All efforts are made to better unify the judicial application guidelines of this new crime.

2 THE CURRENT SITUATION OF JUDICIAL RECOGNITION OF ILLEGAL USE OF INFORMATION NETWORK CRIME AND THE NEED FOR REGULATION

2.1 Current Status of Judicial Determination of Illegal Use of Information Network Crime

According to the data released by the Ministry of Public Security of the People's Republic of China in 2020, the number of cybercrimes in China accounts for 1/3 of the total number of crimes and is growing at a rate of more than 30% per year [4]. The criminal governance of cybercrimes has become imminent. In order to strictly control cybercrimes, crimes related to cybercrimes have been added to the Criminal Law Amendment (IX). This crime is one of them.

As of July 7, 2022, a full-text search of "illegal use of information network" on "China Judicial Documents Website" yielded 1,612 criminal case decisions. From 2015 to 2021, the overall trend of judicial determination of this crime is increasing year by year, with a maximum amount of 555 cases and a minimum amount of 2 cases. The number of the illegal use of information network crimes is increasing year by year, and there is a trend of becoming a new "pocket crime".

In addition, the application of this crime varies relatively widely across the country's provinces geographically, with a maximum difference of 247 and an average amount of 52. The amount of judicial determination of this crime in the southern and eastern coastal provinces is significantly higher than that in other provinces. While the amount in the western, northern, and southwestern regions are less. The reason for this is related to the regional telecommunications industry and the level of economic development [5]. Moreover, it also reflects the different attitudes of different regions to the application of this crime and the lack of a unified standard for identification.

The research results of this crime mainly focused on five years ago. After the promulgation of the "Interpretation", there are still some shortcomings. The research results are less. Therefore, the research on the application of the law of this crime can be more in-depth.

2.2 The Legislative Evaluation of The Crime of Illegal Use of Information Network and the Necessity of Regulating It.

The original intention of this crime is to crack down on the behavior of using the network as a criminal tool to increase the amount of specific information. In addition, the behavior of providing a specific type of information flow platform was included. It can curb the occurrence of crime effectively [6].

The "Interpretation" which was implemented on November 1, 2019, has given the clear explanation about the standards of conduct. For example "serious circumstances", "publish information", "for the implementation of fraud, teaching criminal methods, the production or sale of prohibited items, controlled substances and other illegal and criminal activities of the website, communication groups". However, by analyzing the relevant criminal judgments of this crime, it is not difficult to find some controversial points in the judgment process.

There are also many controversies about this crime in the academic world. Firstly, some scholars believe that we should severely punish acts related to cybercrimes. Therefore, they treat many acts outside the criminal law as this crime, which will make this crime become fallback provision. Secondly, the three objective acts specified in this crime are often for the purpose of creating conditions for other crimes or for the purpose of providing assistance. It is easy to make the boundary between this crime and other crimes blurred. Thirdly, the penalty for this crime is light. When there is imagination joinder, the legal punishment of this crime will not be heavier than that of other crimes [7]. Fourthly, some judges fear that the application of this crime will be more controversial, they often use illegal use of information networks as the cause of a case. However, they sentenced it for other crimes, which creates a virtualization of this crime. At last, this crime also suffers from many others problems. For example, two common cases have different judgments. Some acts that should not be regulated are also recognized as crimes [8]. In addition, the judgment standards of different courts are not uniform. These are not conducive to the effective realization of the legislative aims and purposes of this crime.

In order to establish a unified standard in the understanding and application of this crime, it is necessary to discuss the constitutive elements and interpretation rules of this crime. It can provide reference for judicial judgment. What's more, it can avoid the situation about the "different sentences in the same case" and confuse the boundary between this crime and other crimes. What is more important, it will not excessively restrict people's freedom to use the information network.

3 PROBLEMS IN THE UNDERSTANDING AND APPLICATION OF THIS CRIME OF ILLEGAL USE OF INFORMATION NETWORKS

3.1 Poor Understanding of Help Attributes Leads to The Risk of Becoming Nominal

The "criminalization of preparatory behaviour" of this crime is a recognized exception to the Criminal Law. Therefore, some defendants may have already proceeded to the execution of other crimes when they constitute accomplishment of this crime. At the time of judgment, in order to avoid contradictions and conflicts, the judge prefers to choose other traditional crimes. It may lead to the marginalization of this crime.

In judicial practice, the judiciary basically considers the purpose of this crime is to make the preparatory behaviour become a perpetrator. For example, the judge in the criminal judgment No. 22 of The Baicheng City Intermediate People's Court (2021) in Jilin Province had stated it. If the perpetrator release information for implementing fraud and other illegal and criminal activities, it constitutes the crime of illegal use of information network. What needs to be added is the situation needs to be "serious". This behaviour is an independent crime to realize the criminalization of preparatory behaviour. Besides, the judge in the Beijing Chaoyang District People's Court (2018) Beijing 0105 criminal judgment No.2344 stated it. The judge thought that the original intention of this crime is to combat the criminal preparation behavior in cyberspace. However, with such understanding, it is easy to make the original intention of legislation of this crime not be well practiced.

There are three paragraphs for this crime and three subparagraphs in the first paragraph. The first and third subparagraphs include two situations. The first situation is to set up a communication platform or release information for themselves to crimes. The second situation is for others. If the perpetrator is the first situation, it is undoubtedly a typical criminal preparation. If the perpetrator is the second situation, the whole behavior still belongs to the criminal preparatory behavior from the aspect of attribute or function. However, it can also be classified as the helping behavior from the aspect of purpose or motivation, which belongs to the relative perpetration of accessory crime [9].

In addition, the second paragraph of this crime is the provision of the imaginative joinder. When the perpetrator illegal use information network for others who commit information network crimes, it constitutes the imaginative joinder between this crime and the crime of helping information network criminal activities. When the perpetrator does that for others who commit non-information network crimes, it constitutes the imaginative joinder between this crime and other crimes. In summary, this crime still has "help" purpose and attribute. If the judiciary considers that the crime is only a criminal preparation behavior, it is not conducive to the judiciary to crack down on the corresponding new crime type. Therefore, some of the legislative provisions of the crime cannot be effectively applied and become "zombie clause". It is not conducive to distinguishing this crime from the other and is prone to the imbalance of conviction and punishment.

3.2 It Is Easy to Be Confused with the Neutral Behavior of Publishing Information on the Network

The second subparagraph of the first paragraph expression for the "release the information about the production or sale of drugs, firearms, obscene articles and other prohibited items, controlled substances or other illegal crimes". This expression could easily be considered as a neutral helping act of simply posting illegal items on the internet, which is not for oneself or others.

There are three positions in the academic community regarding the standard of punishment for neutral helping behavior, which are subjective, objective, and compromise. Either one can lead to ambiguity and inconsistent conclusions. For example, from the subjective point of view, a lack of objective resultant behavior can also make the perpetrator guilty of aiding and abetting. From the objective point of view, it is easy to expand the scope of criminalization of neutral helping behavior, for example, a person selling kitchen knives or driving a cab can easily be recognized as an accessory in some situation. While there is some validity to the compromise, the criteria are not clear.

This crime requires the degree of "serious circumstances" can be convicted and punished. Although the "Interpretation" has clearly quantified the "serious circumstances", the seventh subparagraph in 10-th article is Miscellaneous Provisions where the content is "other aggravating circumstances". It lacks uniform recognition criteria. Therefore, it often requires the judge to analyze and evaluate various comprehensive elements before making a judgment on the defendant's behavior. In addition, the objective conduct specified in this crime has the attribute of assistance, which is easily confused with neutral helping behavior, and there is no uniform standard in determining the nature of the conduct, which is very detrimental to fight against the crime.

3.3 Overly Broad Interpretation of "Illegal Crime"

In judicial practice, the judiciary has adopted an expansive interpretation of the term "illegal crimes". They held that the "illegal crimes" in the provision of illegal use of information networks includes both criminal behaviour and general illegal behaviour.

The number of cases of this crime in 2018 has increased sharply and bounds compared to 2017. The main reason for this phenomenon is that the judiciary has criminalized both the act of setting up network groups used to publish information on prostitution and the act of publishing information on prostitution. In addition, it includes the act of establishing the communication groups for religious activities, the act of publishing information on solicitation of prostitution through information networks, and the act of releasing the information about the sale of knives, ecstasy, fake license plates, fake ID cards and driver's licenses, crossbows, electric batons, and items with alprazolam ingredients. After November 1, 2019, many judiciaries still have such improper practices like that. They recognized general violations that may not constitute a crime as the illegal use of information network crime, such as releasing information on solicitation of prostitutes through information networks, selling controlled knives, recommending fake apps to defraud others of member registration, teaching

methods of using rule loopholes to obtain improper benefits, building a false academic qualifications inquiry website and so on. For example, the Criminal Judgment No. 358 of the People's Court of Tianmen City, Hubei Province (2020) E9006 Criminal Initial Judgment and the Criminal Judgment No. 38 of the People's Court of Xingcheng City, Liaoning Province (2020) Liao 1481 Criminal Initial Judgment both identified the perpetrator's act of simply releasing information about soliciting prostitutes to unspecified objects through information networks as the crime of illegal use of information networks.

In fact, the act of publishing information simply about soliciting prostitutes does not constitute any crime in criminal law but only a general administrative violation. There are also many cases where the corresponding behavior does not yet constitute a crime but only a general violation of the law. The over-expansive interpretation of the nature of "illegal crimes" is contrary to the principle of statutory penalties and the spirit of modesty of criminal law. It tends to make the crime of illegal use of information networks a new "pocket crime".

3.4 The Boundary Between This Crime and the Crime of Helping Information Network Criminal Activities Is Unclear

This crime consists three paragraphs. The first and second paragraphs are the provisions of the basic composition of the crime. The third paragraph is the clause of imaginative joinder. As for this crime, there are two situations. The first one is the case that the perpetrator illegally using the information network for his subsequent criminal acts. This situation applies to the provisions of the first or second paragraph of this crime, and there is no possibility of imaginative joinder. The second one is the case that the perpetrator using the information network illegally for others' criminal acts. This situation only applies to the provisions of the second paragraph of this crime. It belongs to imaginative joinder of offenses [10].

According to the second paragraph of Article 287 of the Criminal Law, the subject of this crime is natural person and unit. They know that others will use information networks to commit crimes and provide them with technical support such as Internet access, server hosting, network storage, communication transmission. Furthermore, they provide assistance in advertising and promotion, payment and settlement, etc., which is the "serious circumstances". For this crime, setting up websites and communication groups for the purpose of committing crimes can also be regarded as a technical support act. Publishing information can also be confused with advertising and promotion acts easily.

However, in judicial practice, the act of setting up websites, communication groups or publishing information for others knowing that they are using information networks to commit crimes often results in different sentences for the same case. For example, the defendant's behavior in (2020) Lu 08 Xing Zhong No. 374 criminal judgment of second instance and (2020) Yu 07 Xing Zhong No. 545 criminal judgment of second instance is generally the same. Nevertheless, the former was eventually identified as the crime of illegal use of information network. The latter was identified as the crime of helping information network criminal activities. These two crimes

have many overlapping points in the constitutive elements of crime. The two are often confused in judicial practice and cannot be distinguished, which is very detrimental to the long-term development of criminal law.

4 ANALYSIS OF THE CAUSES OF THE ABOVE PROBLEMS

4.1 Cybercrime Itself Is Too Complex

Science and technology have a significant impact on criminal law. The development of the network has also provided a breeding ground for new types of crimes. Cybercrime is a product of the continuous development of social technology. It is inherently very complex.

Cybercrime has three characteristics. Firstly, it is virtual in nature and does not have the reality of traditional crime. For general traditional crimes, criminal investigators can detect through subsequent tracking and investigation, mapping visits and other measures. However, cyberspace is invisible and inaccessible. It is composed of a string of digital programming. Due to the limitations of existing technology, criminal investigators cannot restore the truth of cybercrime completely. Secondly, the behavior and means of cybercrimes have the characteristics of concealment. The virtual nature of cyberspace leads to the concealment of its criminal behavior. The means of network crime are numerous and extremely complex, some of the criminal methods need to master the relevant technology of professionals to implement. Therefore, it is difficult for criminal investigators and judicial personnel to determine the nature of their behavior [11]. Thirdly, the crime results are dispersed. Influenced by the idiosyncratic nature of cyberspace, the speed of information dissemination is extremely fast. The dissemination channels are uncontrollable. Therefore, when it infringes on a criminal object, there are other criminal objects are infringed. The consequences were unexpected to the original actor.

Based on the above characteristics of cybercrime, legislate cybercrime is a great challenge to legislators. For judicial personnel, they need to relearn unfamiliar areas' knowledge. What's more, the crime technology is always being updated. The criminal law itself has a lag, so it cannot be timely to regulate it. Therefore, it is reasonable that the above-mentioned legislative and judicial issues regarding cybercrimes arise.

4.2 The Legislation and Judicial Interpretation is not Perfect

The initial legislation on computer crimes was made by the National People's Congress in 1997. Namely the crime of illegal intrusion into computer information systems in Article 285, the crime of breaking computer information systems in Article 286 and the principle of punishment for other crimes committed by using computers as instruments of crime in Article 287. It can be seen that the legislation for cybercrimes is only less than 20 years old now. Not to mention that this crime was established in 2015.

Although it has been seven years since the Ninth Amendment to the Criminal Law added this crime, the understanding of the judiciary to the legislative purpose is not deep enough. From the perspective of existing judicial application, the judiciaries' interpretation of the constitutive elements of this crime and the types of incriminating acts are not completely unified. In addition, there are still many controversies about this crime in the academic circles. The reason is that the legislation and judicial interpretation of this crime are not clear enough. Different judges and scholars have their own opinions. Therefore, further theoretical interpretations, academic discussions, legislative or judicial interpretations can be done to standardize this crime. In general, the judicial concept of prudent and limited application should be established as a whole, rather than blindly expanding application.

5 STRENGTHEN THE REASONABLE INTERPRETATION OF THE LEGISLATIVE NORMS OF THIS CRIME

5.1 Adding the Attribute Of "Helping" To This Crime

This crime has not only the attribute of the perpetration of preparatory acts, but also has the attribute of helping behavior. When this crime is in the case of setting up a communication platform or publishing information for other person who want to commit a crime, the attribute of helping behavior is easier to see [12].

There are many elements need to be analyzed whether the perpetrator constitutes this crime directly. For example, it is necessary to judge whether the assisted person has actually committed a crime, or whether the act itself has seriously violated the network security management order. In addition, whether the act reaches the level of "serious circumstances" specified in Article 10 of the "interpretation" should be judged.

Broadening the behavior attributes of the crime can not only broaden the conditions of entering the crime, but can also crack down on new crimes effectively. It is helpful to improve the applicable rate of the crime and prevent the crime from becoming nominal.

5.2 Limiting the Scope of Net Neutrality Behavior

One of the provisions of Article 287 of China's Criminal Law stipulates that only acts that reach the "seriousness of the circumstances" will constitute a crime. However, the second subparagraph of the first paragraph of this crime can easily be understood as a neutral act of simply publishing information on the Internet.

In Jiangsu Province Binhai County People's Court (2019) Su 0922 criminal case No. 349, the defendant Jieming Huang, Shengxin Tao, Kongxiang Li, Junjie Zeng, Lin Tao publish illegal and criminal information about the production and sales of controlled substances on WeChat for a long time. Actually, he sold them. This behavior caused serious consequences of intentional injury and death. The court held that

the acts of the five defendants were serious enough to constitute this crime. From this case, the second subparagraph of the first paragraph of this crime contain the element of "the aim of making profits". Therefore, the perpetrator must be "aware" that other people are going to commit illegal and criminal acts and provide them with ways to obtain criminal tools. This belongs to the indirect intention of "dealing with laissez faire psychology".

In addition, the act of publishing the production or sale of firearms, drugs and other prohibited items for profit is like a "time bomb". It has a great hidden danger. Firstly, it may really cause substantial consequences, such as intentional homicide, intentional injury. Secondly, this kind of behavior is bound to be advertised and sold on major network platforms. Based on the fast propagation speed of the Internet, this information will be widely reprinted and shared by others. This behavior has the characteristics of long time, wide range and great influence. No matter whether the prohibited goods are actually sold or not, they belong to "other serious circumstances" specified in Article 10 (7) of the interpretation.

In summary, providing information as a business on the network does not constitute a crime. However, if the perpetrators provide the information of making or selling guns, pornographic substances, drugs and other prohibited and controlled substances, they will bear criminal responsibility. Moreover, it should meet the standard of serious circumstances. As for whether the circumstances are serious, a comprehensive judgment should be made based on all the facts. For example, whether the perpetrator knows the information he provided is to help others to commit crimes? Whether to really cause substantial breeding consequences? How much does the perpetrator contribute to the behavior and the scope of adverse effects? The degree of victimization also needs to be known. The above elements all need a clearer and unified identification standard. It is helpful to expand the criteria for incriminating neutral acts of help. It can be conducive to combating crime and strangling crime in the cradle.

5.3 Strictly Limited Interpretation Of "Illegal Crimes"

The essence of this crime is to regulate the act of intrusion into the information network severely. First of all, the "illegal crime" of this crime needs to be clarified. It can not only prevent this crime from being fallback, but also lays a legal basis for the division of the boundary between this crime and other crimes.

In fact, the "interpretation" has explained the "illegal crime" clearly. Article 7 of the "interpretation" stipulates that the "illegal crimes" means "criminal behavior". Moreover, "the illegal acts that belong to the behavior types stipulated in the different provisions of the Criminal Law but do not constitute a crime" belongs to the "illegal crimes".

Accordingly, it can be seen that the crime which is not reach the regulated degree remain a "criminal behavior". It means a situation that the behavior of the perpetrator itself can constitute a crime but because of the amount of the crime or the circumstances of the crime are not satisfied. For example, the act of establishing a communication platform or releasing information for selling fake and shoddy commodities, guns and obscene materials do not meet the number of the crime or circumstances

standards. The other example is the act of publishing illegal behavior method, which is not up to the standard of conviction amount. Therefore, no matter whether the crime of amount and the consequential offense stipulated in the criminal law meets the specified circumstances, as long as it belongs to the criminal behavior type stipulated by the criminal law, it is an "illegal crime".

The "illegal crime" in this crime should adhere to the position of limited interpretation [13]. It should follow the provisions of the "Interpretation" strictly. According to the principle of legal crime and punishment, the "illegal crime" should be limited to the scope of "has already constituted a crime" or "the illegal act that can constitute a crime". In addition, it is important to prevent the crime from becoming a new "pocket crime" due to the improper expansion of the judicial determination.

5.4 Criteria to Clarify the Boundary Between this Crime and Related Crimes

First of all, this crime protects the general legal interests. If the perpetrator produces other result, which will violate other legal benefits, other crimes should be considered. This crime cannot be constituted simply because of the use of information means. However, in order to highlight the special nature of cybercrime, the crime should be applied firstly if it meets the fixed-term imprisonment of less than three years. Otherwise it will against the purpose of establishment. For those who cause serious consequences, the maximum sentence of three years can be applied. The standard of "serious circumstances" shall be applied at the same time [14].

In the next place, when the penalty is similar to any other crime, the issue of the imaginative joinder can be discussed in two cases. Firstly, if the behaviour satisfies multiple crimes at the same time, it may constitute the imaginative joinder offenses. Since "the law is superior to the old law" and the penalty of this crime is lighter. When there is a crossover between this crime and other crimes, more serious crime provisions should be applied. Otherwise it is not proportional to the penalty range of this crime. Secondly, the crime can be applied as an "pocket crime" only when invoking other crimes are inappropriate. It can coordinate the various relevant crimes and form a reasonable discretion [15]. When the penalty of this crime is lighter than others, judicial discretion should be exercised. The judge should judge whether the behaviour should apply to this crime which has a lighter punishment. It should be applied to other crimes to achieve the necessity of punishment.

6 CONCLUSION

Information network is a double-edged sword. It brings us convenience. At the same time, cybercrime is also occurring inevitably. In order to combat this new type of cybercrime effectively and regulate the bad consequences of improper using information, it is necessary to play a role in the use of penalties. Therefore, the crime of illegal use of information networks appeared. The behaviour of preparatory and helping for cybercrime should be regulated strictly. This is also in line with the purpose

and requirements of the new legislation. It can give the network environment a pure land and blue sky.

Since this crime is new, there are many different views about this crime in the academic circles. There are also many problems in the judicial application. This essay analyses the legal attributes of this crime, constitutive elements of this crime and the boundary between related crime and crime. It is hoped that the judicial identification of the crime of illegal use of information network should follow the requirements of criminal law. The provisions of criminal legislation need to be correctly understood. In addition, the application of this crime needs a unified standard. The judges need to make substantive judgments on quantitative factors in combination with specific cases. At the same time, it is also a hope that people can attach the humility of cyber-crimes [16]. The Internet is not outside the law. Everyone should be cautious when disseminating information, expressing opinions and forwarding opinions.

7 REFERENCES

1. D. C. Sun, Application and Doctrine Statement of the Crime of Illegal Use of Information Network, in: *Journal of Zhejiang Gongshang University*, Vol.1, 2018, pp. 42-57.
2. Y. Zhang, The Judicial Application of the Crime of Illegal Use of Information Network, in: *Application of Law*, Vol.15, 2019, pp. 13-22.
3. W. C. Liu, Research on the Crime of Illegal Use of Information Network. East China University of Political Science and Law, 2020. DOI: 10.27150/d.cnki.ghdzc. 2020.001160.
4. P. Y. Dong. Analysis of the applicable boundary of the illegal use of information network crime. in: *Journal of Dalian University of Technology (Social Sciences Edition)*, Vol.41, 2020, pp. 84-90,
5. Z. C. Qin, The Current Situation, Misunderstandings and Its Correction of the Judicial Identification of the Crime of Illegal Use of Information Network, in: *Macao Law*, Vol.1, 2016, pp. 48-52.
6. S. Hu, Research on the Application of the Crime of Illegal Use of Information Network—"Being Nominal" and "Pocket", in: *The Society ruled by Law*, Vol.7, 2019, pp. 11-21
7. H. B. Chen, The Understanding and Application of the relevant provisions of "While constituting Other crimes" in "the Criminal Law Amendment (9)", in: *Politics and Law*, Vol. 2, 2016, p. 17.
8. J. L. Jiang, Judicial Application of the crime of illegally using information network under the interpretation of legal interests: based on the analysis of the sample of judicial documents since the criminal law amendment (IX), in: *Application of Law*, Vol. 15, 2019, pp. 33-42.
9. X. Q. Liu, H. Y. Fang, Difficulties in identifying the crime of helping information network crimes, in: *People's Procuratorate*, Vol. 19, 2017, pp. 9-12.
10. C. H. Ma. Understanding and application of the crime of illegal use of information network. in: *Collection of Shanghai Law Studies*, Vol23, 2020, pp. 68-72, DOI: 10.26914/c.cnkihy. 2020. 050322.
11. H. S. Yu, The Legislative Expansion and Judicial Application of Cyber Crime, in: *The Application of Law*, Vol. 9, 2016, pp. 2-10.
12. Y. Y. Zhang, On Improving the Judicial Application of the Crime of Illegal Use of Information Network, in: *The Application of the Criminal Law*, Vol.31, 2019, p. 27.

13. J. W. Sun. Research on the Judicial Application of the Illegal Use of Information Network Crime. Liaoning University, 2021. DOI: 10.27209/d.cnki.glniu. 2021.001590
14. Zhou Ming, "A Study on the conviction Standard of Illegal Use of Information Network Crime- -From the perspective of" Behavior mode "and" Serious circumstances "identification standard construction", in: Criminal Trial, Vol.2, 2020, pp. 22-34. DOI: CNKI: SUN: SPSD.0.2019-04-003
15. H. Li, Various Studies on Criminal Law (Second Edition), Law Press, Beijing, 2016.
16. Y. S. Li, S. Hu, On the Nature of the Crime of Illegal Use of Information Network, in: Journal of Jiangxi Police College, Vol.6, 2018, pp. 76-81.

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