

Computer Devices Changing the Concept of Property Larceny Crime

M. Kurbanov

PhD, Tashkent, Uzbekistan

Abstract: In this article, by author considered and analyzed the crime of larceny of property by using a computer and noted to differ this type of crime from other types of theft and similar crimes in the IT sphere in terms of the object and the objective side, and the subject and the subjective side of the corpus delicti. Moreover, author mentioned, while studying the corpus delicti of a certain crime, a detailed analysis of its objective features allows drawing conclusions that are more precise. However, in the article there are some suggestions and recommendations to improve the mechanism in this area.

Keywords: larceny of property, IT, computer, corpus delicti, instrument of crime, hardware tools, software tools, crime weapon.

In recent years, in mass media we often face with term "computer crimes". Of course, this is not surprising. Nowadays, it is hard to imagine any industry - media, communications, trade, industry, banking, stock exchange operations, public administration and others, without computers.

Currently, all the important functions of the society related to the computer and computer networks. Computer technology has become an integral part of today's society, its great contribution to the development of society, with the development of the global economy and the rapid integration of the countries of the world community led to the formation of negative term such as "computer crimes".

Today, the lack of a perfect mechanism in the legal system and the fight against computer crime creates difficulties in current situation¹. The role of computer information systems in society, increasing the scale of the use and processing, increasing the number of global Internet users maintaining computer networks and government is actively considering entering these systems and the protection of information on criminal offenses actual problems.

In general, one of the reasons for increase in crime regularly as a result of the crime, including the amount of money: at the same time damage from the bank larceny in developed countries amounted about 19 thousand US dollars, while damage from computer criminal on average amounted 560 thousand US dollars¹. In general, researchers have a wide range of opinion and comments regarding the study of computer crime as a part of crime².

For example, Yu.M.Baturin says that "computer criminal in the legal aspect of crime does not exist as a separate group, but a lot of traditional crimes are modified by including computer

¹ Баранов О. Цифровое законодательство // Дзеркало тижня. – № 20 (395). – 1–7 червня 2002 р.

² Тропина Т.Л. Киберпреступность: понятие, состояние, уголовно-правовые методы борьбы.. Автореф. дисс. на соискание ученой степени канд. юрид. наук. – Владивосток, 2005. – С. 12.

equipment, so we can talk about the aspects related to computer crime without dividing them into special groups"³.

We also expressed this view, the contents of the computer crime, which covers a wide range of crimes. Larceny theft of others property takes a special space among computer crime.

Larceny of others' property by using computer devices is characterized by a number of specific features in the computer crime system. First of all, we need to mention some differences of crime system.

Nowadays, one of the aspects of computer crime in legal literature⁴ takes special place: this is a group of computer crimes at the same time an instrument of a crime and subject to criminal (or tool) to perform the function. However, this type of computer crime is not proper for the larceny of others' property by using computer devices. Larceny of others' property by using computer devices in accordance with the subject of criminal offenses, the electronic lists of non-cash money of account and the computer is only an instrument of a crime that is also important.

For deeper understanding the nature of larceny of others' property using a computer crime we need to identify the "robbery, larceny" concept.

In European countries (France, Germany and Spain) and the United States there are different approaches to the concept of the existing Criminal Code Pillage⁵.

The meaning of larceny of property so that the victim illegally deprived a certain amount of material wealth or rights for them.

M.H.Rustamboev notes that "larceny is - looted property to the benefit of others, larceny, and other parties to put illegal and free."⁶ The same meaning given by E.S.Tenchov⁷ and by A.I.Rarog⁸.

R.Kabulov notes that "Pillage is another property owner or the owner of the property possession for personal benefit or for others, free of charge, malicious, illegal and intentionally possessed, and as a result the owner gets material damage⁹".

V.V.Veklenko, S.S.Niyozova, A.K.Irkaxadjaev and E.O.Alauxanov¹⁰ think about the important and unique among the mercenary purposes, the right to return to the method with the condition that the accused or other parties, such as the damage to the owner.

³ Батулин Ю.М. Проблемы компьютерного права. – М.: Юрид. лит., 1991. – С. 27.

⁴ Наумов В. Отечественное законодательство в борьбе с компьютерными преступлениями. // Computer World Россия. – №8. – 1997. – С. 31.

⁵ Новый Уголовный кодекс Франции / науч. ред. Н.Ф. Кузнецова, Э.Ф. Побегайло. М., 1993.; Уголовный кодекс Испании / под ред. Н.Ф. Кузнецовой, Ф.М. Решетникова. М., 1998.; Уголовный кодекс ФРГ. М., 1998.; Уголовный кодекс штата Нью-Йорк. § 10.00, п. 11, 12, 13 // Уголовное законодательство зарубежных стран: сб. законодательных материалов / под ред. И.Д. Козочкина. М., 1998.

⁶ Жиноят хукуки. Махсус қисм. Дарслик. Муаллифлар жамоаси. – Тошкент: ТДЮИ, 2000. – Б. 196.

⁷ Уголовное право России. Часть Особенная. Учебник. / Отв. ред. Л.Л. Кругликов. – 3-е изд. – М.: Волтерс Клувер, 2005. – С. 203.

⁸ Уголовное право Российской Федерации. Особенная часть: Учебник / Под ред. проф. Б.В. Здравомыслова. – Изд. 2-е. – М.: Юристъ, 1999. – С. 141.

⁹ Кабулов Р. Уголовно-правовые борьбы с хищениями: теория и практика. Дисс. докт. юрид. наук. – Ташкент, 1997. – С. 22.

¹⁰ Векленко В.В. Процесс квалификации хищений // Юридические технологии. – 2001. – №10. – С. 35; Ниёзова С.С. Ўзгалар мулкни иштирокчиликда талон–торож қилганлик учун жиноий жавобгарлик муаммолари. Юрид. фан. номз. ... дисс. – Тошкент: ТДЮИ, 2006. – Б.15–16; Иркохаджаев А.К. Субъективная сторона хищения имущества, совершенного путем мошенничества. // Уголовно-правовые меры борьбы с преступностью. – Ташкент: Фан, 1987. – С. 25; Алауханов Е.О. Квалификация хищения совершенных по подложным документам / Отв. ред. проф. Г.А.Ахмедов. – Алматы – Ташкент: Адолат, 1994. – С.12.

Sh.Yo.Abdugodirov and U.M.Mirzaev¹¹ talked about the larceny of property of others through using a computer, estimated this type of crime as "using and taking others properties for the benefit of them and others through the illegal use of computer and free focus".

However, the above-described definitions do not reveal the full contents of larceny. For all types of larceny will not be able to commit the use of computer tools and in all cases, the computer tool as a separate element of an offense is incorrect. Thus, the computer larceny definition Pillage what computer types carried out using the methods described in the stories can be enhanced computer Pillage think it would be more correct.

Larceny committed using computer technology for above unique feature, however, this type of crime is characterized by a number of peculiarities.

Firstly, the offense of Larceny of others' property by using a computer according to the subject of crime in electronic form, in cash (non-cash) and cash money from the special account in the form of digital or non-cash means of plastic cards;

Secondly, Larceny of others' property by using a computer radically differs from the other Larceny crimes depending on the recipe. That is, a) the subject of a criminal attack to the identity (in the form of information may have property, weapons that can be used by means of a computer (program), instead using the damage);

Thirdly, as this crime happens in cyber environment, the person who committed the crime is often not defined or a high level of latency of the offense is followed.

Fourthly, the opportunity of performing the illegal action in a certain distance, speed of crime performance and opportunity to hide the name of those who performed crime, as well as damages to the victim, which can be very high;

Fifthly, this special knowledge of the crimes in the field of information and communication technologies is almost impossible to open and expose;

Sixthly, any person as a victim of this crime, but as a legal entity, bank or credit institutions and bank accounts of physical and legal entities will be shown;

Larceny of others' property, using a computer today, the scope of the scope of the crime of plunder, using a computer or any other property crimes also discussed the issue of the crime of larceny. Of the existing criminal law, using a computer, embezzlement, fraud, theft and liability are available and provided.

A.V.Raspopova, wrote about it, "Larceny of others' property, using a computer, mainly clearly shown in theft, fraud, embezzlement or extortion, or cause damage to property by deception or abuse of trust, illegal business, commercial, illegal possession of tax or banking secrecy and disclosure of credit card fraud is evident in the crimes¹²."

We cannot join the opinion of the author. The reason, mentioned by the researchers, fraud, deception or abuse of trust by way of damage to property, illegal business, commercial, financial or banking secrecy and disclosure of illegal possession of a fake credit card according to the nature and content of such acts is not included into pillage of the property of others, and accordingly larceny, using a computers in pillage cannot be assessed.

One type of larceny of others' property by using a computer is computer fraud and learning it is plays important role. "Computer fraud" occurred in the 70 years of the last century.

If to talk about computer fraud, in the content of its lawyers, who can be seen to interpret computer fraud in different ways. In particular, T.Tropina defines "computer fraud" as it does not

¹¹ Абдуқодиров Ш.Ё., Мирзаев У.М. Мулкни талон-торож қилганлик учун жиноий жавобгарлик. – Тошкент. ТДЮИ, 2009. – Б. 7.

¹² Распопова А.В. Организационно-методическое обеспечение первоначального этапа расследования преступлений, совершаемых в сфере экономики с использованием средств компьютерной техники. Автореф. дисс.канд. юрид. наук. – М., 2007. – С. 3.

lies to people, indeed it “lies” to computer systems. The author notes that, with regard to computer crime, “fraud” in the traditional sense of the meaning of these concepts is different concept. She says that, in essence, to obtain information illegally, and so on, the computer system of “cheating”¹³ is carried out. However, in our view, the cases of computer fraud are debatable. Researchers’ assessing computer fraud as “to trick the computer tool” to represent or assessing computer as the victim of the system is wrong.

In particular, the issue of December 21, 2001, the Plenum of the Supreme Court of the Republic of Belarus “Larceny of property on the application of the criminal law and judicial practice” law approach¹⁴ is appropriate, in our opinion. Its content is regarding “Larceny committed using computer technology can only be done through computer manipulation, the victim or the person entrusted with the property being lied through using the information processing system will be demonstrated.”

However, if to analyze the norms of the criminal laws in many foreign countries, “computer fraud” responsibility given in many norms concepts as “abuse of trust” and “deception” were not used. In other words, without setting connection between the fraud and computer fraud, computer fraud is widely defined as computer pillage a consensus without any proof. This situation can be met criminal laws of many European countries (for example, Germany, Austria, Sweden, Denmark).

In recent years, various lawyers are offering to fill in the criminal law with law about “computer fraud”. For example, D.A.Zykov¹⁵ and S.D.Brajniklar¹⁶ offered to include special law about computer fraud into criminal law. However, law about computer fraud cannot be added. Indeed, the use of the criminal law of each term should be clear, to apply to all legal acts in one meaning, ambiguous and vague terms should be avoided. The researchers used “deception and abuse of trust” terms cannot be related to computer systems, because there are no signs of intelligent and free, and it creates obstacles to call it as “based on deception, voluntarily surrendered victim”.

Also it should be noted that, that this acts as a computer is used as a medium of a crime in cyberspace is necessary to distinguish from fraud. Today, one of the popular movements of people cheating is the auction web. At the same time, setting communicating tool with the victim of computer, the environment is seen as an alternative to the normal environment. Web sites allows not to communicate directly with the victim of the violation, it is difficult to assess the personality of the criminal, helps to ensure the safety of its services.

Some researchers thank that, “such acts are not committed by changing the computer data in violation of the law, in other words, the relations in the field of information security are not raped and robbery, and because of that larceny is not a cause of such manipulation, such acts are appropriate to traditional fraud and does not cause criminal law to be qualified with other norm of criminal law¹⁷”.

In our view, larceny property through fraud, by using a computer does not require qualification. After all, this is a sign of criminals, even though fraud is performed through computer information technologies, but the computer is not an instrument of a crime, but because it a tool of communication (relation), calling it as computer fraud is denied. When the data stored in the computer information system of the computer as a tool by the modification of the deception

¹³ Тропина Т. Компьютерное мошенничество: вопросы квалификации и законодательной техники. // www.crime.vl.ru

¹⁴ www.lawbelarus.com/repub/sub13/texc5747.htm

¹⁵ Зыков Д.А. Понятие компьютерного мошенничества. www.crime-research.org

¹⁶ Бражник Ф. Множественность преступлений – отражение их совокупной общественной опасности // Уголовное право. – 2000. – № 3. – С. 10.

¹⁷ Тропина Т.Л. Киберпреступность: понятие, состояние, уголовно-правовые методы борьбы. Автореф. дисс. ... канд. юрид. наук. – М., 2005. – С.21-23.

carried out and as a result, the property larceny, in this case, making qualification of this act as computer fraud is right.

Taking into account the above comments, larceny of others' property through using a computer is understood as, the right to property or proprietary computer using the computer information system, through the modification of data in violation of the law intentionally, freely and without condition.

Moreover, larceny by using the computer should be given criminal responsibility, norms, reasons are following: first, the crime of larceny of others' property, using a computer is spreading rapidly across the world in recent years, increasing the potential risk; Second, larceny of the property of others, using a computer crime, in many cases, will not be reflected in the official statistics, in other words, this type of crime is defined with high latency, based on official figures suggests not to diminish the fight against crimes of this type; Third, larceny of the property of others through computer technologies crime differs from the simple crime of larceny, this requires right qualification in compliance with the purpose of determining the responsibility.

References

1. Баранов О. Цифровое законодательство // Дзеркало тижня. – № 20 (395). – 1–7 червня 2002 р.
2. Тропина Т.Л. Киберпреступность: понятие, состояние, уголовно-правовые методы борьбы.. Автореф. дисс. на соискание ученой степени канд. юрид. наук. – Владивосток, 2005. – С. 12.
3. Батурин Ю.М. Проблемы компьютерного права. – М.: Юрид. лит., 1991. – С. 27.
4. Наумов В. Отечественное законодательство в борьбе с компьютерными преступлениями. // Computer World Россия. – №8. – 1997. – С. 31.
5. Новый Уголовный кодекс Франции / науч. ред. Н.Ф. Кузнецова, Э.Ф. Побегайло. М., 1993.; Уголовный кодекс Испании / под ред. Н.Ф. Кузнецовой, Ф.М. Решетникова. М., 1998.; Уголовный кодекс ФРГ. М., 1998.; Уголовный кодекс штата Нью-Йорк. § 10.00, п. 11, 12, 13 // Уголовное законодательство зарубежных стран: сб. законодательных материалов / под ред. И.Д. Козочкина. М., 1998.
6. Жиноят ҳуқуқи. Махсус қисм. Дарслик. Муаллифлар жамоаси. – Тошкент: ТДЮИ, 2000. – Б. 196.
7. Уголовное право России. Часть Особенная. Учебник. / Отв. ред. Л.Л. Кругликов. – 3-е изд. – М.: Волтерс Клувер, 2005. – С. 203.
8. Уголовное право Российской Федерации. Особенная часть: Учебник / Под ред. проф. Б.В. Здравомыслова. – Изд. 2-е. – М.: Юристъ, 1999. – С. 141.
9. Кабулов Р. Уголовно-правовые борьбы с хищениями: теория и практика. Дисс. докт. юрид. наук. –Ташкент, 1997. – С. 22.
10. Векленко В.В. Процесс квалификации хищений // Юридические технологии. – 2001. – №10. – С. 35; Ниёзова С.С. Ўзгалар мулкани иштирокчиликда талон–торож қилганлик учун жиноий жавобгарлик муаммолари. Юрид. фан. номз. ... дисс. – Тошкент: ТДЮИ, 2006. – Б.15–16; Иркохаджаев А.К. Субъективная сторона хищения имущества, совершенного путем мошенничества. // Уголовно-правовые меры борьбы с преступностью. – Ташкент: Фан, 1987. – С. 25; Алауханов Е.О. Квалификация хищения совершенных по подложным документам / Отв. ред. проф. Г.А.Ахмедов. – Алматы – Ташкент: Адолат, 1994. – С.12.
11. Абдуқодиров Ш.Ё., Мирзаев У.М. Мулкни талон-торож қилганлик учун жиноий жавобгарлик. – Тошкент. ТДЮИ, 2009. – Б. 7.

12. Распопова А.В. Организационно–методическое обеспечение первоначального этапа расследования преступлений, совершаемых в сфере экономики с использованием средств компьютерной техники. Автореф. дисс.канд. юрид. наук. – М., 2007. – С. 3.
13. Тропина Т. Компьютерное мошенничество: вопросы квалификации и законодательной техники. // www.crime.vl.ru
14. www.lawbelarus.com/repub/sub13/text5747.htm
15. Зыков Д.А. Понятие компьютерного мошенничества. www.crime-research.org
16. Бражник Ф. Множественность преступлений – отражение их совокупной общественной опасности // Уголовное право. – 2000. – № 3. – С. 10.
17. Тропина Т.Л. Киберпреступность: понятие, состояние, уголовно-правовые методы борьбы. Автореф. дисс. ... канд. юрид. наук. – М., 2005. – С.21-23.