

An Analysis of Determining the Criteria for “Serious Circumstances” in the Criminal Offense of Unlawful Utilization of Digital Networks

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Abstract: The establishment of the criminal offense of unlawful utilization of digital networks provides a legal foundation for combating the dissemination of illegal and criminal information through online platforms. The concept of “serious circumstances” plays a critical role in this crime. The 2019 Interpretation of Several Issues introduced detailed regulations on “serious circumstances”, presenting a quantifiable standard for determining this offense. However, in practical judicial proceedings, there are still issues regarding the determination of the criminal offense of unlawful utilization of digital networks, including a low conviction threshold, broad scope of conviction, and ambiguous penalty standards. Consequently, it is necessary to adjust the quantitative standard for “serious circumstances”, raise the threshold for criminalization, expand the types of “serious circumstances”, restrict the applicability of the “serious circumstances” clause, and refine the penalty criteria for this offense. By accurately defining “serious circumstances” to reduce the risk of becoming a “pocket crime”.

Keywords: digital network, internet crime, serious circumstances

1. Introduction

Article 281 of the Criminal Law in China stipulates the criminal offense of unlawful utilization of digital networks, in which “serious circumstances” is regarded as one of the elements of this offense. However, the criterion for determining “serious circumstances” have always posed a significant challenge in judicial practice. Currently, research on the determination of “serious circumstances” in the criminal offense of unlawful utilization of digital networks primarily focuses on two aspects: improving identification rules and legal dogmatic analysis. Firstly, in terms of enhancing identification rules, some scholars argue that “serious circumstances” should be assessed based on factors like the number, content, dissemination of information, and the amount of illegal income generated by the perpetrator [1,2]. Secondly, from a jurisprudence perspective, some scholars believe that the determination standard for “serious circumstances” should address the abstract danger to important legal interests or consider the infringement of downstream legal interests [3]. In 2019, the Supreme People’s Court and the Supreme People’s Procuratorate promulgated 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 Unlawful utilization of Digital networks and

Helping Digital network Criminal Activities (the 2019 Interpretation of Several Issues), providing a quantifiable standard for the determining “serious circumstances”. However, whether this standard can fully resolve differences in judicial practice and whether other challenges exist in practice application remain pressing issues requiring urgent resolution in the theoretical and practical areas. Based on these considerations, this article aims to examine and address the aforementioned issues by incorporating insights from judicial practice and relevant criminal law theories.

2. Interpretation of “Serious Circumstances” in the Criminal Offense of Unlawful Utilization of Digital Networks

“Serious circumstances” is an important constituent element of the criminal offense of unlawful utilization of digital networks, and an important factor in judging crime or innocence. Therefore, quantitative requirements are added to the qualitative basis of the crime, the behavior and degree of “serious circumstances” are stipulated in more detail. This is conducive to more precise combating of crimes, avoiding the waste of judicial resources, and maintaining the authority and legitimacy of criminal law. The 2019 Interpretation of Several Issues made more detailed regulations on the criminal offense of unlawful utilization of digital networks. Among them, Article 10 stipulates in detail the “serious circumstances” in the criminal offense of unlawful utilization of digital networks, which provides a quantitative basis for the determination of crimes of unlawful utilization of digital networks. In a nutshell, the “serious circumstances” described in the judicial interpretation mainly include the following aspects:

One is illegal and criminal means, setting up illegal and criminal websites in the name of state agencies or financial institutions. Pretending to be state agencies and financial institutions, defrauding the trust of the people to commit illegal and criminal acts will lead to a crisis of trust in the state and social institutions, reduce the credibility of the country, and may eventually cause social harm and adverse effects. Therefore, this clause does not set a quantitative identification standard, and any violation of this clause will constitute a criminal offense of unlawful utilization of digital networks [4].

The second is the scope of influence. For the purpose of illegal and criminal activities, set up 3 or more illegal websites or register more than 2,000 accounts, set up 5 or more communication groups or the cumulative number of member accounts is more than 1,000, publish more than 100 pieces of illegal information, or send to More than 2,000 users, sending to groups with more than 3,000 members, and using accounts with more than 30,000 followers to spread illegal and criminal information, etc [5]. Since the popularity of the Internet, it is very convenient to transmit information through the Internet. Unlawful utilization of the Internet to publish illegal and criminal information will undoubtedly increase the social harm extremely rapidly. Detailed regulations on the number of illegal websites, the number of communication groups, and the number of illegal information items will help law enforcement officers clarify the boundaries of the crime and clearly determine whether the perpetrator’s behavior constitutes a “serious circumstance”.

The third is the amount of illegal income. The perpetrator uses the digital network to make illegal profits of more than 10,000 yuan, which is considered “serious circumstances”.

The fourth is the case of previous convictions. If a person receives administrative punishment for cybercrimes within two years and fails to correct their mistakes, continuing to illegally use the digital network, they should be subject to criminal punishment and bear criminal responsibility. This article primarily relies on the subjective viciousness of individuals. When a perpetrator has already been administratively punished for unlawful utilization of digital networks, they are aware that their actions will cause harm to society yet choose to persist in engaging in illegal and criminal activities, committing repeat offenses in defiance of the law [6].

Fifth, other serious circumstances. This clause is a catchall clause, which gives the judge a certain degree of discretion when the behavior of the perpetrator does not meet the aforementioned “serious circumstances” situation. Judges can evaluate the perpetrator’s specific crimes and determine whether it constitutes a criminal offense of unlawful utilization of digital networks.

In addition to the quantifiable criteria for “serious circumstances”, the 2019 Interpretation of Several Issues also provided further clarifications on the “unlawful utilization of digital network crimes” and “release information” mentioned. Article 7 of the 2019 Interpretation of Several Issues stipulates that the term “illegal crime” in the Article 287 of the Criminal Law includes both criminal acts and illegal acts that fall within the types of behavior specified in the specific provisions of the Criminal Law but have not yet constituted a crime. This provision should be interpreted as a restrictive scope. The illegal and criminal situations encompassed by the criminal offense of unlawful utilization of digital networks are not limited to the types explicitly listed in the corresponding articles of the Criminal Law, but also include violations specified in other sub-provisions of the criminal law. Besides, for administrative violations that are not clearly stipulated in the Criminal Law, but only stipulated in the Public Security Management Punishment Law or other laws, even if the digital network is involved, they should not be deemed as the criminal offense of unlawful utilization of digital networks [7]. Article 9 of the 2019 Interpretation of Several Issues stipulates that “those who use digital networks to provide information links, screenshots, QR codes, access account passwords, and other guidance for accessing services via digital networks shall be regarded as engaging in criminal activities under Article 287 of the Criminal Law. This broadens the scope of “information release”. Even though it does not directly present illegal and criminal information to others, indirect methods such as providing links, screenshots, or QR codes for information transmission still constitute a means of transmitting information, and the content to which they refer remains illegal and criminal information. Therefore, it should also be identified as “publishing information” in the criminal offense of unlawful utilization of digital networks [8].

The publication of the 2019 Interpretation of Several Issues has provided a quantitative judgment standard for determining the presence of “serious circumstances” in the criminal offense of unlawful utilization of digital networks. This standard will aid law enforcement officers in making more accurate judgements whether a perpetrator has committed the crime. It upholds the authority and legitimacy of the criminal law, and it also safeguards the legitimate rights and interests of the accused.

3. Interpretation of “Serious Circumstances” in the Criminal Offense of Unlawful Utilization of Digital Networks

The 2019 Interpretation of Several Issues set specific criteria for the criminalization of the criminal offense of unlawful utilization of digital networks. It established quantifiable standards for factors such as the methods used in illegal activities, the scope of impact, illegal profits, previous convictions, and other serious circumstances. This hybrid identification approach allows for a comprehensive examination of the plot from multiple aspects and angles, but it also has certain disadvantages.

First, the threshold for conviction is low. The criminal offense of unlawful utilization of digital networks is a crime that is determined by the circumstances. In other words, when the illegal acts committed by the perpetrator meet the criteria of “serious circumstances”, it constitutes a crime. However, based on judicial cases, in many instances, the number of websites, communication groups, or information released, as well as the amount of illegal income involved in this crime often exceed the thresholds specified in the judicial interpretation. This leads to a low threshold for the application of this crime in the judiciary, and the risk of “pocketization” is prone to occur [9]. For example, according to Article 10 of the 2019 Interpretation of Several Issues, the establishment of a communication group for carrying out illegal activities would be considered “serious circumstances” if the number of groups is five or more, or the cumulative number of group members’ accounts

exceeds one thousand. However, if the perpetrator created five communication groups, but each group has only three members, should it still be considered as “serious circumstances”. Similarly, according to the Article 10 of the 2019 Interpretation of Several Issues, publishing more than 100 pieces of relevant information on a website would be deemed as “serious circumstances” in this crime. But what if the perpetrator sends a hundred WeChat Moments posts containing illegal and criminal information, even though the perpetrator’s WeChat account has only one friend? From the above two examples, if the perpetrator’s actions are strictly judged according to the relevant provisions of the 2019 Interpretation of Several Issues, it would be considered as a criminal offense of unlawful utilization of digital networks. However, in terms of the social impact and harm caused by the behavior itself, it may not meet the level that warrants criminally punishment.

Secondly, the 2019 Interpretation of Several Issues adopted the format of “enumeration + bottom line” for the description of “serious circumstances”. One flaw of this approach is that the type of behavior covered by this crime are relatively broad [10]. With the development of the Internet and the continuous advancement of science and technology, the means and forms of cybercrime will inevitably become more diverse. The enumeration of “serious circumstances” is bound to be inexhaustible, and if a catchall clause is used to determine the seriousness of the circumstances, the criminal offense of unlawful utilization of digital networks will have the risk of being reduced to a pocket crime. After the 2019 Interpretation of Several Issues was promulgated, an analysis of the types of behaviors involved in the criminal offense of unlawful utilization of digital networks found that, in addition to the crimes clearly listed in the law, including (1) Establishments used to commit fraud, teach criminal methods, make Or websites and communication groups that sell prohibited items, controlled items, and other illegal and criminal activities; (2) Publishing information about the production or sale of drugs, guns, obscene items and other prohibited items, controlled items, or other illegal and criminal information; (3) Publishing information for the implementation of fraud and other illegal and criminal activities. Furthermore, other illegal and criminal behaviors such as publishing advertisements, cheating on exams, gambling, and forging certificates are also subject to punishment under the criminal offense of unlawful utilization of digital networks [11][12]. It can be seen that although Article 10 of the 2019 Interpretation of Several Issues sets a quantifiable standard for the scope of “serious circumstances”, and Article 7 limits the scope of “violation and crime” in this crime clause, including both criminal acts and illegal acts that fall into the categories specified in the specific provisions of the Criminal Law but have not yet constituted crimes. However, it is not difficult to find from actual judicial cases that some administrative violations, which should be regulated by the Public Security Management Punishment Law are not specified in the Criminal Law, such as publishing illegal information related to soliciting prostitutes and “five black categories”, have also been categorized as crimes under the offense of unlawful utilization of digital networks. This indicates that the release of the 2019 Interpretation of Several Issues has not yet resolved the issue of overly broad penalties in judicial practice.

In addition, it is not difficult to find from the published judicial practice cases that for similar cases of unlawful utilization of digital network crimes, courts in various places have different trial standards and applicable penalties, and there are situations where the same case has different sentences. Taking the Sun’s case as an example, the defendant used multiple QQ numbers to publish prostitution information in multiple QQ groups for soliciting prostitution information, and made a cumulative profit of more than 2,000 yuan, which was eventually determined by the People’s Court of Ningjiang District, Songyuan City, Jilin Province as illegal use Digital network crime, sentenced to six months in prison and fined RMB 2,000 [13]. In the Xu’s case, the defendant also posted prostitution information in several QQ groups, making illegal profits of more than 4,000 yuan. He was found guilty of unlawful utilization of digital networks by the Xingcheng People’s Court of Liaoning Province and sentenced to a fine of 10,000 yuan to hand over the illegal gains [14]. In the Ji Mou’s

case, the defendant posted prostitution information in coded language in multiple chat groups and obtained illegal income from it. He was finally found guilty of unlawful utilization of digital networks by the Baoshan District People's Court in Shanghai and sentenced to four months of criminal detention. Probation for four months and a fine of 3,000 yuan [15]. Judging from the aforementioned three cases, the circumstances of the defendants' cases are similar, and they violated the same core legal interests, thereby meeting the criteria for being considered as the "same case". However, due to the lack of clear penalty standards in existing legislation and judicial interpretations, different sentences are given for the same case. This inconsistent application of criminal law not only undermines judicial justice but also risks undermining judicial authority.

4. Optimization of the Judicial Identification Path of "Serious Circumstances" in the Criminal Offense of Unlawful Utilization of Digital Networks

The introduction of the Interpretation of Several Issues in 2019 has provided a quantitative basis for the determination of the criminal offense of unlawful utilization of digital networks. However, there are still unreasonable standards for the number and amount of "serious circumstances", the threshold for conviction is low, and the method of "enumeration + bottom line" cannot list all types of crimes, it is easy to expand the scope of convictions for this crime, and the penalty standards are vague. Different cases and other issues. This will not only damage the interests of the perpetrator, but also affect the fairness and authority of the criminal law. Therefore, it is of great significance to improve the identification path of "serious circumstances" in the criminal offense of unlawful utilization of digital networks.

4.1. Adjust the Standards for the Number and Amount of "Serious Circumstances"

Article 10 of the 2019 Interpretation of Several Issues stipulates the "serious circumstances" in the criminal offense of unlawful utilization of digital networks. If you set up more than five communication groups for the implementation of illegal and criminal activities; publish more than 100 pieces of information about illegal and criminal activities on the website; and have illegal income of more than 10,000 yuan, it will be deemed as a "serious circumstance" that constitutes this crime. The social harm brought about by its illegal and criminal behavior also needs to be punished by criminal law. However, nowadays the Internet has already entered people's lives, and social software such as WeChat and QQ are indispensable for daily communication and communication. Creating QQ groups or WeChat groups, posting QQ news or circle of friends are skills that almost everyone knows. In this context, it is easy to create more than 5 communication groups or publish more than 100 messages. If some standards that can be easily achieved are used as the standard of conviction for crimes in the criminal law, there will be cases where excessive force is used and the principle of appropriateness of crime and responsibility will be violated. The criminal offense of unlawful utilization of digital networks belongs to the category of cybercrime, and the speed of transmission and the wide range of transmission are major characteristics of digital networks. Therefore, when setting the quantity and amount standard of "serious circumstances" in this crime, the social impact caused by the perpetrator's illegal and criminal behavior should be considered, such as the number of broadcasters and the number of visits. Taking Article 10 of the 2019 Interpretation of Several Issues as an example, the creation of more than 5 communication groups can be changed to the creation of more than 5 communication groups and the cumulative number of group members reaches 1,000; more than 100 illegal articles will be published is modified to publish more than 100 pieces of illegal and criminal information and the cumulative number of views has reached 3,000 times. By appropriately adjusting the number and amount standards of "serious circumstances" in this crime and raising the threshold of conviction for this crime, the risk of this crime becoming a "pocket crime"

can be reduced. For some illegal acts that do not meet the “serious circumstances” standard, can be combated through such as administrative regulations.

4.2. Enrich the Types of “Serious Circumstances” and Limit the Expansion of the “Pocket” Clause

Article 7 of the 2019 Interpretation of Several Issues stipulates that the “illegal crime” mentioned in the relevant provisions of the criminal offense of unlawful utilization of digital networks includes”. However, it is not difficult to find from actual judicial cases that many cases that constitute administrative violations but not criminal violations are also judged to constitute this crime, which undoubtedly deviates from this clause. For example, after the Interpretation of Several Issues was promulgated in 2019, some judicial organs still judged the establishment of prostitution groups and the release of information on the sale of controlled knives as crimes of unlawful utilization of digital networks. This also exposed two problems. One is that in judicial practice, the understanding of the scope of “violation and crime” stipulated in the 2019 Interpretation of Several Issues is not thorough enough. The second is that the application of the “covering the bottom line” clause enables the court to have greater discretion, which invisibly expands the scope of conviction of this crime. If things go on like this, Article 7 of the 2019 Interpretation of Several Issues may become useless.

Nowadays, there are more and more acts of using the Internet to commit crimes, and the means and forms of cybercrime are also tending to be diversified. Therefore, the identification of the type of “serious circumstances” must also keep pace with the times and follow the principle of modesty. If a certain behavior has serious social harmfulness and is difficult to be regulated by other laws and regulations, it should be included in the regulation of criminal law, and the type and judgment standard of “serious circumstances” should be expanded. Additionally, when applying the “covering the bottom line” clause to determine whether the behavior of the perpetrator constitutes the “serious circumstances” of the crime, a narrow interpretation should be made to limit the scope of punishment of the crime to a reasonable range and prevent the crime of the crime from being punished. Falling into the dilemma of “pocketization” in the application of justice.

4.3. Refinement of Penalty Standards for the Criminal Offense of Unlawful Utilization of Digital Networks

According to the relevant provisions of the Criminal Law, this crime is a misdemeanor, and the statutory sentence of fixed-term imprisonment is less than three years. However, there is no finer-grained penalty standard for this, which may lead to different penalties being applied to cases with the same facts in judicial practice, and different sentences for the same case. Therefore, in combination with the relevant provisions of Article 10 of the 2019 Interpretation of Several Issues, the applicable standards of criminal penalties are refined from the aspects of illegal and criminal means, social impact scope (quantity standard), illegal income, and criminal record, and it is clarified that severe punishment should be imposed situation. During the trial, the applicable penalty for the case is comprehensively judged based on factors such as the social harmfulness of the case and the subjective attitude of the perpetrator, and strives to achieve similar judgments for similar cases, unify the applicable penalty standards for this crime, and achieve the goal of matching the crime with the punishment.

5. Conclusions

The establishment of the criminal offense of unlawful utilization of digital networks is of great significance for cracking down on illegal and criminal activities using digital networks as the medium, and “serious circumstances” have always been the difficulty in judging this crime. The release of the

2019 Interpretation of Several Issues provided a quantifiable basis for the “serious circumstances” of this crime to a certain extent, but there are still problems such as low threshold for incrimination, wide scope of incrimination, and vague application standards of criminal law. Therefore, in response to the abovementioned problems, this paper puts forward a comprehensive proposal from three aspects: adjusting the number and amount of “serious circumstances”, enriching the types of “serious circumstances”, limiting the extension of the “covering the bottom line” clause, and refining the penalty standard for this crime. The identification path of “serious circumstances” for the criminal offense of unlawful utilization of digital networks is expected to help the reasonable, legal and scientific application of criminal offense of unlawful utilization of digital networks in my country’s judicial practice.

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