

# Determination Of the Amount of Cross-Border Telecommunication Fraud Crime in The Era of Big Data

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**Abstract.** The new features of Cross-border telecommunication network fraud criminal activities become the main reason why amount of the crime is difficult to be designated as fraud. Based on the characteristics of the organization of cross-border telecommunications network fraud criminal activities, the amount of fraud for the determination of joint crimes cannot be adopted as the amount of proceeds of crime, and the loss of victims should become the basic standard. In view of the broad and unspecific characteristics of the victims, the facts of the whole case should be analyzed comprehensively when all the victims cannot be found. In order to determine the amount of crime committed by each member of a criminal group, it is not sufficiently rigorous to follow the current doctrines alone. The doctrines of total amount of the crime and amount of participation should be applied in a comprehensive manner to the roles within the group, respectively. Specific amounts should not be determined differently from one administrative region to another because of differences in economic levels, and absolute uniformity should be maintained. For cases where the amount of fraud is also difficult to verify, it is reasonable to use non-amount standard circumstances. Ultimately, the amount of cross-border telecommunications network fraud can be systematically and reasonably recognized. This paper will take China as the research object and combine the method of comparative analysis to provide suggestions for China's governance of cross-border typical network fraud criminal activities.

**Keywords:** Cross-border telecommunication network fraud crime; amount determination; fraud; telecommunication fraud.

## 1. Introduction

In recent years, China's cross-border telecommunication network fraud has become serious, which has new characteristics compared with traditional telecommunication network fraud. In accordance with article 3 of United Nations Convention against Transnational Organized Crime, For the purpose of paragraph 1 of this article, an offence is transnational in nature if: (a) It is committed in more than one State; (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) It is committed in one State but has substantial effects in another State [1]. This type of criminal activity with a "cross-border" element presents new features, compared with traditional telecommunications fraud criminal activity: first, the victims are an unspecified majority of people; second, the criminal activity presents a cross-regional nature; and third, there is an organized, syndicated form of the crime.

Cross-border electronic fraud with new features trigger judicial determination of the amount of fraud difficulties. Specifically, because of the first feature, if the amount of the victim's loss is used as a criterion for determination, it seems difficult to determine the amount of the crime when the victim is difficult to identify or find out [2]. If we adopt the doctrine of victim loss, cross-border wire fraud group of different roles within the group and cannot be identified as a uniform amount, but the existing single doctrine on the amount of a member of the internal determination does not seem to satisfy the principle of appropriateness of crime and responsibility; In addition, cross-border wire fraud activities across the region, the country between different regions of the difference between the economic development of different areas, income and standard of living are uneven, so whether the amount of different regions to determine whether the standard should be maintained uniformly, which is also controversial [3].

In summary, with the development of big data, there are more and more cross-border telecommunication network fraud criminal activities, but the traditional judicial determination method cannot be adapted to the new characteristics of such fraudulent activities. And there is a dispute between the relevant doctrines is not uniform, so there are difficulties in determining the amount of cross-border telecommunication network fraud co-crime.

## **2. Criteria for Determining the Amount of Money in Cross-border Telecommunication Network Fraud Crimes**

The amount of fraud is the criterion for distinguishing between crimes and non-crimes and the seriousness of crimes under the crime of telecommunication network fraud. In the joint crime of cross-border telecommunication fraud, the difficult problem of how to specify the standard for determining the amount of each joint offender has yet to be solved. In our view, it is relatively reasonable to take the victim's loss as the standard under the premise of harmonizing the national amount standard.

### **2.1. Harmonization of the Determination of the Amount of Various Administrative Regions**

It is believed that the criteria for determining the amount of the crime should be harmonized [4]. China is a vast country, and there are large differences in the state of economic development in various places, so although the relative standard of the amount of fraud can be determined on its own, due to the fact that this type of criminal activity involves a wide range of society, and in order to unify the interests of the property, it is more appropriate to unify the standard of the amount of the offence of wire fraud than to determine the standard of the amount based on the state of economic development of the region.

### **2.2. The Amount of the Victim's Loss Should be Used As the Criterion**

It has been argued that a uniform standard should be adopted, and since this is the case, for the characteristics of the unspecified majority of victims, this paper insists that the loss of victims should be the standard.

Offenders and victims are not subject to geographical limitations, the rapid flow of accounts, the development of high and new technology has led to the detection of fraud amount of evidence is difficult to prove that all types of evidence cannot form a complete chain of evidence. The rapid flow of fraudulent funds cannot be recovered in a timely manner to minimize losses. Calculation of the amount of crime of the victim's property losses as the main standard of property losses, the actual income of the offender standard does not reflect all the contents of the judicial determination process, for the confirmation of the amount of the crime, the actual proceeds of the offender are not reasonable to be regarded as the standard of sentencing. Many empirical analysis of the actual proceeds of criminals are often less than the actual loss of the victim in order to effectively protect the legitimate interests of victims, the actual proceeds of the victim shall be the basic standard of the victim's property losses, rather than the actual loss of the offender. In order to effectively protect the legitimate rights and interests of victims, the actual loss of the victim should be used as a sentencing criterion and the amount of the crime in the case should be determined. Insisting on the victim's loss as a criterion will lead to a new problem, namely, how to determine the amount of fraud in the case of not being able to find all the victims and the amount of money seized and frozen for the crime of telecommunication network fraud, which is difficult to correspond to the victims one by one?

On this issue there are two kinds of judicial determination tendency: the first one is to investigate the number of victims and the amount of money identified; the second is to determine the amount of the crime by synthesizing the facts of the whole case [4]. Based on the nature of the criminal law to protect legal benefits, the key to determining the amount of the crime is to identify the victim's property loss as the identification criteria, and fully integrated with the full case to comprehensively identify the amount of the crime. China's "Supreme People's Court, Supreme People's Procuratorate,

Ministry of Public Security on the handling of telecommunications network fraud and other criminal cases of the application of law a number of issues of the opinions" Article 6 (1) also emphasized: handling telecommunications network fraud cases, really due to the number of victims and other objective conditions of the limitations of the victims cannot be collected one by one statement of the victim, can be combined with the statement of the victim has been collected, as well as verified by bank account transaction records, third-party payment and settlement account transaction records, call records, electronic data and other evidence, and comprehensively determine the number of victims and the amount of fraudulent funds and other criminal facts.

In summary, the amount of loss of victims should be taken as the basic standard for determining the amount of fraud of such criminal groups. When it is impossible to find all the victims and the seizure and freezing of the amount of telecommunications network fraud crimes in the case of difficult to correspond with the victims should be a comprehensive analysis of the facts of the case in order to determine the amount of fraud.

### **2.3. Criminalization of Members within a Joint Criminal Enterprise**

Currently, this is a controversial criterion for determining the guilt of each member of this new type of fraudulent group. The representative doctrines are the doctrine of division of stolen money, the doctrine of sharing, the doctrine of participation, the doctrine of the total amount of the crime, and the doctrine of the combined amount. In response to these five views, this paper argues that the total amount doctrine and the participation doctrine should be combined, while examining the division of roles within the criminal group.

#### **2.3.1 Evaluation of various doctrines on cross-border wire fraud crimes**

First of all, the amount of stolen goods itself has obvious irrationality. The definition of the amount of stolen goods theory is that different members of the criminal gang bear the corresponding criminal liability according to the amount of their stolen goods. However, this doctrine is also imperfect. For the textual interpretation of the "amount of stolen goods doctrine", "distribution of stolen goods" represents a criminal result, that is, the fraudulent property has been controlled by individual criminals. Such a doctrine cuts off the entirety of the criminal organization and ignores the syndicated and organized nature of cross-border wire fraud criminal activities, and therefore fails to recognize an important characteristic of the criminal organization, namely, intentional liaison. By virtue of the amount of stolen goods obtained by the offender directly convicted and punished is to mechanically equate the amount of crime directly with criminal liability. Therefore, the adoption of this doctrine is unable to combat organizational crime, which is even more socially harmful than individual crime. Moreover, in cross-border telecommunication network fraud, not all accomplices will participate in the distribution of the stolen funds, and using the doctrine of the amount of the stolen goods as the standard for determining the amount of the amount of the crime will result in the phenomenon of lighter penalties for felonies and heavier penalties for misdemeanors.

Secondly, it is difficult to address the specific problem of the generality of applying the total amount of the crime alone. The doctrine holds that each participant is responsible for the entire proceeds of crime of a criminal group, but that the circumstances of the crime and the role of the accomplice are to be taken into account in the final sentencing. The application of the total amount of crime is a prerequisite, the criminal must join the criminal group as a starting point, only to join the criminal group after the amount of illegal income is responsible for, based on the principle of joint criminal punishment, as long as the implementation of some of the fraud, to all of the results of fraud, that is, the total amount of the crime to be held liable. Because of the common crime of wire fraud, the status and role of different members of the group are different, this should be a comprehensive analysis of the status of different members of the group and the actual role of criminal activities for the determination of responsibility. Therefore, if each member of the joint crime is held criminally liable for the total amount of the joint crime, the differences between the subjects of the joint crime are not taken into account, which is not desirable. Although the doctrine reflects to some extent the characteristics of joint criminality, it is still rather vague and open to misinterpretation.

In addition, the separate application of the amount-of-participation doctrine and the amount-of-participation doctrine could not fully address the issue of the different responsibilities of roles within a cross-border telecommunications network fraud group. There is a view that the defendant only needs to participate in the link of the actual amount of fraud responsible, do not need to be responsible for the entire amount of the criminal group fraud. The concept of "jointly and severally liable for the violation of the law" has merit, but it also has shortcomings. In fact, this theory is more difficult in practice because it cannot be applied to non-perpetrators. This situation is mainly reflected in some large cross-border wire fraud criminal groups, whose leaders and organizers often hide behind the scenes and do not directly and specifically commit wire fraud crimes. They are mainly responsible for overall planning, giving orders and directing the actual perpetrators of wire fraud to carry out their actions. When such leaders and organizers are evaluated as the primary group members, according to the relevant provisions of the existing Chinese law, the total amount of the group's fraud shall be taken as the amount of the fraud and the corresponding criminal liability. However, according to this doctrine, the criminal liability of the primary criminal may be lower than that of some members of the criminal group. Therefore, it is obviously not reasonable, so this doctrine cannot be fully adopted either.

### 2.3.2 Combination of Two doctrines

This paper maintains that the amount of the crime and the amount of participation are both criteria for determining the amount of the crime, and that they are not contradictory but complementary. Specifically, the amount-of-crime theory adds the consideration of the circumstances of the crime to the amount of the crime, and therefore has a certain scientific nature. According to the principle of punishment for joint crimes, as long as the perpetrator has practiced part of the fraudulent act, he or she shall be responsible for all the results of the fraudulent act, i.e., he or she shall be liable for the total amount of the crime. Part IV, article 2 of the Opinions makes similar provisions. However, telecommunication network fraud crimes present some new features compared with traditional fraud crimes, such as the continuous upgrading of various fraudulent techniques and the use of big data and AI and other technologies; and the emergence of a large number of professional and specialized cross-border withdrawals, which makes it very difficult to identify key factual issues related to evidence collection, characterization, and recovery of stolen goods. Therefore, the evaluation of criminal responsibility for such crimes should have more elements, such as the number of times the perpetrator has committed fraud, the number of victims, the social impact caused, etc., all of which belong to the evaluation of its criminal responsibility.

However, the current criminal system in China shows obvious discomfort and lag in the evaluation of criminal responsibility for telecommunication network fraud crimes.

## 3. Methodology for Cross-border Telecommunication Network Fraud Amounts

Under the premise of a uniform amount nationwide, the amount of the loss of the victim's loss should be taken as a criterion. In the case of not being able to find all the victims and the amount of the criminal amount of the telecommunication network fraud that has been seized and frozen in the case of difficult to correspond one by one to the victims, it is wise to determine the facts of the whole case. For the attempted offenders, it is taken into consideration for the criminal group's internal division of labor for the Role division of labor considerations, for attempt, consider the application of non-amount standards.

The criminal legislation of the United Kingdom and the United States reflects that the amount of the crime of telecommunication network fraud is not related to the conviction [5]. German case law also provides less for the amount of the offense, which is only a factual aspect of sentencing, and the sentencing system adopts less stringent rules of evidence and a lower standard of proof [6]. As a result, it is less difficult to prove the amount of the crime than in China. It is common in China for the amount of the crime to be difficult to prove, resulting in the inability to convict and sentence the perpetrator

of the fraud [7]. However, such a situation does not occur in any of the countries mentioned above [8].

In judicial practice, China has stipulated the amount of the crime. This proves that our law does not consider minor damage to the legal interests of other people's property to be a crime. This is not only the requirement of modesty in criminal law theory, but also an inevitable choice in line with China's national conditions. Moreover, cross-border telecommunication network fraud is rampant in China, so if the requirement of the amount of crime is abolished, the number of cases will increase dramatically. This situation may be exacerbated by the fact that China currently has a large backlog of judicial cases but few criminal trial personnel. This could ultimately lead to the unfavorable consequence that judicial effectiveness cannot be guaranteed. Secondly, the separation of conviction and sentencing model cannot be accepted in its entirety. China has adopted an integrated model of conviction and sentencing, and for amount offenders, the amount of money is both a criterion for conviction and a criterion for sentencing, and China can make appropriate reference to the differentiated treatment of conviction and sentencing as two parts of judicial practice.

### **3.1. Precise Determination of the Amount of the Attempted Crime**

With regard to cross-border telecommunication network fraud crimes, individual doctrines cannot be applied singularly; instead, this paper consider them in a comprehensive manner. Specifically, the position and role of the perpetrator in the crime should be analyzed. However, this abstract generalization is not sufficient to solve the problem of criminalization within a criminal group, because the definition of the doctrine of integrated amount of crime is vague, and thus the hasty application of this doctrine may lead to more confusion in determining the amount. Some scholars insist on the theory of criminalization according to the amount obtained through participation, arguing that the amount actually obtained by the defendant varies according to the part of the crime in which he or she participated only. They are only liable for that amount, not for the entire amount of money that the criminal group has obtained.

The roles of the fraud group can be broadly categorized into two models, namely the vertical division of labor and the parallel division of labor. Vertical division of labor in each role of the fraudsters in accordance with the sequence on the cooperation, and then form a complete fraud chain. Each role and the results of the crime have a causal relationship in criminal law, so each criminal in this cross-border telecommunications network fraud criminal gang needs to be responsible for the results of the crime, parallel division of labor in which members of the criminal act in the same or exhaustive roles and tasks. The behavior of each role does not require the behavior of other members as a prerequisite, and each role does not need to provide assistance to the other. In this model, there is a direct and separate causal relationship between each member of the offense and the results of their respective offenses. Thus, for the team directly managed by the principal offender, the principal offender bears all responsibility, while the principal offender is not responsible for the rest of the team. The accessory does not provide assistance to enable the others to obtain the amount of the fraud, so the accessory is only responsible for the proceeds of his own fraud [5]. In other words, in determining the amount of the crime, a distinction should first be made between criminal group structures. In the case of a criminal group that is connected to each other, each member should be responsible for all the funds defrauded by the group. When the various criminal links are independent of each other and have no connection, the total amount of their participation in the criminal links shall be the standard [9].

Therefore, first of all, for the group's prime mover, the total amount of crime to bear the corresponding responsibility. Because the amount of fraud to determine the principal offender should be the total amount of crime committed by the entire group, that is, the total amount of property loss of all victims; for the general principal offender, the theory of the total amount of crime and the theory of the amount of participation in the crime obtained should be applied. That is, in accordance with their respective organizations, the total amount of crime led or involved in all the amount of crime; for the general joint crime in the principal offender when in accordance with the amount of

participation in the amount of fraud that it is found to be the total amount of all the crimes in which it participated; and finally, for the accessory to participate in accordance with the amount of participation in accordance with the amount of the crime in accordance with the amount of their participation in the determination of the actual amount of the crime.

### 3.2. Determination of Attempt through Non-amount Circumstances

According to the provisions of Article 5 of the Criminal Judicial Interpretation of the People's Republic of China, it can be seen that there are two main modes of attempt in telecommunication network fraud. The first is that there is a larger fraud target, but due to reasons outside the will of the fraud criminals did not obtain the fraudulent funds. For example, the victim chooses to delay the arrival of the account, and in this period of time, he finds that he has been defrauded, and urgently stops the payment behavior through the bank. At this time the suspect subjectively with fraudulent intent, but the suspect objectively did not obtain the amount of criminal fraud. The second is "other aggravating circumstances" where the amount is difficult to verify. In other words, the technical content of this legislation is to quantify the means of fraud. The amount of the criminal fraud is not the only basis for conviction and sentencing [10]. At this point, this paper should take into account a variety of factors, such as calculating the number of messages sent, the number of relevant Internet links clicked, the number of phone calls used to commit fraud, and the number of means used as the basis for conviction and sentencing [11]. In addition, the Supreme Court of the People's Republic of China and the Supreme Procuratorate of the People's Republic of China have published the relevant documents "Opinion I" and "Opinion II". These two documents also set out the scope of some elements which do not take the specific amount of money defrauded as a circumstance for the determination of the crime. Specifically, according to the provisions of these two documents, when it is difficult to verify part of the amount of fraud, the amount that has been verified can be calculated. When the amount that has been found reaches the standard of the larger amount of fraud, then it can be stipulated that the specific amount of fraud is not used as a circumstance to determine the crime. This situation can be used as a criterion for determining the criminal attempt of cross-border telecommunication network fraud; Part of the amount of fraud is difficult to verify but has been verified that the amount does not reach the standard of the larger amount of fraud, and the amount of property as the target of the non-amount of the circumstances, as the cross-border telecommunication network fraud of criminal attempt behavior standards; part of the amount of fraud is difficult to verify but has been verified that the amount of money is not up to the standard of the larger amount of fraud, and does not target the amount of property as the amount of the larger amount of non-amount of the circumstances, as the cross-border telecommunication network fraud of administrative violations of standards. The administrative offense standard of fraud [12].

For the first mode of criminal attempt, the defendant can be fraud directed to the amount of the total, but at the same time pay attention to make a distinction with the crime is completed. In other words, the penalty should be light or mitigated. For the calculation of the amount of the second mode of attempt, this paper believe that this paper pay attention to the following two points: first, accurately distinguish between fraudulent information. Because in practice most of the defendants will not succeed immediately in committing telecommunication network fraud, on the contrary, the victim will hesitate and confirm many times [13]. If there are close to each other for the purpose of text messages, should not be uniformly calculated in accordance with the total number of fraudulent text messages, because this type of information does not comply with the implementation of the crime of fraud, will not cause the victim's misconception, and the normal life of the text messages sent, if it is recognized as the number of attempted fraud means of conviction and sentencing is obviously irrational. Thirdly, the number of messages sent by the defendant is derived by multiplying the number of days of fraudulent messages sent by the time when the fraud was added to the crime. Then convict and punish according to the corresponding standard. Fourth, the entire calculation process should ensure that the defendant has the right to present counterevidence. Because the projected number of messages is based on calculations, any anomaly in any of the variables in the calculation

process will cause the whole result to deviate from the truth, thus violating the principle of the criminal law of the appropriateness of punishment to the crime.

#### 4. Conclusion

With the rapid development of big data, the criminal activities of telecommunication network fraud present the new characteristics of syndication, cross-regional, and the victims are widely distributed and unspecified. These have led to difficulties in recognizing the activities of transnational telecommunication network fraud offences as fraud offences. First of all, for organized cross-border criminal groups, the amount of joint crime should not be determined in accordance with the amount of stolen money obtained by the criminal act. This paper believe that the actual amount of loss to the victim should be the basic standard. Secondly, this cross-border telecommunication network fraud activities in the victim is often not specific, when cannot find all the victims or the amount of loss, should adhere to a comprehensive analysis of the facts of the whole case; in the amount of the criminal group within the amount of the determination, to exclude a single amount of the stolen goods said or participation, should be for the role of the group role respectively, comprehensive application of the total amount of the crime said and the amount of participation said. Each region to determine the amount of fraud to exclude the discretion of geographical factors, to maintain absolute uniformity.

In short, for the cross into the telecommunications fraud crime amount is difficult to determine the dilemma, should be unified under the premise of the national amount of standard, to the loss of the victim as the standard, in the inability to find all the victims and the seizure, frozen telecommunications network fraud crime amount in the case of difficult to correspond with the victim one by one to determine the facts of the whole case, for the attempted offenders, for the criminal group for the role of the internal division of labor to be taken into account For attempted offenders, for the amount is also difficult to verify the situation, should be reasonable consideration of non-amount standard circumstances, to realize the amount of cross-border wire fraud identified scientific judicial system.

This paper analyzes the current situation of cross-border telecommunication network fraud in China based on the current situation of cross-border telecommunication network fraud in China, but such a research result will also give a reference to the improvement of the governance of cross-border telecommunication network fraud crime in the world.

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