Proceedings of the 4th International Conference on International Law and Legal Policy
DOI: 10.54254/2753-7048/2025.26599

On the Application of "Knowledge" and Its Improvement in the Offence of Helping Information Network Criminal Activities - Taking Mainland China as an Example

Jiongkun Li

School of Humanities, Beijing University of Posts and Telecommunications, Beijing, China
1159949120@qq.com

Abstract. In view of the high incidence of information network crimes, the Amendment (IX) to the Criminal Law of mainland China added the offence of aiding information network criminal activities, aiming at cutting off the chain of cybercrime and preventing information network crimes. However, in judicial practice, there are great differences in the determination standard of "knowledge", which has become a key difficulty in the judgement of crime and non-crime. In this regard, the presumption of "knowledge" should be explicitly adopted, and the subjective knowledge of the perpetrator should be presumed through the basic facts, in order to cope with the difficulty of obtaining evidence. At the same time, the term "knowingly" should be interpreted as meaning that the perpetrator clearly recognised or should have known of the unlawfulness of the act of assistance, rather than generalising it to mean that he or she "may have known". In addition, it is not appropriate to mechanically equate the object of knowledge - "another person using information network to commit a crime" - with a completed offence in the sense of a sub-rule of the Criminal Law. Instead, it should be based on the logic of criminalisation of the act, adopt independent judgment, emphasise the ambiguity of the perpetrator's cognition of the improper act and causal foresight, so as to achieve a balance between combating crime and safeguarding rights, and maintain the principle of modesty of criminal law.

Keywords: offence of helping letter, knowledge, judicial determination, subjective intention

1. Introduction

At a time when information technology is developing at a high speed, the Internet has been embedded in every aspect of society, and consequently, information network crimes have exploded in growth, and have emerged as a characteristic feature of strong covertness, long chains, and diversified subjects [1]. In order to further combat cybercrime, the crime of helping information network criminal activities (hereinafter referred to as the crime of helping the letter) was added to the 2015 Amendment (IX) to the Criminal Law of the People's Republic of China, aiming to punish those who provide technical support for cybercrime, account renting and selling, promotion and attraction and other assisting behaviours, so as to cut off the chain of information network crime.

DOI: 10.54254/2753-7048/2025.26599

1.1. Dispute over the nature of the "knowledge" determination rule

In recent years, there have been disputes in mainland China's academic circles over the determination of the "knowledge" of the offence of aiding and abetting a trust, which to a large extent revolve around the nature of the "knowledge". In recent years, the controversy in mainland Chinese academic circles about the determination of "knowledge" of the offence of helping the trust, is largely centred on the nature of "knowledge", i.e. whether Article 11 of the Interpretation is a "presumption rule", which is related to the scope of application of the provision. Normally, evidence is required to prove the elements, and in the absence of evidence or judicial proof, it is difficult for the facts to be recognised as true. However, in reality, the complexity and diversity of cases, in order to solve the case of factual proof, "presumption" is one of the most important methods. The general view is that the facts that are the premise of the presumption generally need to be proved by evidence, they are called "basic facts", while the facts that have not been judicially proved and found to be established are called "presumptive facts" [2].

With regard to the application of the offence of "aiding and abetting", article 287, paragraph 2, of the Criminal Law requires that the perpetrator be subjectively aware that another person is using the information network to commit a crime. In reality, however, few criminal suspects will take the initiative to explain their true intentions. According to the principle of criminal law in China, the offence is generally "the lesser of the two offences" [3]. In order to deal with this problem, Article 11 of the Interpretation stipulates that the perpetrator can be deemed to have knowledge of the circumstances stipulated in the Article, unless there is evidence to the contrary. The phrase "may be found" is tantamount to granting judicial discretion and does not fully establish the rule of applying a mandatory presumption [4]. It is therefore necessary to clarify whether article 11 of the Interpretation is a "rule of presumption".

There is also Article 8 of the Opinions on Several Issues Concerning the Application of Law in Handling Criminal Cases of Telecommunications Network Fraud and Other Criminal Cases (II) (hereinafter referred to as the "Opinions on Telecommunications Fraud"), which provides that the determination that a perpetrator as stipulated in Article 287 bis of the Penal Code is aware that another person is using the information network to commit a crime shall be based on subjective and objective factors such as the perpetrator's acquisition, sale or rental of a credit card as stipulated in the preceding Article 7, and shall be made on a comprehensive basis. Based on this provision, some scholars have argued that knowledge of the offence of facilitating trust is a rule of presumption, but that a comprehensive determination will limit the presumption [5].

1.2. "Presumptive rule" of the "knowingly" determination rule

This article argues that article 11 of the Interpretation should be interpreted as a "presumptive rule". Firstly, from the textual structure, Article 11 lists six specific cases and sets up the bottom clause to stipulate the so-called "foundational facts". If there is a foundational fact, it "may be assumed" that the perpetrator knew of the "presumptive fact", so there is a direct logical link between the two [6]. According to this legislative design, as long as the perpetrator commits the circumstances set out in the article, it is presumed that he or she has subjective knowledge of the offence of helping. In essence, this is a legal fact instead of complete proof, and allows the defendant to prove the legislative design of the defence, in line with the inherent characteristics of the legal presumption.

Secondly, from the point of view of the presumption of proof mechanism, the core of the presumption rule is to reduce the burden of proof of the party to be determined, aiming to cope with the problem of the difficulty of proof in cases prevailing in practice. According to the traditional

DOI: 10.54254/2753-7048/2025.26599

theory of joint crime, in order to be convicted, it is necessary to prove the existence of joint criminal intent and the commission of a joint crime between the persons of different links, etc., but in reality most of the suspects will claim that they do not know the facts of the crime. Therefore, for this type of situation, article 11 of the Interpretation stipulates that, even in the absence of direct subjective evidence, knowledge can be presumed on the basis of factual behaviour, constituting the so-called "permissive presumption".

2. Determination of the degree of "knowledge" for the offence of helping the messenger

2.1. Controversy over the degree of "knowledge"

The above analysis leads to the conclusion that article 11 of the Interpretation is a permissive presumption rule, i.e., the judge may presume the subjective form of the perpetrator on the basis of, for example, rules of thumb. However, the extent of "knowledge" as a subjective constituent element will have a bearing on the scope of the offence. In terms of systematic interpretation, according to the Criminal Law and related judicial interpretations, knowledge means "clear knowledge" and includes "should know". For example, article 8 of the 1992 Interpretation by the Supreme People's Procuratorate of Several Issues Concerning the Specific Application of the Law in Handling Theft Cases stipulates that: "Where it is proved that the defendant knew, or should have known, that it was the proceeds of a crime and that it was to be harboured or sold on behalf of the defendant, the defendant may be deemed to have had knowledge of it." Therefore, it is generally accepted that "knowledge" includes "clearly and ought to have known". "Knowledge" refers specifically to the mental state in which the perpetrator has a clear perception, i.e., knowledge is a state of intent. On the other hand, "should have known" embodies a "form of negligence", and the two are not directly equivalent because of their different degrees of awareness of the behaviour [7].

2.2. Limiting the scope of "knowledge"

With regard to the extent of "knowledge", this paper argues that "knowledge" should be interpreted in a limited way. As mentioned above, the presumption of subjective intent of the offence of helping the trust, makes the determination of "knowledge" in judicial practice expand to "should know" and "may know", which will expand the scope of punishment. Therefore, it is necessary to restrict the connotation of "knowingly". First of all, "explicit knowledge" undoubtedly belongs to the category of "knowledge". In terms of textual interpretation, "knowingly" means "clearly knowing". At the legislative level, criminal intent includes only "knowledge". The terms "should have known" and "could have known" essentially include "actual ignorance", which should be attributed to the category of negligence. If the two are arbitrarily included in the scope of "knowledge" of the crime of helping the letter, it is likely to lead to a large number of emerging neutral helping behaviours in the network era being generalised into the crime, and unduly expanding the scope of subjective responsibility. Therefore, limiting the "knowledge" of this crime to "explicit knowledge" is not only the proper meaning of the subjective element of the intentional crime, but also in line with the common circumstances of this crime. Therefore, it is required that the suspect must be clearly aware of the illegality of the "aided act" in order to be considered as aiding and abetting the subjective intent of the offender.

In addition, "ought to know" should be included in the category of "knowledge". Although there is a possibility that "ought to know" includes "actual ignorance", it characterises the perpetrator as having a high degree of awareness of the commission of a cybercrime by another person - the

DOI: 10.54254/2753-7048/2025.26599

perpetrator usually has the conditions of awareness (could have clearly known) and only fails to have actual knowledge due to objective factors. Cognitive conditions (could have clearly known), only due to objective factors failed to actually know; from the perspective of judicial proof, cybercrime is more covert, some substantive "clear knowledge" may be identified as "should know". Considering the high degree of convergence between the two, the inclusion of "should know" in "knowingly" is in line with the Interpretation. Particularly in the area of cybercrime, adherence to the standard of proof of "clear knowledge" would lead to the escape of the offence due to the high evidentiary threshold.

3. Determination of the "knowing" object of the offence

3.1. Disputes over the determination of the "knowing" object of the offence of helping a trust

In addition to the scope of "knowledge", the object of "knowledge" also affects the determination. From the viewpoint of the criminal composition of the offence of helping others to communicate, the object of "knowledge" is "another person's use of the information network to commit a crime", but how should "crime" be defined here? In this regard, there is a view that "crime" should be strictly limited to the types of offences stipulated in the sub-rule of the Criminal Law, and must be a specific crime, and the "crime" of the person being helped should satisfy the constituent elements of the wrongful and responsible classes [8]. However, this paper believes that if the "crime" is limited to the meaning of criminal law sub-rule of the criminal law, contrary to the original legislative intent of the establishment of this offence. The crime of helping the letter is essentially a kind of norms of helping behaviour, its legislative purpose is to block any form of assistance to other people's illegal behaviours, so as to curb the formation of the criminal chain. Requiring that the object of the helping behaviour must constitute an offence in the sense of a sub-rule of the Criminal Law will likely significantly narrow the scope of the fight. For example, if a perpetrator knows that another person has committed theft through an information network and provides assistance, the perpetrator should be assessed as having committed the offence of helping to commit the offence of trust, even though the theft does not constitute the offence of theft because the amount of the theft does not reach the standard for entry into the offence. Otherwise, it will encourage the perpetrator to "step on the red line", thus weakening the normative effect of the offence.

3.2. The principle of independence in the determination of the "knowing" object of knowledge

The object of "knowing" should be judged independently of its subjective elements [9]. First of all, the perpetrator only needs to have a vague understanding of the nature of the behaviour of the person being helped, i.e., as long as he or she recognises that the other party is committing an obviously improper act, he or she does not need to be explicitly aware of its specific criminal composition and characterisation. That is, the perpetrator only needs to recognise the obvious impropriety of the behaviour of the person being helped, without having to know what kind of criminal elements or judicial qualification it meets. That is to say, to meet the subjective cognitive requirements, it is not required to have explicit knowledge of the specific composition of the act in criminal law, and there is no need to judge whether it meets the constituent elements of a specific crime. Secondly, the perpetrator should be aware of the specific content of the act of assistance that he or she has committed, and if he or she only knows "providing assistance" in the abstract without knowledge of the specific carrier of the act, the subjective attribution of responsibility for intentional crimes is not met. In other words, if the perpetrator only knows in the abstract that he is "doing

DOI: 10.54254/2753-7048/2025.26599

something to help others" but does not know the specific form of the act, he does not establish criminal intent. Finally, the perpetrator should also be aware that the act of helping may have a beneficial effect on the commission of the offence by the other party, i.e., he or she should have foreseen the causal link between the help and the offence. Such foresight does not require a precise quantification of the effect of the help, but a degree of awareness that "there is a realistic possibility of promoting the realisation of the offence". In this way, not only can it effectively limit the pocketing tendency of the offence of helping to trust, avoiding the blanket inclusion of neutral business conduct in the offence of helping to commit a crime, but also ensures that the offence does not become a dead letter, thus striking a balance between safeguarding the development of the technology and maintaining the protection of legal interests.

4. Conclusion

As an important institutional innovation in the fight against information network crime, the scope of application and the path of interpretation are directly related to the definition of the culpability of the perpetrator. The determination of "knowingly" in judicial practice is not only a difficult point of proof, but also reflects the differences in the interpretation of criminal law and value orientation. This paper argues that, under the premise of combating cybercrime, the dilemma of proving subjective intent should be alleviated by the "permissive presumption", while strictly limiting the degree of cognition of "knowledge", and preventing it from being interpreted as negligence or fuzzy presumption. The judgement on the object of "knowledge" should also adhere to the principle of subjective independence, taking into account the perpetrator's knowledge of the act of helping itself and the foreseeability of the result of the crime. In this way, while maintaining network order, we can avoid the risk of "pocketing" the crime of helping to trust, and achieve a reasonable balance between the effectiveness of criminal law norms and the protection of human rights.

References

[1] Zhang Yafei, Li Wenjing. On the Redetermination and Judicial Application of the Type of Offence of Helping Information Network Criminal Activities [J]. Journal of Kashi University, 2025, 46(2): 28-36.
[2] Chen Ruihua. On presumption in criminal law [J]. Law, 2015(5): 105-116.
[3] Jiang Luo Yi, Liu Shude. Review and Regulation of Judicial Rationale of "Knowingly" in the Crime of Helping Information Network Criminal Activities [J]. Rule of law modernisation research, 2024, 8(5): 124-135.
[4] LONG Zongzhi, HU Jia. The Determination of "Knowledge" in the Crime of Helping Information Network Criminal Activities [J]. Journal of Southwest University for Nationalities (Humanities and Social Sciences Edition), 2024, 45(1): 61-72.
[5] He Bangwu, Hu Lingyu. On the Proof of "Knowledge" in the Offence of Helping Information Network Criminal Activities - From Presumption to Comprehensive Determination [J]. Journal of Liaoning Normal University (Social Science Edition), 2023, 46(2): 60-69.
[6] Wu Hongqi. Normative Review and Generalisation Correction of the Knowledge Determination Rule for the Crime of Helping Trust [J]. Jurisprudence Forum, 2025, 40(2): 17-27.
[7] Wang Shenghua, Zhang Xingxun. On the Judgement Rationale of "Knowingly" in the Crime of Helping Information Network Criminal Activities [J]. Journal of Jiangsu Police College, 2023, 38(6): 22-31.
[8] Yao Wanqin. A doctrinal analysis of the determination of "knowledge" in the crime ofhelping information network criminal activities [J]. Criminal Law Review, 2025, 24(1): 50-65.
[9] Zhou Weiping. The identification mode and rule construction of "knowing" fact under the view of argumentation [J]. Law Application, 2023(7): 65-77.