

我的電腦，你的檔案 ——論刑法第359條「他人電磁紀錄」 之範圍界定

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摘 要

就刑法第 359 條「無故取得、刪改他人電磁紀錄罪」之「他人電腦或其設備之電磁紀錄」應如何解釋之問題，我國實務近期具代表性之見解，係將該用語解釋為「他人之電磁紀錄」，並根據電磁紀錄之「處分權限」究竟屬行為人自己或他人所有，界定本罪客體之範圍。惟若細究判決理由，或得察覺系爭判決並未回應既有學說見解，亦未說明其採取相關解釋之理由，甚至可能於判斷標準之選用上存有邏輯上之不當連結，而牴觸我國立法者就「電腦使用人」與「電腦使用安全」所設之極限。為釐清前述爭議，筆者自本罪十數年來之法益爭議中，探詢各說見解對法益內涵之基礎共識，並同時參酌德國刑法對「電磁紀錄」處分權限歸屬之判斷，嘗試建構符合我國法制現狀之判斷標準。

關鍵詞：電腦犯罪、電磁紀錄、處分權限、電腦使用安全、電腦法益

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投稿日：2019 年 7 月 7 日；採用日：2019 年 9 月 20 日

Cite as: 6 NCTU L. REV., March 2020, at 117.

My Computer, Your File — Discussion about the Scope of Criminal Law Article 359 “Magnetic Record of Another”

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Abstract

As to the question of how to interpret the “magnetic record of another’s computer/another’s magnetic record in computer” in Criminal Law Article 359, also known as “obtaining, deleting or altering Magnetic Record of Another without reason,” the recent judgment from the Supreme Court has tried to interpret the term as “magnetic record of another,” and then define the scope of the object, depending on who has the “disposition authority” of the magnetic record. However, if the reasons for the judgment are carefully investigated, it is certain that the judgment has neither responded to the existing doctrines and opinions, nor explained the reasons behind its choice. In the worst case, it may even have logically inappropriate links, which in turn touches the limits set by legislators on “computer users” and “security of computer use”. In order to clarify the above disputes, the author explores the basic consensus of the meaning of legal interests from the controversy for more

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than a decade. At the same time, the German criminal law's discussion on the privilege of the "magnetic record" has also been considered, in an attempt to construct the standard that conforms to the status quo of Taiwan's legal system.

Keywords: Computer Crime, Magnetic Record, Disposition Authority, Security of Computer Use, Legal Benefit of Computer