

# Information Network Crimes in China: An Analysis Regarding the Contemporary Juridical Situation and Suggestions for Future Improvements

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## ABSTRACT

The focalization of this article is the current situation of criminal justice regarding information network crimes, the potential solutions for foreseen challenges, as well as suggestions for future improvements. This essay has clearly introduced the background information under the topic and pointed out the existing challenges regarding the juridical situation in China. Within high percentages illustrated, the criminal prosecution rate and guilty sentence rate in China concerning the criminal offences in information network crimes have raised another series of societal problems and concerns, which are negatively influencing the fairness of legal justice. Meanwhile, the crucial factor of “knowing” determines if a suspect is convictable to a criminal court, but the realistic cases have reflected that this factor is typically affirmed arbitrarily. Thus, this article also addressed the existing problems regarding law enforcement and realistic cases, especially the crucial factor of “knowing”.

## KEYWORDS

Law; Cybercrime; Juridical Situation; China.

## 1. INTRODUCTION

How to improve the fairness of contemporary Chinese juridical situation for the governance of Information Network Crimes? A number of studies have demonstrated that the current situation of information network crimes is intractable in reaching judicial fairness and achieving an ideal social governance effect, since the criminal process concerning this category of crimes does not effectively fight with the insecurity and instability, while the undesirable social echoes have gradually raised.

This phenomenon was discovered as on March 2<sup>nd</sup>, 2023, when the China Internet Network Information Center published the 51<sup>st</sup> Statistical Report on the Development of the Internet in China in Beijing, which has illustrated that the swift advancements that modern Internet brought people convenience and opportunities, it also caused dangers and worries regarding the governance of Information Network Crimes (Luo et al., 2024). At the meanwhile, most offenders of Information Network Crimes are weak in legal awareness and lack of the knowledge for the negative outcomes that their behaviors will lead to. It is difficult to affirm that if they are actually “knowing” that their behaviors can result in benefitting criminal activities.

It is concluded that the contemporary judicial system is generally neglected the “criminal punishability” regarding aiding behaviors in the Information Network Crimes and excessive punishments are typically assigned to offenders, while renewing the standard of the determination of

“knowing” and establishing the Criminal Record Sealing System are the efficient and fair countermeasures.

## **2. THE DIFFERENCE BETWEEN TRADITIONAL CRIMES AND INFORMATION NETWORK CRIMES**

The origin of all the challenges and difficulties concerning the Information Network Crimes is summarily attributed to the enormous difference exists between the traditional crimes and Information Network Crimes. Due to such a difference, it is hard to conduct a fair legal process for such crimes both theoretically and practically (Gu & Song, 2022). This category of crime is totally differed than traditional crimes, cybercrime requires a tight interaction between the upstream and downstream, and many cases showed that the downstream does not realize that the upstream is associated to any crimes, but people in downstream still received criminal convictions.

Upstream refers to the original criminal conducts that correspond to the downstream, so any object of money laundering crimes refers to as the upstream. For example, in a fraud case, the criminals who conduct the deceits and directly defraud the victim for benefits are considered upstream. Downstream refers to the people who provide “assistance” to the upstream, such as providing credit or debit cards to the upstream for money laundry or SIM card for launching scam calls. The nature of downstream is concealing the illegal proceeds that the upstream obtained. From the theoretical analysis of criminal law, the subject of the crime of money laundering should not be the perpetrator or accomplice of drug crime, organized crime of underworld nature and smuggling crime, but refers to the behavior that these upstream criminal actors know to cover up and conceal the proceeds of these crimes.

A typical case as instance for this category of crime, one of the upstream criminals is launching a fraud calling to the victim, saying that his is a nurse and the victim’s son lies in a hospital because of car accident, while the victim has to make payment immediately for surgery costs. Once the victim makes the transaction, the upstream criminal receives the illegal proceeds and needs a “mediator” for the process of money laundry. At this point, the downstream involves in this fraud case through providing the “mediator”, usually a bank card for transferring the illegal proceeds and make them undetectable.

While it is just a neutral helping behavior that contributes to a crime and the downstream conduct this for benefits. These kinds of criminal cases usually appear in illegal “part-time job” that upstream pretends to be legal employers to hire the downstream for criminal assistance. At this point, if the downstream does not realize that they are actually assisting a crime, then people in downstream is subjected to a crime.

Unacceptably, Due to the vague demarcation of “knowing”, many of the offenders are not supposed to get convicted as they never know that their behaviors are providing assistance to the Information Network Crimes, since the juridical system just briefly sorted them into the convictable category combining the objective factors.

## **3. A SYSTEMATIC ANALYSIS CONCERNING THE CURRENT SITUATION OF INFORMATION NETWORK CRIMES**

### **3.1. Weakness Regarding Juridical Practices of Information Network Crimes in China**

The most crucial weakness with regard to the juridical practices is affirming if a suspect is “knowing” that they were helping a crime. It is easy for people to enroll in an information network crime carelessly without a high subjective culpability. This weakness is significant, as it directly determines if a case has “criminal punishability” and the practicability of conducting a guilty sentence.

As the first and foremost obstacle, affirming “knowing” is a “Gordian knot” that the criminal law only vaguely defined that any serious aiding behavior to Information Network Crimes and the suspect is subjective knowing that the upstream benefits from it for criminal reasons, it is convictable. At this point, “knowing” is the hardest factor to determine and it is also a crucial factor here to determine whether or not a behavior is a crime. In judicial practices, the standard of testify “knowing” is that the objective conditions prove that the offenders “should have knowing”, which is insufficient to determine if they are guilty (Gu & Song, 2022). Also, various forms and conducts of determining this factor are applied, depends on the region or even the police officer individually. Such a large room is given, it is impossible to ensure that the reliability of affirming “knowing” in both theoretical and practical perspectives.

Additionally, it is easy to enroll in such a crime, as part-time jobs appear in similar formats that the employees are definitely working for their salary, but they might not know if they are working for illegal industries. Specifically, receiving benefits or not is typically a way of the affirmation of “knowing”, as a suspect receives the benefits that he or she is convictable, while in any part-time job obtaining benefits are usual.

For instance, there are dozens of young people in China are seeking for jobs and begin their journey as new members of workforce. Diverse kinds of companies are hiring them for work, while a small section of them are the cyber fraud industries. From the entrance process to signing work agreements and start working, those fraud firms operate mostly the same way that other normal companies are. Thus, it is a really high demand for the young people who just enter the workforce and without societal experiences to differentiate those fraud firms and normal companies. Finally, what will probably happen is that they consistently serve for the criminal industry for months without realizing that they are associated with crimes, and finally get arrested and even received criminal convictions while their situations should not consider to be crimes.

In general, the most intractable problem of a vague definition of “knowing” made the demarcation of crimes have no specific reference, while it is one of the crucial factors of determining if a suspect really crime. This directly influence the accurate judgement of “criminal punishability” and result in the increase of legal unfairness.

## **3.2. Societal Influences and Echoes in Chinese Society**

### **3.2.1. The Definition of “Ex-Offender”**

The word of ex-offender in this context refers to people who used to enroll in any criminal case of the Information Network Crimes and received a guilty sentence as the result. Any person who received the legal decision of “nolle prosequi” (not to convict) or does not fulfill the conditions of receiving a criminal sentence are not defined as an ex-offender.

### **3.2.2. Negative Influence on the Ex-Offenders**

In recent years, China’s criminal structure has undergone major changes, serious violent crimes have shown a continuous downward trend, and dangerous crimes with relatively light social risks and new types of crimes have increased. Among them, the crime of helping information network criminal activities as a misdemeanor has become the third-ranked crime. Although China has not set up a criminal employment prohibition order for most professions, the public order and good customs of traditional society, ex-offenders will subconsciously label criminals as “bad people” by the society. It is believed that the most noteworthy unexpected influence for ex-offenders are criminal records and life-long stigmas that made them encounter unnecessary difficulties in multiple aspects of their lives, such as finding a job, applying for volunteer in non-profit organizations, and visiting foreign countries with visa requirements. The result of this stigmatization is that many enterprises and units in reality will not hire people with criminal records, that is, employment discrimination. Moreover, according to the currently valid criminal law, there is no criminal record could be pardoned or sealed

for adult offenders while only for non-adult offenders who received a sentence that led to 5 years in prison or less will be sealed (Yang & Lei, 2019).

### 3.2.3. Downsides of the Current Policy Regarding Criminal Records and A High Guilty Rate

Regarding the tough policy for permanent reserved criminal records and raising rate of guilty sentences, numerous problems have observed in the contemporary Chinese society. Firstly, this violates the principle of fairness and justice and the principle of protecting human rights, which often leads to the difficulty of criminals integrating into society, and commits a crime again with the mentality of “breaking the jar”, once they have the records permanently and they have no chance to be rehabilitated (Liu & Wu, 2023). On the other hand, some of the legitimate rights and interests of the close relatives of people with criminal records, such as further education and employment, will also be seriously affected. There is a suspicion of joint and several liability, which violates “their own responsibility” and is not conducive to the harmonious development of society. Lastly, based on China’s large base population and the recent employment difficulties of ordinary people, there seems to be no problem in the short term, but as China’s population aging problem becomes more serious and criminal crimes show a trend of youth, this phenomenon must be corrected.

## 3.3. Positive Outcomes That Criminal Punishments Against Information Network Crimes Reflected

### 3.3.1. Reducing the Harms of Information Network Crimes to the Society

Raising people’s mind of obedience to laws and regulations while reducing the negative influence from information network crimes such as telecommunications network fraud. With the increase of conviction cases and the expansion of the scope of crime treatment, it is conducive to the implementation of relevant public policies by relevant state departments, to increase the scope of combating cybercrime, and to deter people who are lucky to want to commit cybercrime. The popularity of anti-fraud propaganda has made gradually more people become familiar with cybercrime, it guides people to interpret the law and abide by the law, while standardizing the use of network. The network is not an extra-legal place has been specifically realized by Chinese society.

### 3.3.2. Educating the Public

In addition, people who lack of legal awareness are typically have low societal experience and income, so that they have no consciousness to distinguish and vigilance for high-paid part-time job and are more susceptible to the temptation of petty profits, without realizing the hidden risks (Xu, 2024). Based on this situation, even though granting criminal punishments to those offenders could be over harsh, such a measure became precious opportunities for those who among the group of no societal experience and low income to learn from the harm of crimes. Thus, through this advertising effect, potential offenders might be more aware of the negative influence of such misconducts and prevent more cases from happening.

## 4. PRACTICAL SUGGESTIONS FOR DISPOSING INFORMATION NETWORK CRIMES IN CHINA

### 4.1. Establishing the Legislation for Sealing Criminal Records

Speeding up the legislative procedure for Criminal Record Clearance Law and consummate relevant policies that help ex-offenders adapt into the society ideally. Even though the current observations in China’s legal justice have reflected that the problems and concerns are existed, it is possible to mitigate the situation through a series measure for revisions (Bu, 2022).

It is essential to build a criminal record elimination system covering adults and all minors, and modify the provisions of Article 100, paragraph 2 of the Criminal Law that “those who were sentenced to less than 5 years of imprisonment at the time of committing a crime under the age of 18 shall be exempted from the reporting obligation stipulated in the preceding paragraph” and “those whose criminal records have been eliminated shall be exempted from the reporting obligation stipulated in the preceding paragraph”. Facing to the challenge presented, the second suggestion is establishing a unified series of standards for determining “knowing”, this can effectively maintain the preciseness and fairness of juridical process and determine if a behavior is considered a crime in criminal law, especially when the crime is subjected to the category of Information Network Crime, which can be complicated and differed than traditional crimes.

The above measures that proposed are practicable and can directly address the exiting problems and concerns. Establishing the system of sealing criminal records initiated at the request of the applicant and initiated by the people’s court to improve the court’s functions. Building a criminal record elimination system with Chinese characteristics, including criminal entity judgments for minor crimes, relevant criminal records such as non-prosecution, withdrawal of prosecution, misjudged cases, acquittal cases, and non-criminal referee records such as criminal detention, detention, and arrest records. In order to ensure the implementation of the minor criminal record storage system, there should also be relevant relief measures. The “criminal record that should be sealed” should be included in the scope of “personal information” and “privacy”, and civil liability and criminal liability should also be investigated for those involving this clause.

#### **4.1.1. The Most Recent Progress Concerning the Establishment of the System for Sealing Criminal Records**

It is worth mentioning that on July 18, 2024, the third plenary session of the 20<sup>th</sup> Central Committee of the Communist Party of China adopted the “Decision of the Central Committee of the Communist Party of China on Further Comprehensively Deepening Reform and Promoting Chinese-style Modernization.” In the part of “Improving the Judicial System and Mechanism of Fair Law Enforcement”, it was written that "establishing a minor criminal record storage system" is a manifestation of China’s legislative progress and is conducive to building a socialist rule of law system with Chinese characteristics.

## **4.2. Consummating the Legislation Aiming at the Information Network Crimes**

### **4.2.1. The Problems Caused by Current Legislation**

Throughout the contemporary juridical process, numerous problems occurred that have caused wrongful prosecution and unfair judgements. As previously stated, that the determination of “knowing” is one of the examples among the juridical process. Meanwhile, the criminal cases from different regions of China may receive completely different results and varies from the degree of need to fight with this category of crimes, which is also unfair to the individual suspects as well. The legislation has to correspond to the current situation in a realistic manner, so that the public can always be vigilant and safeguarding their own, keep the legitimate rights of suspects, and reaching a more advanced law-based society (Li, 2015).

### **4.2.2. Measures for Consummating the Current Legislation**

Firstly, it is suggested to clarify the incriminating standards by revising the current legislation, with the special focus on defining “knowing” and combine it into practice. As the major factor in juridical practice for determining guilty or not, “knowing” is vaguely defined in the current legislation. In real practice, most of the local police also arbitrarily determine if a suspect is categorized as “knowing” that they were involving in crimes. Therefore, regardless what kinds of neural helping behaviors the suspect conducted, foremostly clarify the boundary and setting up clear and reasonable standards can be an efficient measure for revising the current legislation with fairness.

On the other hand, standardizing the regulations of police in disposing the information network crimes. Besides clearing up the standards, it is also important for the police to conduct a realistic investigation concerning this category of crimes, which is the first step in the criminal legal procedure. If the police provided inaccurate information through arbitrary investigation, it will probably lead to a wrongful sentence as the result.

## 5. CONCLUSION

In summary, facing to today's novel forms of criminal conducts that aid the crimes in the category of Information Network Crimes, the measure of consistently prosecuting and convicting suspects is not suitable and could further result in societal concerns.

Although the positive outcome of granted criminal punishments on offenders have raised people's mind of obedience to the law and defend the authority of law, it is aware that the number of convicted people is raising at a rapid rate. Regarding this situation, it is aware that the contemporary judicial system should not neglect to attach more importance on the "criminal punishability" regarding aiding behaviors in the Information Network Crimes, while cancelling excessive sentences upon offenders and renew the standard of affirming "knowing" as well as establishing the Criminal Recording Sealing System for an efficient measure of governance and fair treatment for offenders.

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