



Criminal Law Protection of computer information in Russia as a means of ensuring economic development

Ley Penal Protección de la Información Digital en Rusia como medio para asegurar el desarrollo económico

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Contents

- [1. Introduction](#)
 - [2. Methodology](#)
 - [3. Findings](#)
 - [4. Discussion](#)
 - [5. Conclusions](#)
- [References](#)

ABSTRACT:

The primary goal of this article is to prove that computer information about the property which belongs to an individual can be treated as the target of crimes against ownership, thefts. Such variety of computer information can be recognized as property, namely the property rights. The method for achieving this goal consists in substantiation of the fact that the target of crimes against property in the environment of market-based economy and development of the information society is the most important economic good which has real value. This logic is equally realized by the criminality; there has recently been an increasing frequency of crimes aimed at unlawful seizure of this immaterial property and thus causing significant damage to the economy. Therefore, it is necessary to enhance the legal protection of computer information on property with the use of criminal remedies, recognizing it as the target of crimes against ownership, thefts. The recognition of computer information on property as the target of theft determines the novel nature of this article.

Keywords: economy, information, computer information, property, property rights, ownership, things, criminal law, target of thefts.

RESUMEN:

El objetivo principal de este artículo es demostrar que la información de computadora sobre la propiedad que pertenece a un individuo puede ser tratada como el objetivo de delitos contra la propiedad, los robos. Dicha variedad de información de computadora puede ser reconocida como propiedad, a saber, los derechos de propiedad. El método para lograr este objetivo consiste en comprobar que el objetivo de los delitos contra la propiedad en el entorno de la economía de mercado y el desarrollo de la sociedad de la información es el bien económico más importante que tiene valor real. Esta lógica se realiza igualmente por la criminalidad; recientemente ha habido una creciente frecuencia de delitos dirigidos a la incautación ilegal de esta propiedad inmaterial y causando así un daño significativo a la economía. Por lo tanto, es necesario mejorar la protección legal de la información de computadora en la propiedad con el uso de recursos penales, reconociéndola como el objetivo de los delitos contra la propiedad, los robos. El reconocimiento de la información de la computadora en la propiedad como objeto de robo determina la naturaleza novedosa de este artículo.

Palabras clave: economía, información, información de computadora, propiedad, derechos de propiedad, propiedad del barco, cosas, derecho penal, objetivo de robos.

1. Introduction

Since the mankind has entered the third millennium, the information society has been formed and developed. In such a society where the market laws are in vigor as well, the basic economic function is also performed by those industries in which the production, exchange and distribution of information take place. Information becomes an especially valuable economic good.

Computer information assumes the greatest prominence. By reference to Note 1 to Article 272 of the Criminal Code of the Russian Federation, computer information is the messages, information or data which are presented by means of electric signals; moreover, irrespective of the means of their processing, storage and transmission (Criminal Code of the Russian Federation, 1996). Computer systems penetrate all areas of the living environment of a man, including the property relations, and are instrumental in the development of the economy.

In his message to the Federal Assembly of the Russian Federation in 2015, the President of the Russian Federation noted: "We faced strong economic challenges last year. The prices for oil and our other conventional export goods fell... Difficulties in the economy affect the income and the standard of living of our people in general... This does not mean however that we must keep a low profile... Despite the current problems, one should not lose sight of the main trends of the global development: the contours of the global economy change swiftly; new trade blocs are being formed; radical changes in the area of technologies are in process... We should be strong in the economy, in technology..." (Message of the President of the Russian Federation, 2015).

As a matter of fact, not only material goods, not only conventional things, but also other types of property, values that have no features of things, but also engender the property rights of their proprietors or lawful owners, have been increasingly included in legal economic turnover of commodities in the property relations. Thus, the property relations have been increasingly introduced into the areas which are informative in nature, e.g. uncertificated securities, shares, financial capital; into the high-tech areas - electronic money in the settlement of non-cash payments, for mobile communication technology; as well as into the areas associated with the use of electronic technologies, Internet - web sites, Internet property, Internet money, software, etc. And all these processes are carried out mainly by means of computer information.

These material goods and property holdings do not have the physical parameters of a common thing, common material object (such parameters as volume, weight, width, length, etc.), that is, these goods are intangible, immaterial. They are informative in nature and attach the property rights of their owners.

2. Methodology

Such trends in the development of the property relations have never been neglected by the criminality. In addition to commitment of offences against things of value, the criminals have been increasingly receiving unlawful benefit due to gaining possession of the abovementioned informative values. There has recently been a visible well-targeted economic interest of the criminal world in the information, since the information has economic value. It is the information which gives its owner the right to obtain property, i.e. the so-called property information. If we talk about the legal nature of such property information, then it represents the property rights. The property rights mean the information on the eligibility of their owner for the receipt (claim) of property in a particular amount (quantity).

The main reasons for criminal influence on the targets where information acts as the target of crime, of course, is the great value of this information. At the present stage, the ability of information, as well as tangible property, to be included in the processes of production, exchange and distribution, is evident. These processes equalize the legal nature of property information (information on property, the property rights), with property in the sense of

things, which is conventionally recognized as the target of crimes against ownership, thefts. This gives rise to questions in theory and practice of criminal law when determining the nature of actions associated with unlawful influence on the computer information. In our opinion, the criminal law dedicated to protection of property has to take into account these circumstances and exercise the necessary protection of not only the property in the sense of things, material goods, but also of other types of property, especially the property rights. These property relations, the property rights attached by means of computer information, should be adequately protected as well with the help of criminal law among the articles of the Criminal Code of the Russian Federation about the crimes against the economy (Shulga, 2016).

The legislative experience of those world powers that take into account the market relations during the drawing-up of regulations also confirms the adoption of this practice in Russia. The criminal law of many developed countries is already struggling against the so-called computer crime in sections "Crimes against ownership". The Criminal Code of the Russian Federation focuses on similar crimes in Chapter "Crimes Against Public Security and Public Order". This difference in positions in determining the place of computer crime in the structure of law is mainly justified by the fact that the current Criminal Code of the Russian Federation still defines tangible things alone as the target of crimes against ownership. Meanwhile in the Criminal Code of developed countries the property is treated as the target of theft includes, for example, energy, as well as information, including information which is stored in the computer memory or in portable computer software, i.e. computer programs as such, etc. (Chuprova, 1997).

The property rights which in and of itself represent the information about the right to property as well, about the extent of property owned by the person – is the same important and essential value as the property in the sense of things. That's why they can also be protected pursuant to Chapter 21 of the Criminal Code of the Russian Federation "Crimes against ownership". In our opinion, such attitude towards the abovementioned computer information like property, ownership, will contribute to prevention of such crimes and adequate criminal legal struggle against them.

3. Findings

At the present time, in Russian criminal legal science, there is the most widespread point of view that is supported by the majority of theorists, according to which a thing with regard to which or in connection with which an unlawful act was committed, should be treated as the target of crime (Trainin, 1957, Brainin, 1950).

When committing offences provided for in Chapter 21 of the Criminal Code of the Russian Federation "Crimes against ownership", property is recognized as the target of crime. A conventional system of features of the property as the target of theft has been developed under the influence of longstanding theory and practice of application of criminal law. The main of these features consists in the fact that the target of theft is always a part of tangible world, i.e. is a thing (Criminal Law Course, 2001). Materialistic visions of the subject-matter of the target of theft were mentioned even by the lawyers of pre-Soviet Russia, then this theory and practice migrated to the criminal law doctrine of the USSR, and, by inertia, – to the criminal law of the present-day Russia. Such theory is associated with the traditional economy based on subsistence economy which has long been available in Russia.

Most of the modern Russian scholars are of opinion that one should recognize only material objects, i.e. tangible things, as the target of crimes against ownership, including thefts, (Gaukhmann, 2001).

However, as we have already stated, when expanding the turnover of commodities, developing the property relations, recognizing as property, including the property rights (or rights to claim), not only things but also property rights (rights to claim) should be recognized as socioeconomic category. In case of unlawful seizure of these immaterial goods (which are informative in nature and are presented mainly in the form of computer information) material damage can also be caused to the person affected.

In this regard, the opinions of the modern scholars have started to change gradually. They have started increasingly avoiding the "materialistic" positions in ascertainment of the target of crimes against ownership, including thefts (Kruglikov, 2010). This is due to the fact that given the rate of development of a mankind in the present era, it is not the energy but rather the information that is becoming increasingly available to him (Kalmykov, 2005).

Information, including computer information, has real value, can be recognized as property, and, accordingly, its unlawful uncompensated confiscation can cause property damage to its legal owner (person affected).

4. Discussion

The information plays the key role in the development of the Russian economy. The dominant role of a commodity or property as an economic good of telecommunication (information) products and technologies is recognized. This conclusion about the attribution of certain types of information to the property directly follows from the Information Society Development Strategy in the Russian Federation, where the main trends of implementation of this Strategy in the area of development of the economy of the Russian Federation based on the use of telecommunication and information technologies (Information Society Development Strategy 2008) are specified in Paragraph 4 of Section IV.

The processes of production, distribution and exchange in the modern property relations are based on information; in particular, the processes of ownership, use and disposition of property are carried out on the basis of interchange of information about these processes. At the present time, the majority of the property relations are built in such a way that there is no need to possess property in kind (as a thing), "to hold it in one's hands" (as the legal power of ownership is being traditionally revealed by civil law). It is enough for a person to have information that this is their property. Similarly, one can benefit from the property (use it), dispose of it (transfer it to others) at the level of information interchange. Moreover, it cannot be ignored by the criminal law focused on the protection of the property relations, including the articles about the crimes against ownership, about the thefts.

Important elements of innovation-based economy are the automation and computerization of effectively many areas of life of the society (Mikushina, Makova, 2012). The property relations move into automated and computerized areas as well. Various information resources assume the economic shape of the commodity. Electronic commerce has been recently developed; electronic payment facilities are used along with cash and non-cash money in everyday life.

According to economy scholars, information technologies, computer-aided systems, i.e. high-tech production technologies, are treated as the basic systems of innovation-based economy (Ismailov, Gamidov, 2003). Thus, information and particularly computer information which has become increasingly important in the environment of development of the information society and innovation-based economy, is included in the property relations, has value, and offences against it cause actual property damage. The informative nature of property should lay the foundations of a new approach to the perception of the target of crime in criminal law, in particular, the target of crimes against ownership, thefts.

Confidential information should be treated as the target of property crimes. There is no need to protect open access or publicly available information from unlawful seizure by means of criminal law, since the operations with do not pose any threat to certain persons or society. Official, state, personal, professional or family secrets can be presented in the form of computer information as well. However, this information cannot participate in legal economic relations (property) relations, and, hence, should not be treated as the target of crimes against property.

Only unlawful influence on the confidential information constituting a trade secret, the information which can be included in legal economic relations, and therefore can be a good, a property, should be qualified as the crimes against property. Thus we can raise a question about recognizing such information alone as the target of thefts.

That's why only such confidential computer information which engenders the property rights

of its owners or proprietors (rights to claim, liability rights, i.e. the rights to receive, claim property, the right to perform works or provide services) – property information can be classified as property. It is the information which in and of itself is an intangible (immaterial) property, the criminal action against which (unlawful copying, confiscation, destruction, etc.) can cause property damage in the first place. Social relations in the area of economy should be considered as the target of such crimes.

Thus, “electronic” money is gaining ground in the environment of innovation-based economy with the use of information technologies. Extensive use of the property relations in this area inevitably affected the criminal situation. For example, according to the information presented by the Russian Federation Ministry of the Interior, the damage caused in the area of electronic payments in Russia is about 6 billion US dollars a year (Osipenko, 2014).

Electronic money represents pecuniary obligations of the issuer in electronic form. It is stored on the electronic media in the form of information and is readily accessible to the user. The electronic money does not belong to conventional meaning of money and forms a new area of property relations. It belongs to another type of property – to the property rights presented in the form of computer information, and can be the target of crimes against ownership, thefts. In case of unlawful confiscation of this electronic money, a property damage will unavoidably be caused to their lawful owner.

The so-called “Internet money” is a variety of electronic money. Such electronic money can be converted by means of the Internet, computer networks, payment cards, electronic wallets and other devices which operated with payment cards. In this case, the so-called game currency or virtual currency which is a variety of electronic money used for selling or buying of soft goods in various online communities has been recently gaining popularity.

Soft goods have been actively engaged in economic relations for a long time already; they yield significant profits to their creators and creators of virtual currency. Large amounts of money are converted in a virtual world today. For example, electronic virtual currency Bitcoin has recently experienced an unprecedented growth. In cyber-reality, one can buy and sell soft goods, “Internet property” at fabulous prices. For example, back in 2009, the web portal for gamers Zynga announced that it sold soft goods and virtual currencies for an overall amount of more than 100 million US dollars.

The business of these information commodities has been flourishing in Russia as well. However, it is alarming that the online world is not subject to any criminal defense, which is a large gap in the criminal law.

5. Conclusions

In case of unlawful seizure of such virtual Internet property, it is not things or money in their conventional sense, but other property - property rights presented in the form of computer information, that should be treated as the target of theft. Such unlawful acts should be treated as crimes against ownership – thefts.

Since the moment of gaining possession of electronic money, guilty person causes material damage to the person affected and at the same time receives a real possibility to dispose of this property – spend this money for buying the goods in the Internet, withdrawing electronic money from the Internet (cash it), transfer it to another Internet purse; one can also pay the utility bills, pay fines for driving violation, etc. Since that moment such Internet thefts should be treated as a completed crime.

It is the presence of a mercenary motive, infliction of actual property damage as a result of commitment of this crime; property as the target of offence (property rights); unlawful seizure (confiscation) of this property; property relations as the main immediate target of offence - the area in which this unlawful act is committed, – that differentiate the crimes of abovementioned category from the crimes in the area of computer information.

Thus, the unlawful confiscation of computer information on property should be classified under the articles of Chapter 21 of the Criminal Code of the Russian Federation “Crimes against ownership”. The property as the target of theft in criminal law should be treated not only as tangible things, but also other property, including the property rights.

The property rights as the target of crimes against ownership, thefts mean the information about the person's rights to own, use and (or) dispose of property, provide services or perform works; hence, having certain cost and causing damage to a particular person in case of its unlawful seizure.

Such an approach to the criminal law protection of computer information on property on an equal basis with other property will enhance its protection against unlawful seizure, which will also be an important lever for bailout of the economy.

In the end, we would like to say thank you to all those scholars who were involved in solving the problems of criminal law protection of computer information, and whose papers we referred to when writing this article.

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[Index]

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