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Online Information Theft and Its Ruling in Sharia

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ABSTRACT

Crimes of attack on money are of increasing importance, whether in physically or intangibly. Intangible attacks apply to a group of financial cybercrimes that cannot be underestimated. These crimes include theft, swindling, fraud, breach of trust, etc. Financial cybercrimes affect many of the interests of society, particularly banks through e-transactions, withdrawals of balances by credit cards, or electronic payment and e-commerce. As the focus of discussion in this topic is cybertheft, I will talk about the online information theft.

1. Introduction

Information has become a key pillar of contemporary civilization given its control over many aspects of contemporary life in its economic, political, cultural and social dimensions. It has become a high technical, industrial and intellectual wealth, especially after the information network invaded all walks of life, which made it the focus of attention of fraudsters who are experts in dealing with modern technologies and are highly intelligent, so they seize such information and deprive its owner of it.

As we deal in this part with information theft, we must clarify the definition of theft, its elements and conditions, the nature and types of information, as well as the extent to which the information is considered to be a property of others. We will then explain the ruling and punishment for this crime in Sharia and the criminal penal code of the UAE, within the following sections:

Those who look for the definition of theft by the jurists of different sects find that it does not differ from its meaning in the language, even though there is a dispute between them regarding the conditions that must be met in order for the theft to be realized. The Hanafiyya defined it as: "Whoever, being an adult, surreptitiously commits, from any hirz (recognizable protection and a safe

custody) a theft of property of the value of the nisab (minimum value) or more, which is owned by others without any suspicion (of meeting the conditions).” [1]

Legal people use the word theft for the embezzlement of movable property belonging to others, and all of this includes the seizure of the property of the immovable without the owner’s consent.

Pillars of theft: It is evident from the above definitions of theft by the jurists that the offense of theft liable to hadd can only be realized with the following elements:

The first pillar: Being taken surreptitiously (in secret)

The second pillar: Stolen money (property)

The third pillar: The thief

The fourth pillar: Victim of theft

2. Types Of Information

Lexical definition of information is: Collecting information, which is derived in the Arabic from the verb (know). All derivatives of this word revolve around the mind and its functions [2].

As for its contextual definition: it is the data that has been processed to achieve a specific goal or for a specific use, for the purposes of making decisions, i.e. data that has value after analysing, interpreting, or compiling it in a meaningful format [3].

The UAE Federal Law No. 1 of 2006 On Electronic Commerce and Transactions, in its first article, defines electronic information as: “Electronic data and information in the form of text, codes, sounds, graphics, images, computer programs or otherwise.”

As for Federal Law No. (2) of 2006 on The Prevention of Information Technology Crimes , it defined electronic information as: “any information stored, processed, generated and transmitted by an information technology device in the form of text, images, sounds, numbers, letters, codes, signs or otherwise .”

The information worthy of legal protection must have several features, including: Being specific, innovative, confidential and exclusive [4]. Some require that this information be subject to automated processing in order to be subject to criminalization. Automated processing means: multiple processes that take place automatically on the information to be converted into data by processing it within an automated system [5].

Information is divided into three categories: nominal information, information related to intellectual works and accessible information:

2.1 Nominal information:

This information is divided into two groups: objective information and personal information.

1. Objective information: Information related to the addressee, such as his name, domicile and marital status. Such information is related to the personality of its owner. It is not permissible for third parties to access it except with the owner's personal consent or upon an order from the competent authorities.
2. Personal information: Any information attributed to another which requires third parties to give their personal opinion about it, and thus it is similar to objective information in the sense that it belongs to a specific person. Unlike objective information, it is directed to others according to the origin and is not related to the personality of its owner, such as newspaper articles and administrative files for employees at a specific entity. [6]

2.2 Information on intellectual works:

It is information in the form of intellectual works – i.e. works protected by intellectual property legislation -. The owners of those works enjoy the paternity of their works and sole use of the same, which results in financial and moral rights, [7] as provided in Article 2 of Federal Law No. (7) of 2002 on Copyrights and Related Rights.

2.3 Accessible Information:

Accessible Information refers to any information that everyone has access to because it is without an owner, such as the daily stock market reports and weather forecasts. The ownership of such information is for the first to collect and formulate it according to Article 3 of the aforementioned law no. (7) of 2020: "Protection shall not include :

1. Official documents regardless of their original language or the language in which they were reproduced such as texts of laws, regulations, decisions, international conventions, court decisions, arbitral awards, and decisions issued by administrative committees having judicial competence.
2. News and reports about incidents and current events which constitute mere information releases.
3. Works that have fallen into the public domain.

It is noted that if this information was collected for the purpose of processing it to be run on the computer, stored and retrieved or with the intention of creating new information, it is divided as follows:

1. **Processed Information:** Information that is processed for operation on the computer to be stored, saved or retrieved when needed [8].
2. **Obtained Information:** Information that results from processing a group of information whose right of ownership is determined here in accordance with the rule of possession of movable money.

3. The Extent To Which Information Is Considered Valuable Assets Owned By Others

The question that arises is if a person robbed information about others by using the internet, would this assault constitute an offence of theft punishable under Sharia and law?

Before answering this question, we ask: Is the information in and of itself considered a form of money, or not?

Based on the concept of money and its utility among the jurists, the opinion of the jurists in the financial information can be based on two views:

The first opinion: Information is not money, a variant of the opinion of the Hanifah, who do not consider the benefits as money [9].

The second opinion: Information is money, driven from the opinion of the majority of jurists, because they do not require money to be physical and have an external presence. Not only that, but they deem the benefits money. Also, information is derived from what is usually and legally used, and has value in the people's custom, and this is one of the financial determinants for the jurists.

According to the above, depending on the nature of the information, the financial condition of the majority may be applied to it, other than the Hanifah.

If this is the case, then the information has a financial and economic value, especially in the present day when information has become the most important asset for institutions and companies.

Based on the economic and financial value of the information, the prevailing opinion is that information is considered money and has the right to protection, whether the information is innovative or not. If the information is innovative, it is: protected by copyright protection legislation and intellectual property laws [11].

If the information is not innovative, then the information money must be protected by special penal provisions that guarantee protection from any attack.

The legal legislations clarify the value of information money by linking it to intellectual property which is protected based on the material value of information, whether this information is in the form of a patent, an author, or a model. [12]

Electronic information is an intellectual and scientific product of human minds to achieve the interests of people. Such information will not be useful unless it is kept in a material form similar to that of the ideas that a book holds. Electronic material, whether in a physical space such as a hard disk or stored in a computer, is a commodity that is customarily of value and approved by Islamic fiqh without clashing with a Sharia's text.

4. The Ruling And Punishment For Stealing Information In Islamic Sharia

4.1 Ruling on information theft in Sharia

Faced with this result that we have reached, which is that information is money, and before we move to the search for the Islamic ruling for this crime, a question comes to mind: Is accessing websites and stealing information considered a violation of a hirz (recognizable protection and a safe custody) making it an offence of theft liable to hadd, or not?

Talking about the nature of the hirz (recognizable protection) requires knowledge of what this money is and where it can be kept. If we are able to do that we can define the appropriate recognizable protection for this money. The recognizable protection of anything is where it is customary and traditionally preserved and protected as determined by the jurists.

We have previously settled that the information is intangible money with a transferable economic value, with the evidence that an empty USB flash drive is only worth a few dollars, but after recording the information on it, that USB flash drive becomes of a high value that amounts to hundreds of thousands.

The internet sites depend on occupying a space from the "servers" that lease space from them to websites, so that each site has its leased space on the server. The site forms an independent entity in the name of the user, and a special password that authorizes him to open the site, enter it, record data and information, and save it.

Some of the information on the website or the computer's memory is accessible to everyone, and some of it is walled by multiple and costly protection methods to prevent unauthorized persons from entering the system, forming a stronger hirz (protection) than a house door.

People have come to know that computers and websites are a safe place to store information and money. An accepted custom is that which is settled in the souls and the minds and that people continue to do which the Shariah approves of and doesn't warn against [13].

Thus, we can say that for the website or computer memory to be hirz (a recognizable protection), two basic conditions are required: custom and non-negligence. This is achieved by applying some preventive security measures, such as protection programs and passwords. These measures constitute a protection for the site, whereby anyone who penetrates this site is considered a violator and an aggressor.

4.2 Ruling on stealing information and software via the internet in Islamic Sharia

Despite the presence of many contemporary jurists in support of intellectual property rights and copyright, they differed regarding entry to websites and stealing information and software from them. Is it a crime of theft or not?

The jurists differed on this issue with two opinions:

The first opinion: Going to websites and taking protected information from them does not constitute an offence of theft, because there are doubts that prevent the description of theft from applying to them.

Second opinion: Logging into websites and taking protected information and software constitutes an offence of theft.

5. Punishment For Stealing Information In Islamic Sharia

Based on the above statement regarding the difference in the financial information and the opinions of the jurists regarding it, we can say that the jurists have differed in the punishment for the crime of stealing information with two opinions:

The first opinion holds that the theft of information and software over the internet does not entail a hadd punishment, but rather a discretionary punishment, because there are doubts that prevent the establishment of the hadd of theft, such as the hirz (recognizable protection) and that the hudud (punishments under Sharia law) are precluded by doubts as proven in the Islamic literature, as well as suspicion of sharing in the ownership of information. The matter is left to authorities to determine its punishment as an attack on public or private interest. This is what a group of contemporary scholars such as Khaled Al-Musleh, Dr. Hashem Jamil, Dr. Atta Al-Sunbati, Dr. Shallal Al-Ani, and others think on the matter. [14]

The **second opinion** is that the theft of information of high financial value, such as invention, manuscripts, books and studies, is a theft liable to hadd that requires the perpetrator to have his hands cut off. This is the opinion of Wahba Al-Zuhaili, Dr. Muhammad Al-Ruki and Sheikh Muhammad Al-Munajjid.

The extent to which the description of the conditions of theft applies to the theft of information and software: Through the aforementioned definition of theft, which is: "Whoever, being an adult, surreptitiously commits, from any

hirz (recognizable protection) theft of property of the value of the nisab or more, that is owned by others without any doubt or interpretation.” We can deduce some of the most important conditions that can be applied to the theft of information and software, namely:

1. The stolen is protected money (property)
2. Taken surreptitiously (in secret)
3. That the money reaches the minimum value (nisab).
4. The money is taken from its recognizable protection (hirz).

6. Conclusions

1. The evidence that the supporters of the second opinion inferred is strong. The inferences of the first opinion can be objected.
2. The second opinion agrees with the objectives of Sharia in terms of preserving the mind and money of the author (producer or creator of information).
3. The right of authorship and considering it to be a means to elevate the society and satisfy the author’s need, because the author will devote himself to composing and writing because he knows that his work will generate money that will provide him with his needs and will not be tempted to pursue other activities that earn him money which hinders knowledge.
4. The Islamic Fiqh Council of the Organization of Islamic Cooperation (OIC) issued in its fifth edition its decisions related to intangible rights, in which it stated: Copyright, invention and innovation rights are protected, and their owners have the right to dispose of them and it is not permissible to violate them.
5. The perpetrator in the crime of attacking information does not commit this act with the intention of obtaining a magnetic disk and the like. Rather, the purpose of his action is to obtain certain information, the purpose of which is to reveal the secrets of another person - the owner of the information - or divulge the secrets of a party, or obtain data on others for the purpose of taking advantage of it in order to gain substantial financial or moral compensation.
6. Electronically processed programs and data cause rights for their owner and authorize him to enter into contracts related to them, such as a lease or storage and sale contract, and any other form of exploitation, because one of the characteristics of information is being transferable. All of these matters bring us to an important fact that information is money not because of the relationship between the money and owner only, but because it has

an economic value. It is put on the market for trading, just like any commodity, and it has a commercial market that is subject to the laws of the economic market.

Theft of information and programs may be subject to the conditions of theft liable to hadd, but it is necessary to differentiate between the results of entering the website and taking information from it. The aim may be to make copies of this information while keeping the original, or by stealing the entire information and depriving the owner of it. In the first case the description of theft liable to hadd does not apply because the possession of information and programs is still with the owner, and in the second case, it undoubtedly constitutes an offence of theft liable to hadd.

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