RESEARCH ARTICLE

Study on the Judicial Application of the Crime of Aiding Information Network Criminal Activities

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Abstract

The rapid advancement of internet and information technology has given rise to new forms of cybercrimes and illegal activities. To precisely combat such increasingly severe new types of crimes, China incorporated the "crime of aiding information network criminal activities" into the Amendment (IX) to the Criminal Law of the People's Republic of China. However, in judicial practice, issues persist, including an overly low threshold for determining "knowingly," insufficient justification for "the principal offender's commission of a crime," ambiguous definition of "aiding acts," and biased assessment of "serious circumstances." These problems have exacerbated the vagueness of legal provisions, leading to a tendency of over-expansion in penalty application by judicial authorities. Therefore, it is imperative to reasonably define the scope of "knowingly," standardize criteria for identifying "serious circumstances," deepen research on interpreting "aiding acts," and strengthen investigations into "others' use of information networks for criminal activities," thereby improving adjudication standards and addressing the high incidence of this crime.

Keywords: aiding information network criminal activities, aiding acts, serious circumstances, knowingly.

1 Introduction

Cybercrimes differ significantly from traditional crimes, characterized by more sophisticated division of labor within criminal organizations, forming relatively independent interest-driven criminal models that pose challenges to criminal law application [1, 9]. China has effectively suppressed the crime of aiding information network criminal activities through its deterrent effect, achieving notable regulatory results. However, judicial practice is plagued by ambiguous and overgeneralized identification of legal provisions, as well as disputes over conviction and sentencing, resulting in inconsistent judgments in similar cases. Thus, in-depth research on the subjective and objective elements of this crime, and constructing its criminalization boundaries within a theoretical framework, is essential to clarify legislative purposes and provide solutions for judicial identification dilemmas.

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2 Overall Judicial Application of the Crime of Aiding Information Network Criminal Activities

2.1 Temporal Distribution of Cases

After searching on the professional Chinese-English bilingual legal information database (wkinfo.com.cn) that cooperates with China Judgment Online, as of December 31, 2024, it is found from the data of judicial documents (excluding ruling documents) concerning the crime of aiding in information network criminal activities, which are released by the Grassroots People's Courts of Guangzhou and the Guangzhou Intermediate People's Court that, although Chinese courts across the country have adjudicated dozens of such cases since 2015, there were only 2 cases were recorded before 2019, but the number surged after the Supreme People's Court and the Supreme People's Procuratorate issued the Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Illegal Utilization of Information Networks and Aiding Information Network Criminal Activities [2]. To date, Guangzhou has seen 486 such cases, with a peak of 296 in 2021. Despite a decline in the past three years, cybercrime cases remain at a high level. The specific annual distribution of cases from 2020 to 2024 is visually presented in Figure 1.

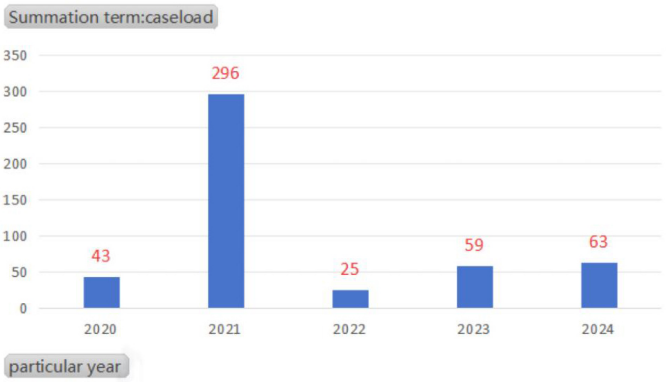

Figure 1. Distribution of the number of cases in the past five years.

2.2 Specifics about the defendants

According to the statistics of 486 adjudication documents involving 608 defendants, excluding the 48 individuals whose sentencing information is not publicly disclosed, 91% of the defendants were under 40 years old, and only 9% were over 40 years old. This indicates that the younger group accounts for an extremely high proportion of defendants in the crime of aiding information network criminal activities, and that this group is prone to become participants in the crime or to be exploited by others due to their relatively outstanding cyber skills and weak resistance to the temptation of money. Therefore, legal education and risk prevention and control for this age group need to be focused on. The detailed age composition of the defendants is illustrated in the pie chart shown in Figure 2.

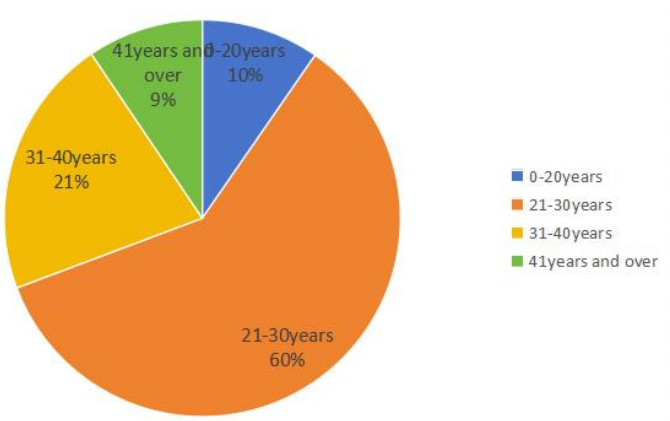

Figure 2. Pie chart of defendants' age distribution.

Of the 608 defendants counted, excluding the 48 individuals whose sentencing information is not publicly disclosed, the percentage of defendants at each level of education, from elementary school to university, was as follows: 54 defendants at the elementary school level, or nearly 10%; 334 defendants at the junior high school level, or 60%; 119 defendants at the senior high school and middle school level, or about 21%; and 53 defendants at the university college level and above, or about 8%. Analysis from a cultural perspective shows that the majority of the defendant group involved in this crime is concentrated in the stage below high school, and the main reason for this is that this group of people generally lacks a high level of cultural literacy and legal awareness, which makes it easy for them to step into the abyss of crime, leading to greater risks and challenges in social and economic life. The breakdown of defendants' educational attainment is presented in Figure 3.

2.3 Status on penalties

According to the statistics of 486 judgments, 503 of the 608 defendants involved in the case were sentenced to less than one year's imprisonment for the crime of aiding criminal activities in the information network, accounting for nearly 75% of the total; those who were sentenced to more than one year's imprisonment accounted for about 10% of the total; and those who were sentenced to criminal detention accounted for about 4% of the total. Of all the defendants sentenced

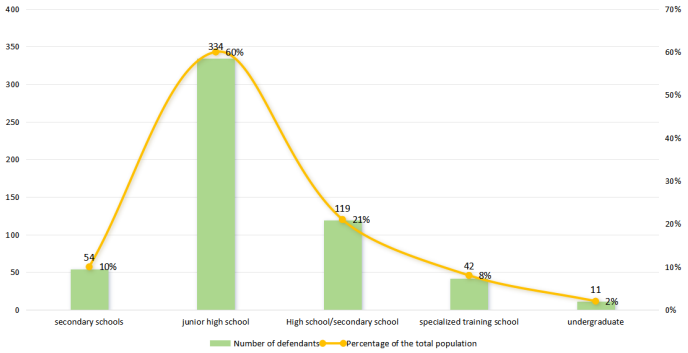

Figure 3. Educational attainment of defendants.

to fixed-term imprisonment and detention, nearly 10% were subject to probation, and about 1% were exempted from criminal punishment. According to the above data, the proportion of those sentenced to fixed-term imprisonment of more than one year in the penalty for this crime is significantly lower than the proportion of those sentenced to fixed-term imprisonment of less than one year and criminal detention. The distribution of different types of penalties imposed on the defendants is shown in Figure 4.

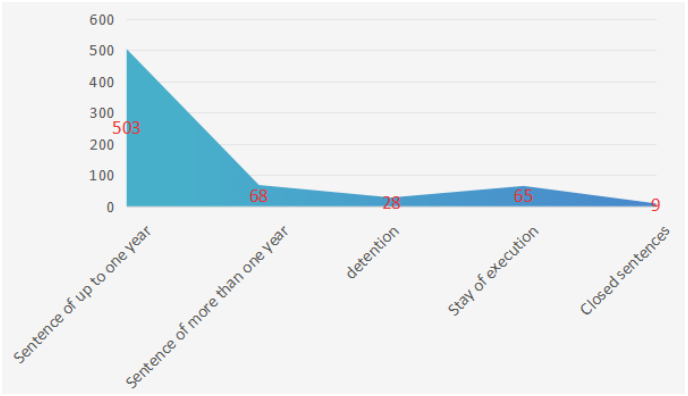

Figure 4. Penalties imposed on defendants.

The data shows that 510 of them were fined less than five thousand yuan, accounting for about 84% of the total; 68 were fined less than ten thousand yuan, accounting for about 11% of the total; 24 were fined more than ten thousand yuan, accounting for about 4% of the total; and 6 were fined in undisclosed amounts, accounting for about 1% of the total. Given that the defendants of the crime of aiding information network criminal activities made relatively small profits, the sentences were therefore not long and were subject to probation, and the property penalties were light, the amount of fines was generally low. A detailed summary of the fine amounts imposed on defendants is provided in Table 1.

Table 1. Distribution of fine amounts for defendants.

Sum of Money	Number of Defendants	Proportion
0–5000 Yuan	510	84%
5000–10,000 Yuan	68	11%
10,000 Yuan or more	24	4%
Non-disclosure of amounts	6	1%
Total	**608**	**100%**

3 Difficulties in Judicial Practice of the Crime of Aiding Information Network Criminal Activities

3.1 The standard for determining "knowingly" is too low

As an important criterion in China's judicial activities is the consistency between subjectivity and objectivity, the standard for determining "knowledge" is too low. Therefore, when it comes to helping others to commit crimes, if the helper is aware of the criminal behavior of the person being helped, this will be used as a key basis for conviction and sentencing. Otherwise, the conduct of the helper will not constitute a crime. In practice, the judicial authorities in the trial process often do not sufficiently argue the case of the subjective "knowledge" of the helper, confusing "knowing that his or her own behavior may be used for illegal and criminal activities" with "knowing that the other person is committing a crime using the information network", which is the key basis for conviction and sentencing. Information network to commit a crime", so that the threshold for committing this crime is greatly reduced [3].

In addition, in real life, the provision of network services is a general business practice, and there is no evidence that it provides assistance to criminals. If only on the basis of speculation that others may use network services to commit crimes, the network service provider will be categorized as a crime, undoubtedly significantly increase the network service provider's business risks and costs.

3.2 The argumentation of "other people committing crimes" is still lacking

In addition to the issue of determining "knowledge" (of the illegal act), the demonstration of "the commission of a crime by another person" is also insufficient. The key to the establishment of the crime of "aiding information network criminal activities" is whether the assisted behavior makes use of the assistance provided to commit the crime, but China has

not elaborated on the "crime" of "others committing the crime" in the Criminal Law, so there is an undue expansion of the scope of the crime. However, China's criminal law does not elaborate on the "crime" of "others committing a crime", so there is a potential risk of undue expansion [4]. Secondly, in the legislation also did not give a clear standard for "others to commit crimes" of the criminal state to judge the network to aiding act. And it is very easy to lead to three types of shortcomings: first, the degree of aiding act does not constitute a crime, but others are helped to implement the act of establishing a crime; second, the aiding act to establish a crime, but others are helped to act can not be clear whether it constitutes a crime or does not constitute a crime; third, the aiding act to establish a crime, others are helped to act to also establish a crime. These drawbacks are very easy to lead to "the same case different judgment" phenomenon, which for the authority of the rule of law and the unity of the damage caused by [5].

3.3 "Aiding Act" is not clearly defined

Furthermore, the definition of "aiding acts" is equally ambiguous. In view of the legislature will "aiding act" is divided into three categories of technical support, advertising and payment and settlement, and the use of a catch-all clause to accommodate new types of aiding acts. However, the law does not clearly define the essential meaning of "aiding act", nor does it fully explain the word "etc." in the law. Therefore, resulting in the judicial application of the "aiding act" of the determination of differences, inadvertently expanding the "aiding act" determination of the scope [6]. And the vast majority of the court on the "aiding act", in addition to the provisions of the law of payment and settlement type "aiding act", will provide rental and sale of "bank cards and phone cards" type is also directly recognized as a "aiding act". In addition to the payment and settlement type of "aiding act" stipulated in the law, the provision of rental and sale of "bank cards and phone cards" is also directly recognized as this type of "aiding act", which will lead to the gradual broadening of the applicable jurisdiction of this crime.

Secondly, the penalty boundary of network neutral aiding act essentially also reflects the unclear definition of aiding act. Nowadays, neutral aiding act in cyberspace has triggered controversy, with some advocating full punishment and others arguing that punishment should be limited. However, most of the courts have ambiguity in defining the punishability of neutral network aiding behavior, which makes different judgments in the same case, different identification of crimes, and other judicial chaos continue to emerge.

3.4 Errors in the determination of "serious circumstances"

In judicial practice, there are also many issues with the legal provisions on "serious circumstances" in the crime of aiding information network criminal activities, both in judicial procedures and judicial interpretations. The concept of "serious circumstances" in the Criminal Law of China is vaguely defined and generalized, resulting in controversy over the characterization and quantification of this crime. As a constituent element of this crime, "seriousness of circumstances" means that even if the perpetrator meets the requirements of the crime, but the overall evaluation does not reach the level of seriousness of circumstances, he or she cannot be convicted and punished. Due to the ambiguity of the boundaries of the serious circumstances, gives the judge a certain degree of discretion, resulting in the court on the "serious circumstances" judgment bias [7].

Although the judicial interpretation of the "serious circumstances" of the crime has been clearly defined, and the introduction of the "other serious circumstances" of this article, however, there are still some deviations in the practical application. For example, if the amount of money involved is huge and the victim has suffered heavy losses, directly invoke the judicial interpretation of the bottom clause to be judged, very easy to lead to the expansion of the target of this crime.

4 Optimization Path for the Application of the Crime of Aiding Information Network Criminal Activities

4.1 Reasonably define the determination standard of "knowingly"

First, the definition of "knowingly" should be strictly defined. As a subjective constituent element of the crime of aiding information network criminal activities, the determination of "knowledge" should be based on solid evidence, follow the logic of law and facts, and exclude personal subjective assumptions. China's judicial interpretation of this crime uses a combination of enumeration and reverse exclusion to define "knowledge", and further discusses the judgment method of "presumed knowledge" [8]. However, in judicial practice, still need to "know" in the case of the presumption of rules for detailed analysis, from the perpetrator's understanding, the

flow of funds, unlawful acts and other aspects of the analysis of its various stages of the confession and its objective behavior at the time of the crime, and then accurately presumed that its subjective "knowingly This will lead to an accurate presumption of subjective "knowledge", thereby improving the current situation in which there are differences in the standards for determining "knowledge".

Secondly, it is necessary to refine and supplement the way of "presuming knowledge": firstly, it is necessary to refine the relevant notification, which is issued by the department with the authority to supervise the network, and is mainly in written form, and in case of emergencies, notification can be made by telephone, e-mail, etc., and there must be evidence to prove that the notification has been effectively made; and secondly, it is necessary that, upon receipt of a complaint or supervisory notification, if the complaint or supervisory notification is unable to be eliminated, it is necessary to provide the relevant information in writing. network service's facilitation of criminal behavior, it is deemed to promote the crime; if more than half of the service recipients report their illegal activities or criminal behavior, it is presumed that they knowingly do so. The judiciary should verify the reported information and compensate for economic losses caused by malicious reporting to avoid excessive pressure on network service providers; furthermore, it should explain the connection between the high price charged for unlawful technical support and information network crimes, establish a pricing range, and clarify the definition of the behavior of website construction and link production to regulate the charges and prevent different judgments due to the differences in the understanding of the adjudicators; lastly, it should Refine the content of "providing programs, tools or other technical support or assistance specifically for use in the commission of illegal crimes" in the judicial interpretation, and elaborate on various types of illegal assistance behaviors, such as opening phishing websites and illegally collecting other people's information.

4.2 Strengthening the definition of "others using information network to commit crimes"

After clarifying the criteria for determining "knowledge", it is further necessary to strengthen the clarification of "the commission of a crime by another person". First of all, the specific criteria for determining the "crime" committed by the person being helped should be clarified. If the perpetrator has no intentional conspiracy with the person being helped, even if he or she knows that another person has used the information network to commit a crime, even if he or she does not determine the specific crime and holds indirect intent, it will not constitute an accomplice, but only constitutes a separate crime. Constituting an accomplice requires the perpetrator to share joint intent with the principal offender and participate in the criminal act through mutual coordination, the perpetrator's act constitutes a legal fiction overlap with this crime, but to constitute the premise of the accomplice. The determination of complicity depends on the degree of knowledge and the possibility of recognizing the crime of the object being helped. In view of the independence of the social harm of the act of helping, therefore, the act of aiding in network crime of independent regulation, in order to solve the problem of determining the subject of the crime and the nature of the crime as well as some of the cases to deal with the dilemma.

Secondly, whether the object to be helped "proceeds" does not affect the determination of aiding act . As the crime of aiding information network criminal activity has independent legal benefit infringement attribute, the core of its evaluation lies in the network to help the harmfulness of the behavior itself, so the object of being helped in the preparation or implementation of the crime stage does not affect the perpetrator has criminal punishability. And the perpetrator's aiding act must reach the degree of seriousness, such as not yet reached the degree of criminal offense, still need to examine whether the act falls within the scope of conduct regulated by the Specific Provisions of the Criminal Law , if only belongs to the general violations, the helper's act does not constitute this crime. If the act of the person being helped has reached the state of criminal preparation oassistingr attempt, as long as the aiding act meets the elements of serious circumstances.

4.3 Further refinement of the term "act of assistance"

Furthermore, the determination of " acts" should be further refined. First of all, the need to improve the interpretation of the type of "aiding act". China's existing law lists technical support, advertising and promotion, payment and settlement of three types of "aiding act" [10], with a catch-all clause ('etc.') to cover other acts. However, in judicial practice, not enumerated behaviors often refer to the enumerated matters identified, but because of the differences in the social environment and criminal policy around China may lead to "the same case

different judgments". Therefore, it is necessary to further clarify its technical and professional, excluding less socially harmful behavior, to avoid the crackdown is too wide. Therefore, the restriction of the word "etc." may include: firstly, in accordance with the rule of interpretation of the same category, "etc." should cover behaviors that are homogeneous and comparable in harm to the three aforementioned categories of behaviors, which need to be included in the scope of neutral aiding acts and their relatively limited social harm; Secondly, the combination of open-ended enumeration in the criminal law and judicial interpretation regulates the types of conduct, taking into account legal stability and new types of criminal response, and helps to effectively prevent the over-expansion and arbitrariness of the determination of this crime.

On this basis, the boundaries of "aiding act" should be defined accurately by combining causality and punishability. On the one hand, the need to scientifically grasp the causal relationship between aiding act and other people's crimes, aiding act needs to be helped by the object of criminal activities such as providing bank cards to assist in payment and settlement for fraudsters to achieve the necessary conditions for the transfer of property and other substantive promotion, but for the "causality has not yet actually occurred", for example, to help the behavior has been implemented However, for cases where "the causal relationship has not yet actually occurred", such as where the act of assistance has been committed but the person to be assisted has not proceeded to commit the crime, the criteria for its composition need to be refined to avoid over-expansion of the scope of punishment.

On the other hand, the punishability of neutral aiding act needs to be properly determined, and the following elements should be integrated when judging: first, whether it violates work or professional norms, and generally neutral aiding act in the normal performance of duties is not punishable; second, the subjective malignancy should be judged from the cognitive ability, and those who lack the cognitive knowledge of the illegal nature of the crime need to be determined with prudence; third, the determination of the "knowledge" needs to be combined with the evidence of the whole case. Third, the determination of "knowingly" need to be combined with the evidence of the case to avoid relying only on confession, insufficient evidence should be presumed in favor of defendant [11]; Fourth, whether the network service provider is a neutral act of help, need to consider its subjective state of mind and the nature of the business, can be based on the handling of regulatory notices or reports to judge the situation, reasonable fees and due diligence, in principle, is not recognized as illegal.

4.4 Standardize the determination of "serious circumstances" standard

In addition to this, it is also necessary to standardize the criteria for determining "serious circumstances". First of all, should optimize the "seriousness" of the determination of the principle. The judicial interpretations issued by the Supreme People's Court and the Supreme People's Procuratorate of China enumerate the "serious circumstances", reflecting the social harm, subjective viciousness and criminal consequences of the crime of aiding criminal activities on the information network, and provide a single standard for judicial determination. In addition, the provision of technical assistance, payment and settlement, advertising and promotion outside the country can also be included in the determination of the standard, forming an effective reinforcement [13]. As well as for "for the same object to provide more than one type of help" situation, need to strengthen the relevant standards to fit its harmfulness of the two aspects. This crime is listed in the form of Internet access and other behavior is different but the essence of homogeneity, the perpetrator of the same object to provide a variety of technical support, the harm is not less than "for more than three objects to provide assistance", but the lack of corresponding standards, so the need to supplement the regulation.

Further, it is necessary to adjust the applicable provisions of "other serious circumstances". In judicial practice, the judicial interpretation of article 12, paragraph 1, subparagraph 7 of the "other serious circumstances" should also take a rigorous attitude, only in the case of not belonging to the first six, but the danger of a considerable degree can be applied, in order to avoid undue expansion of the scope of the fight. Based on this, on the basis of the integration of practical experience and theoretical interpretation, a comprehensive standard can be introduced, and if the harmfulness of the act is comparable to a single standard, it can be categorized as "serious circumstances". Comprehensive standards can be used in two paradigms: a complementary amount of paradigm, the amount of money involved in close to the standard behavior, if the case there are multiple criminal circumstances and harm up to 90%

of a single standard and can be complementary to the circumstances, it can be recognized as "serious circumstances" [12]; Second is the paradigm of the serious circumstances, the existence of the crime has been sentenced for the crime, technical assistance in violation of industry regulations, inducing and abetting the participation of minors in the industry, the situation is not the same. The second is the paradigm of serious circumstances, the existence of a previous conviction for this crime, technical assistance in violation of industry regulations, inducing and abetting minors to participate in the formation of a relevant criminal group or organization is regarded as "serious circumstances". The "other serious circumstances" clause provides judges with a basis for decision-making, enabling them to exercise discretion in the light of the circumstances of the case and guaranteeing a fair and reasonable trial.

5 Conclusion

China's crime of aiding information network criminal activities, as a newly added offense, is not a helpless response to the increasingly rampant cybercrime, but a legislative response to the significant harm of aiding behaviors in cybercrimes. In practice, difficulties in identifying this crime may lead to over-punishment of Internet technologies, thereby inhibiting technological development and hindering the precise crackdown on cybercrimes. Therefore, attention should be focused on the crime itself: starting from its subjective and objective elements, and based on its basic nature, we should further rationally define "knowledge" at the subjective level, clarify the scope of "aiding acts" at the objective level, and optimize the standards for "serious circumstances" at the quantitative level. Only in this way can the judicial determination of the crime be unimpeded. Meanwhile, while relying on practice, theoretical research should be strengthened to further explore its legislative purpose, applicable subjects, and scope of application, so as to clarify its positioning and nature, expand solutions to problems, and ultimately realize the original legislative intent of the crime.

Data Availability Statement

Data will be made available on request.

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Conflicts of Interest

The authors declare no conflicts of interest.

AI Use Statement

The authors declare that no generative AI was used in the preparation of this manuscript.

Ethical Approval and Consent to Participate

Not applicable.

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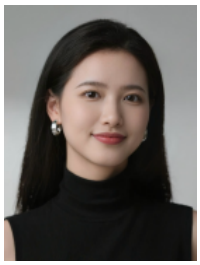

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