

Offence of Scalping Train and Ship Tickets: Necessity and Legislative Improvement

Zhe Zhu

Shenzhen University, Shenzhen, China
2447847231@qq.com

Abstract: “The offence of scalping train and ship tickets” in China's criminal law has effectively regulated the act of scalping tickets. However, with the development of the times, the type of scalping has also change, triggering the academic community to discuss about the necessity of the existence of the offence of scalping train and ship tickets. This paper takes the necessity of the offence of scalping train and ship tickets as the research object, adopts case analysis, historical analysis and other methods, combines the background of real-name system and the development of network ticketing technology. It argues that, although the form of scalping is becoming newer, it still infringes on the "travelers' right to free ticketing options" and "passenger's right to fair ticketing" and undermines the fairness of public resource allocation. The article refutes the theory of "civil agency" and "non-circulation", and emphasizes that the public welfare nature of train tickets requires criminal law protection. Finally, it suggests limiting the extension of "ticket" to train tickets, refining the incrimination amount standard, distinguishing between labour service type and opportunity monopoly type substitute purchases, and strictly regulating the ticket snatching software, so as to achieve the unity of precisely combating the crime and safeguarding the rights and interests of the citizens.

Keywords: ticket scalping offence, real-name system, paid ticket snatching, fair ticket-buying rights, legislative improvement

1. Introduction

The new Criminal Law made in 1997 independently provided for the “offence of scalping train and ship tickets”. Since then, there have been numerous cases of ticket scalping. In the past, scalpers purchased tickets offline in large quantities and then sold them at an increased price to realize ticket scalping. However, with the popularity of real-name ticketing, online ticketing and ticket snatching software, many scholars believe that the offence of scalping train and ship tickets is not necessary, some scholars believe that the legal interest does not exist, and some scholars believe that the crime cannot be implemented under the real-name system, and some scholars believe that the crime belongs to the act of civil agency [1-3]. However, the above views are too absolute and one-sided. This paper believes that the offence of scalping train tickets still have value to exist nowadays, but need some flexible interpretation and application in accordance to times. In order to benefit the development of China's ticket system, the following will discuss the necessity and importance of the existence of the offence of scalping train and ship tickets, and its legislative improvement. Since the incidence of the offence of scalping ship-ticket is relatively lower, this article will focus on the offence of selling train tickets.

2. Necessity of the Existence of the Offence of Scalping Train Tickets

This section discusses the necessity of the offence of scalping train ticket, focusing on the change of the definition and new types of scalping under the real-name system and network technology, and revealing its core features - subjective profit-making and objective monopoly. It further argues that China's special conditions of large population and tense transport resources provide the soil for the persistence of scalping behaviour, highlighting the necessity of criminal law regulation.

2.1. "Scalping" Behaviour Continues to Exist and Needs to Be Addressed

2.1.1. Understanding the Meaning of "Scalping"

In European and American countries, "scalping" mainly refers to "the resale of tickets at a price higher than face value, usually for entertainment or sporting events", such as in the United Kingdom, where scalpers sell Wimbledon Tennis Championships tickets for more than 3,500 percent of face value [4-5]. In the United States, Barry's Ticket Service conspired with an employee of Ticket Master to illegally obtain preferred seating by asking ticket agents to hold back entire batches of tickets and secretly pay for them with a series of credit cards [6].

In China, the term "scalping" is not explained precisely in the dictionary. The traditional meaning of scalping mainly refers to scalping tickets to majority of people, that is, hoarding a large number of tickets and then reselling them at a much higher price, which is the process of "buy first and then sell" [7]. This involves two transfers of ownership. However, the traditional understanding of ticket scalping is biased, so it is necessary to update the meaning of "scalping". This paper argues that the key to "scalping" does not lie in buying before selling and the secondary transfer of ownership; the essence of scalping lies in the subjective profit-making purpose, and the monopoly and deprivation of the sale and purchase of tickets by the seller in the objective act of selling, .

There are three reasons why scalping requires a subjective profit-making purpose. First, according to the literal understanding, the seventh edition of the Modern Chinese Dictionary points out that the term "scalping" refers to the buying and selling of bus tickets, ferry tickets, admission tickets, etc., and that buying and selling refers to buying at a low price and selling at a high price in order to make a profit. It can be seen that the act of scalping tickets needs to have the purpose of profit-making; secondly, according to the proof of the existing laws and regulations, the crime of selling land use rights and the crime of selling cultural relics stipulated in Article 228 and Article 326 of China's Criminal Law both point out that there must be a profit-making purpose for the selling, but the crime of scalping train and ship tickets does not explicitly stipulate that it needs to have the purpose of profit-making, and it belongs to the non-statutory purpose of the offence. If a non-statutory purpose offence are linked to a specific purpose, the act should be an objective act stipulated in the crime description, and should have the purpose of exercising. Then the crime constituted by the act requires a specific purpose as a subjective condition. Resale itself includes the subjective purpose of making a profit [8]. Thus, the act of scalping necessarily covers the subjective condition of making a profit.

Selling is objectively an act of scalping, and the act of selling features monopoly and deprivation of the sale of tickets. While the traditional act of hoarding tickets and then selling them at a higher price is, needless to say, an act of scalping, in recent years there has been a rise of paid substitute purchases in the use of black software or manpower at a very high price, and this type of behaviour should also be regarded as scalping tickets. Charging 10-20 yuan, which is acceptable, to help others to buy tickets is a normal purchase. This is equivalent to just replacing a ticket operator, and does not deprive people's right to ticketing, and does not monopolize ticket transactions. But charging 50-200 yuan per ticket is unreasonable in terms of the general concepts and the trading habits. The black ticket snatching software can use multiple accounts to snatch one ticket, encroaching on the resources

other travelers should legally enjoy. These are perpetrators' intention to take advantage of travelers' "hard-to-get ticket" situation, resulting in unfairness and unbalance in investments and production of travelers and scalpers, and monopolizing the ticketing market.

2.1.2. Scalping Still Exists in China

European and American countries have a small population and high per capita income with well constructed public transport service. When the public service is insufficient, the market can play a regulatory role [7]. Therefore, there is no realistic space for the offence of scalping train and ship tickets to take a root. However, China has a total of 1.4 billion people with a large population base and frequent movement of people. According to the data, China's mobile population will reach 9 billion people in the spring festival in 2025. But the construction of China's public transport resources is not perfect and per capita income varies a lot. Therefore, during the holiday season, tickets are often hard to buy, and market-based services (such as air tickets, special buses) are not affordable for ordinary people. Consequently, there is a huge conflict between the supply and demand of basic services, which gives the scalping tickets a realistic space. Without handling the tension between the supply and demand of tickets, scalping tickets will continue to exist and still need to be punished.

2.2. The Necessity of Punishing "Ticket Scalping" Behavior Under the Real-name System

In 2011, the national railway system began to widely implement a real-name system for the purchase of tickets. After the implementation of the real-name system, some assert that the offence of scalping train tickets is not necessary. There are two major points of view: First, "civil agency". In the real-name system of ticketing, scalpers cannot scalp tickets through hoarding and selling, but only through the way of paid substitute purchases. To save time and energy, travelers entrust others to buy tickets. The purchaser receives the cost of purchasing tickets, which have no essential difference with the general sale of their labour for remuneration. It neither let the railway transport suffered losses, nor damage to the interests of the parties concerned, so does not constitute a crime [9]. Substitute paid purchasing tickets is actually an act of civil agency. Secondly, "Non-circulation", due to the implementation of "one person, one ticket, one card" under the real-name system, the purchase of tickets, refunds, and other operations should be entered the specific identity of the travelers, so the ticket does not have the possibility of circulation, which means there is no possibility of scalping. There are also articles pointing out that even if scalpers scalp tickets under the real-name system, they are only taking advantage of the loopholes of the real-name system. As long as the real-name system is strictly enforced, it is possible to completely eliminate scalping, so there is no need for the offence of scalping train tickets under the real-name system to exist [2].

However, the above view is too narrow in understanding "scalping". There are various ways of scalping, and acts such as substitute paid purchases may still constitute the crime. A large amount of cases also proves that the real-name system has not eliminated the act of scalping, but has only changed its ways. Scalpers can buy tickets in large quantities by illegally obtaining and using other people's identity information, or use black software to hoard tickets, and then sell them to travelers by refund operations; scalpers can also buy tickets for travelers by charging extortionate high purchase fees; and they can also sell tickets by selling online order numbers at high prices. As Zhao Bingzhi said: "China's criminal legislation should base on the ideology of forward-looking legislation combining reality and future together " Since scalping tickets still exists in the current real-name system, there is still a need to punish it. Legislation should not go beyond the logic of reality to abolish the offence of scalping train tickets.

3. Importance of the Existence of the Offence of Scalping Train Tickets

This section analyses the importance of train tickets to Chinese residents and the attributes of public welfare, and support the deprivation of individuals' equal access to resources by the act of scalping them. Secondly, it clarifies the core legal interests protected by the offence of scalping train tickets, refute the traditional viewpoints of "Order of ticket management" and "Order of transport". Finally it constructs new theories of "travelers' right to free ticketing options" and "travelers' right to fair ticketing", highlighting the importance of the existence of the offence of scalping train tickets.

3.1. Train Tickets Have Value for Criminal Law Protection

3.1.1. Train Tickets are the Main Travelling Credentials of Chinese Residents

The Ministry of Transport of the People's Republic of China released the 2023 Statistical Bulletin on the Development of the Transport Sector. It shows that railways completed 3.855 billion passenger trips in the year. Highways completed 11.012 billion operational passenger trips. Civil aviation completed 620 million passenger trips. And 98.9% of the inter-regional transporters in 2023 chose to travel by rail and road [10]. It can be seen that railways and roads are the most important means of travel for Chinese residents, and tickets are the main credentials of travel for them so they should be protected by criminal law.

3.1.2. Train Tickets Have Public Welfare Attributes

Train tickets are not fully marketable commodities. China's railway management is responsible by the China Railway Corporation. As a wholly state-owned enterprise, it has a strong administrative monopoly, which leads to the train tickets in fact the implementation of monopoly. The China Railway Corporation is the only operating agency, travelers can't choose other sellers [7]. China's criminal law protects the monopoly system, such as illegal business offence, so train tickets certainly belong to the scope of criminal law protection. Secondly, train tickets carry a strong attribute of national welfare, while the criminal law should ensure citizens to enjoy equal public resources [7]. China's train ticket price is reasonable, 2025 Spring Festival it implemented preferential fares for some trains, and the maximum discount is as low as 2% off, the maximum discount of the train group as low as 3% off. Compared to the plane tickets and bus tickets, it saves time and capital costs [11]. At the same time, China's railway economic support and construction is becoming stronger. On December 21, 2021, the State Railway Administration issued the "14th Five-Year" railway standardization development plan. In addition, China's railway transport also attaches importance to convenient services. From 1 November 2024, passengers can issue electronic invoices in the end of the trip within 180 days through the 12306 for reimbursement [12]. It can be seen that China's railway transport has significant national welfare nature, train tickets have the attributes of public products. Thus maintaining the order of train ticket sales and purchases is related to social fairness and stability, so the criminal law should protect them.

3.2. Importance of Criminal Law Protection of Legal Interests Infringed by the Offence of Ticket Scalping

3.2.1. The Traditional Views of Legal Interests Are Wrong

There are several main opinions about the legal interests that are infringed by the offence of scalping train tickets: "ticket management order", "transport order", "railway enterprises economic interests" and "ticket sales and purchase system", but this paper believes that the above views are wrong, for the following reasons.

Firstly, the "ticket management order" is too abstract and broad. Ticket management order includes the management of ticket sales and purchase, ticketing channels, price, quantity. Taking such a macro content as the infringement of legal interests is too abstract [7]. Some scholars even pointed out: "the abstraction of the protection of legal interests, will inevitably lead to the lack of substantive limitations on the explanation of constituent elements, making constituent elements losing its due function [1]." This is not conducive to strictly enforce the law, and it is easy to expand the scope of punishment.

Secondly, the "transport order" is equally broad. It is not a specific, verifiable legal interest, but a law-making process that lacks direct links to the fundamental rights of a single individual or an unspecified majority of individuals [1]. A German scholar have stated that criminal law should protect predefined legal interests and exclude acts that mere breach of order.....Mere breaches of order should be sanctioned by using non-penal means [13]. Train ticket scalping is not directly related to any of the fundamental rights of an individual such as life, health and property. Further speaking, the order of transport mainly refers to the safe and smooth delivery of travelers to their destinations, but train ticket scalping neither have a negative impact on the order of transport itself, nor does it cause damage to the personal safety. On the contrary, the acts of destroying traffic facilities, jumping red lights and speeding destruct the order of transport more directly and obviously, which are more direct and observable manifestations of disrupting the order of transport. Asserting that the scalping train tickets disrupt the traffic order is just a grand narrative which lacks specific, verifiable and significant infringement of legal interests [1]. And, it is because of the grand-narrative and fuzzy, the number of tickets purchased, the way, the price, etc. can become the basis for judging whether to disrupt the order of transport. Scholars adhere to this point of view can only take "whether the high price" as an only difference between scalping train tickets and legal civil agency [14-15]. This likely leads to the results that, as long as the money amount of "scalping train tickets" reaches the standard regulated by judicial interpretation, the judges will make arbitrary conviction. It will leads to the judgement of "one size fits all", which is not beneficial for limiting the scope of punishments.

Lastly, the "economic interests of railway enterprises" and the "ticket sales system" are not correspondent with the logic of reality. As mentioned above, the sale of train tickets in China is a monopoly. Whether travelers buy the tickets on their own or from scalpers, they have to buy the tickets through official channels. Therefore, the railway corporations are able to obtain the expected economic benefits in the end, and do not lose their monopoly on the sale of train tickets, which will not harm the economic interests of the railway corporations and the ticket sales and purchase system.

3.2.2. "travelers' Tight to Free Ticketing Options" and "travelers' Right to Fair Ticketing" Are Worth Promoting

Some people may think that the scalping train tickets is potentially harmful to China's ticket sales and purchase system. They refute the view that "scalping of tickets does not undermine the ticket sales and purchase system" because it ignores the process of scalping and pays too much attention to the results of the sale of tickets. The behaviour of scalping is actually an indirect control and monopoly of tickets, undermining the state's monopoly on the sale of tickets. The above view seems to be reasonable, but in fact does not touch the essence of legal interests the scalper selling tickets damage to. In this paper, the legal interests harmed by scalping train tickets should be the "travelers' right to free ticketing options" and the "travelers' right to fair ticketing".

First, the "travelers' right to free ticketing options" focuses on whether travelers are deprived of their right to purchase tickets, and focuses on punishing the hoarding of large numbers of tickets or scalping tickets through the use of black software. Originally passengers have a greater chance to buy tickets, but scalpers hoarding tickets or using black software to grab tickets will reduce the probability of passengers to buy tickets. For example, the official originally released 100 tickets and there are

200 travelers need to buy tickets, the probability of travelers to buy tickets is 50%, but if scalpers hoarding tickets 50 tickets, then the probability of travelers to buy tickets is 25%, or the black software directly monopoly 100 tickets, then the probability of travelers purchasing tickets is 0. This completely deprives travelers of their rights and possibilities to purchase tickets, and infringes on their right to free ticketing choices.

Secondly, the "travelers' right to fair ticketing" focuses on whether it violates the principles of reciprocity and equality, and is more focused on punishing unfairly high fees for substitute purchases. Not everyone is willing or able to pay high fees, and groups with low incomes who cannot afford high fees and do not know how to purchase tickets will lose the possibility of purchasing tickets in such cases. Even if they eventually agree to pay, it is mostly due to their urgent travel needs during spring and summer holidays, which violates the principle of equality. At the same time, the value between the high price of the purchase fee and the labour of substitute purchases is too large, violating the principle of reciprocity. As a result, it infringes on the "travelers' right to fair ticketing".

4. Recommendations and Discernment

This section focuses on four major directions for legislative improvement: first, clarifying the scope of "tickets", which should not be overextended; second, refining the incrimination standard to avoid the imbalance of sentencing caused by the different price of different train models; third, strictly distinguishing between labour service type and opportunity monopoly type substitute purchases, to prevent the over-expansion of the penal power; and fourth, clarifying the difference between the normal ticket snatching software and the black ticket snatching software, and promoting the legitimate use of the technology, ultimately achieving a balance between criminal law protection and citizens' rights and interests.

4.1. The Scope of "Ticket" must Not Be Over Extended

"Tickets" should refer exclusively to train tickets and not to bus tickets. There are two reasons. First, the ticket is the main credential of travel for Chinese residents, and train tickets have the attribute of public welfare and the railway enterprises implement the monopoly. And the criminal law should protect the railway enterprises on the monopoly of train tickets and protect the individual's equal opportunity to enjoy public resources. Secondly, there is no monopoly in bus tickets as they have achieved a more perfect market operation. Passengers can freely choose the bus ticket sales company and channels. Even if scalpers scalp bus tickets, it do not infringe on the passengers' right to free ticketing options and the right to fair ticketing. It can be seen that bus tickets do not have the nature of tickets protected by criminal law, and scalping bus tickets does not infringe on the legal interests protected by the offence of selling train tickets.

Some scholars, taking into account the penalties for counterfeiting, forgery and scalping bus tickets, ferry tickets, air tickets, tickets for cultural performances, tickets for sporting events or other valuable tickets or vouchers under Article 52 of the Law of the People's Republic of China on Punishment for Public Security Administration, as well as the realities of selling tickets for concerts and sports games, have proposed that the "offence of scalping train and ship tickets" be extended to "the offence of scalping valuable tickets" [16]. However, "no matter how full of rationality and wisdom the legislators are, they cannot be all-knowing and all-aware of all the problems needed for legislation [17]." This paper argues that the addition of the "offence of scalping valuable tickets" lacks the necessity of a criminal law system. Planes are not the main tool of travel for Chinese residents, only 1% of the people across the region in 2023 chose to fly by air. A concert or a sports game involves at most tens of thousands of people. The group associated with this type of ticket is limited so the harm is relatively low and the chances of occurring is also low. If this offence is enacted, it will lack a place in reality

and thus exist in name only. Secondly, this kind of scalping behaviour belongs to the self-commitment behaviour of both parties. Although the sale is not legal, but it is not worth to start the criminal punishment means to punish [18]. Individuals increase the price of tickets for cultural performances, sports matches are often out of the pursuit of celebrity idols. Individuals is known, voluntary to pay the "premium part". This situation, compared to scalping train tickets when travelers are often forced to compromise due to the urgency of travel, exists a huge and essential difference. Criminal law should allow a certain degree of stretching of individual freedom of will, and it is inappropriate to crack down on this kind of self-commitment behaviour. Therefore, the offence of scalping train and ship tickets should not be amended to the offence of selling valuable tickets.

4.2. Incrimination Amount Requires Specific Analyses of Specific Issues

First of all, the criminal law of China stipulates that the incrimination amount of the "offence of scalping train and ship tickets" is (i) an aggregate amount of more than 5,000 yuan (ii) an aggregate amount of more than 2,000 yuan of illegal profit (iii) other serious circumstances. However, with the development of the economy and transport construction, the price of tickets and residents' income will also change. Therefore, legislators should keep up with the times and make timely adjustments to the incrimination amount.

Secondly, China should also draw on overseas experience appropriately. In New Jersey, the United States, the Cody Act Amendments provided that "each ticket must also indicate a maximum premium not to exceed 20 per cent of the face value of the ticket or \$4 [19]." There is also the Jackman Act, which "prohibits the resale of tickets for more than 20 per cent of the face value of the ticket or \$3 [20]." Chinese legislators can also adopt a flat rate or percentage system based on face value to set a limit on the markup for scalping tickets and improve the simple cumulative rule of the current provision.

Finally, this paper believes that legislators can refine the incrimination amount. In China, travelers can freely choose to buy train tickets, bullet train tickets and high-speed rail tickets. The price difference between the three types of vehicles is large. For example, a ticket from Shenzhen to Xi'an, choose the hard seat of the train is only about 240 yuan, the high-speed rail second-class seat is about 900 yuan, sometimes scalping a high-speed rail ticket is the same as scalping a lot of hard seat train tickets, although the two behaviors may reach the standard of the amount of money, but the former is obviously less harmful. If the two behaviors are all lumped together and a uniform standard for incriminating amount is adopted, will it not be too arbitrary and capricious, making the behaviour itself unbalanced with the evaluation? Therefore, it is worthwhile to think about the legislation to differentiate between different types of trains with different incrimination amount.

4.3. The Need to Distinguish between Labour Services Type and Opportunity Monopoly Type Substitute Purchases

Not all paid ticket substitute purchases constitute the offence of scalping tickets, and if paid ticket substitute purchases are criminalized across the board without distinction, it will lead to excessive interference in civil society by the penal power and blur the understanding of the legal interests of the offence of scalping train tickets. Therefore, the paid ticket substitute purchases should be divided into two categories, namely, the labour service type purchases and the opportunity monopoly type purchases. Among them, labour-service purchases mainly refers to charging a reasonable price and using manpower or legitimate technology to purchase tickets; opportunity monopoly purchases mainly refers to the act of purchasing tickets by manpower at a high price or using black ticket snatching software to scalp tickets.

A Foshan couple charged RMB 10 per ticket to help migrant workers buy tickets, and were arrested by the police for the offence of scalping train tickets, but they were ultimately exempted from criminal liability; the case of "Lin selling tickets": Defendant Lin, aiming to seek illegal benefits, communicate with travelers about the purchase of tickets through the network, and increase each ticket price of 150 yuan to 260 yuan. He sold 159 tickets with a total illegal profits of 25,500 yuan, constituting the offence of scalping train tickets.

Why is the final outcome of the two cases different? The reason lies in the different nature of their paid substitute purchases. Under the labour service type purchases, most of the commissioners are not familiar with the network ticketing. In the spring and summer period they are urgent to return home, for them, paid substitute purchases is the most economical, the most secure decision. Purchaser do not make a monopoly on tickets through illegal means, just one-on-one to help others to buy a ticket, and the purchase of the ticket directly attributable to the commissioner. Also, charging a low and reasonable fee for the purchase commensurate with the labour they paid. In essence, it is a civil agent act, which not only facilitates the clients, but also not infringe the legitimate rights and interests of other travelers.

In the opportunity monopoly type purchases, the high purchase fee is not a reasonable cost which can be accepted by the general public. The lower income groups are often unable to afford the cost to buy tickets. This kind of behaviour maliciously take advantage of the dilemma of other people to make profit, exploit other people's property and monopoly of other people to buy a ticket. It is not a behavior that is ordinary, living and people are not happy to accept. Note that how to distinguish between "high price" and "low price" should be assessed using general social concepts and trading habits, and should not be subjective.

There have also been many cases in judicial practice in which paid ticket substitute purchases at low prices has resulted in conviction for the offence of scalping train tickets, which shows the blurring of the boundaries between civil agency behaviour and the offence of scalping tickets. There are two reasons. First, the court mechanically apply the "on the trial of criminal cases related to the interpretation of the problem of scalping tickets": as long as the amount of profit or the amount of face value of tickets meet the standards set out in the interpretation of the judiciary, it will be directly identified as constituting the act of scalping and pursue criminal liability [14]. Secondly, the uncertainty of the meaning of "scalping". Scalping has developed new forms, but the relevant theories have not been established perfectly. In the contradiction between the two as well as the impatience of curbing crime, the judicial gradually expand the criminal circle [14]. Therefore, in judicial practice, judges should apply the relevant judicial interpretations flexibly, improve the relevant legal theories and reach unified consensus so that justice can combat scalping train tickets efficiently, vigorously and extensively.

4.4. Strictly Distinguish between Normal Ticket Snatching Software and Black Ticket Snatching Software

This part examines the labour service type purchases and opportunity monopoly type purchases under the technical software model. In recent years, various types of ticket snatching software have been on the rise with black ticket snatching software quietly emerging. Legislators should make a balance between the reasonable use of technology and malicious abuse, and not generalize all ticket snatching software [7].

Criminal law should affirm and encourage technology, and not all ticket snatching software can infringe on travelers' right to purchase tickets. There are four types of operation mode of normal ticket snatching software: providing network accelerators, using intelligent algorithms to optimize ticket snatching solutions, specialized ticket snatching, and giving priority to high-paying users under the same conditions [14]. By investigating the existing mainstream ticket snatching software, it is found

that it will provide multiple prices of network acceleration services, ranging from 0-60 RMB, and manual ticket snatching services can also be obtained by paying 50 RMB up or down. They provides users with ticket snatching services at different reasonable prices in compliance with the rules of 12306 ticketing, which essentially belongs to the labour service type substitute purchases. The operator is replaced by the computer, namely using technology to provide assistance for ticket snatching. It not only uses technological advantages in a reasonable limit, but also saves time and energy of travelers. Moreover, this type of software implements a point-to-point "one person for one ticket" mode of ticket snatching, and does not increase the success rate of its own ticket snatching by seizing other people's resources, and does not infringe upon other travelers' right free and fair ticketing.

Black software use upstream crawler technology to monitor real-time ticket information and control the source of tickets and use downstream to attract buyers to complete the transaction of train tickets. For example, the upstream illegally obtained 1,000 IP accounts and identity information, which are divided into four groups of A, B, C and D. The first group of A snatched 250 tickets without payment, and 250 tickets were returned to the ticketing system after the deadline of the payment time, and then group B was used to snatch the tickets, and then the cycle was repeated to control tickets. Meanwhile, the advertisement was released in the downstream to obtain the identity accounts of buyers, and then scalpers will take those identity accounts into the upstream to obtain the tickets. The personal information is also often continued to be used by the black software after the transaction is completed [14]. It can also automatically and repeatedly to submit orders and removes conflicting travelers. Therefore, black software obtains ticket information by violating the rules of the 12306 website, illegally uses personal information without the user's knowledge or consent, and finally controls the ticket source by interfering with the train ticket sales system, which is fundamentally different from mainstream legitimate ticket snatching software. Thus, the black ticket snatching software is an opportunity monopoly type purchases, which should be severely cracked down on. In addition, black ticket snatching software may also constitute the crime of infringing on citizens' personal information and the crime of damaging computer information systems. In judicial practice, it is necessary not only to strictly distinguish between normal ticket snatching software and black ticket snatching software, but also to comprehensively determine the crimes involved in black ticket snatching software without neglect and omittance.

5. Conclusions

Criminal law has effectively combated the crime of scalping train and ship tickets, but the legal practice still needs to make the interpretation of this with the times. This paper concludes that the essence of scalping is to infringe on the travelers' right to free ticketing options and fair ticketing by monopoly. With its special properties, train tickets are different from other tickets, making it become the object of criminal law protection. Finally, this paper proposes legislative improvement. Legislation need to limit the extension of "ticket" to train tickets, update and refine the incrimination amount, strictly differentiate between labour service type and opportunity monopoly type substitute purchases, and strengthen the criminal regulation of the black ticket snatching software in response to the technological iteration and revolution of ticketing system. Ultimately, the unity of the precise application of criminal law and social benefits will be achieved. However, the legislative proposals put forward in this paper may be too macroscopic and lack of novelty, omitting specific analyses of law enforcement costs and practical difficulties, Besides, the understanding of various concepts is not precise and general enough, so it is necessary to continue to change and improve them in the future.

References

- [1] Gao Wei. 2009. *On the Decriminalization of the Offence of Scalping Train and Ship Tickets*. *Politics and Law*. 12. 46-50.

- [2] Ran Juhuo. 2013. *The Abolition of the Offence of Scalping Train and Ship Tickets – Starting with the Case of Zhong Mou “Ticket Scalping”*. Chinese Prosecutor. 04. 10-12.
- [3] Qiao Xinsheng. 2013. *Substitute Ticket Purchases Is Not the Offence of Scalping Train Tickets*. People's Daily. 19th edition.
- [4] Sheree Rabe. 1991. *Ticket Scalping: Free Market Mirage*. American Journal of Criminal Law. 01. 57-70
- [5] L.A.Times.1988.*British Officials Aren't about to Fine Ticket Scalpers for Making Huge Profits*. Retrieved from <https://www.latimes.com/archives/la-xpm-1988-06-24-sp-5901-story.html>
- [6] L.A.Times. 1991. *Ticketmaster Has “Had It” with Brokers*. Retrieved from <https://www.latimes.com/archives/la-xpm-1991-04-11-ca-79-story.html>
- [7] Gao Yandong. 2017. *A Normative Interpretation of the Offence of Scalping Train Tickets in the Internet Era: the Criminalization of Paid Ticket-snatching Services*. Zhejiang Social Sciences. 11. 42-51.
- [8] Ouyang Benqi. 2008. *On the Interpretative Application of Truly Non-statutory Purpose Offence – and the Supplementing of Criminal Law Loopholes*. Law Forum. 01. 58-64.
- [9] Huang Ying. 2011. *A Study of the Crime and Non-Crime of Substitute Booking of Train Tickets under the Real-Name System*. Journal of the Railway Police College. 05. 25-28.
- [10] The Ministry of Transport of the People's Republic of China. 2024. *2023 Statistical Bulletin on the Development of the Transport Sector*. Retrieved from https://xxgk.mot.gov.cn/2020/jigou/zhghs/202406/t20240614_4142419.html.
- [11] CNR. 2025. *Which Train Tickets Will Be Discounted and How Can We Alleviate the Problem of Charging While Waiting in Line on the Highway? Here Is A Practical Post for the 2025 Spring Festival Travel Rush*. Retrieved from <https://news.sina.com.cn/zx/gj/2025-01-09/doc-ineekez3182243.shtml>.
- [12] Central People's Government of the People's Republic of China. 2024. *Interpretation of the Announcement of the State Administration of Taxation, the Ministry of Finance, and the China State Railway Group Co., Ltd. on Promoting the Use of Fully Digital Electronic Invoices for Railway Passenger Transport*. Retrieved from https://www.gov.cn/zhengce/202410/content_6981783.htm.
- [13] Klaus Roxin. (2005). *German Criminal Law: General Theory*. Law Press.
- [14] Zhang Xinrui. 2022. *Criminal Regulation of the Black Industry Chain of Scalping Train Tickets in the Web 3.0 Era*. Journal of the China Criminal Police College. 01. 61-70.
- [15] Wang Lizhi. 2013. *Should the Low-priced Online Substitute Ticket Purchases Be Criminalized under Real-name System?* Jurisprudence. 12. 144-152
- [16] Huang Ziqiang. 2008. *Improving the Legislation on the Offence of Scalping Train and Ship Tickets– A Perspective from the Transfer of Beijing Olympic Tickets*. Legal Forum. 04. 172-178.
- [17] Zhang Zhiming. (1999). *Analysis of Legal Interpretation Practices*. China University of Political Science and Law Press.
- [18] Xiong Yongming. 2015. *Reflections on the Proposal to Create New Crimes*. Law Forum. 03. 113-118.
- [19] S.1326, 201st Leg., 2d Sess. (1983).
- [20] A.1399, 201st Leg., 2d Sess. (1983).