

The Justification and Recognition of the Disposal Awareness of Third-Party Payment Platforms under the Theory of Presumed Consent

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Abstract: *The disposal awareness of third-party payment platforms is crucial in the legal classification of property offenses under digital payment models. The theoretical debate centers on whether these platforms can be deceived. The introduction of the theory of presumed consent challenges the traditional notion and reshapes the understanding of their authority in asset management, laying a foundation for recognizing their disposal awareness. Acknowledging that these platforms possess independent disposal awareness aligns with the operational logic of online payment systems, satisfies fraud offense criteria, and is consistent with legislative intent.*

Keywords: *Third-party payment platforms; disposal awareness; presumed consent theory*

1. Introduction

The rapid growth of third-party payment platforms like Alipay and WeChat Pay has made their role crucial in the legal classification of property offenses. Whether these platforms have disposal awareness is key to determining offense types: without it, cases are categorized as theft, while with it, the theory of presumed consent may classify them as fraud.

This paper examines whether third-party payment platforms have disposal awareness, focusing on the application of presumed consent in such cases. The goal is to offer theoretical support for classifying digital payment-related offenses and to promote alignment in criminal law theory and judicial practice.

2. Theoretical Disputes Regarding the Disposal Awareness of Third-Party Payment Platforms

2.1. Divergence of Opinions on the Existence of Platform Disposal Awareness

A key point of contention in legal practice concerning the classification of many online property offenses is whether third-party payment platforms can be deceived. If a platform can be deceived, the necessary conditions for classifying the offense as fraud are met. If not, the offense is more likely to be classified as theft. Under new payment methods, the relationship between the offender and the platform remains, in essence, a relationship between a person and a machine.

Traditional criminal theory has long maintained that “machines cannot be deceived,” a view that has dominated the field. However, strict adherence to this principle would result in most online property offenses being treated as theft, leading to contradictions between theoretical understanding and legal practice. Given the realities of today’s online transactions, it is necessary to modify and reinterpret this view. As a result, an alternative theory—that “machines can indeed be deceived”—has been proposed and has gradually gained support from scholars.^[1]

As part of this evolving understanding, some scholars have introduced the theory of presumed consent from German criminal law. This theory attributes disposal awareness to third-party payment platforms, thereby providing a legal basis for recognizing crimes involving these platforms as fraud.^[2]

The question of whether third-party payment platforms can be deceived plays a decisive role in the legal classification of offenses involving these platforms. If one supports the negative view—that platforms cannot be deceived—then property offenses carried out through these platforms can only be classified as theft. A more moderate, intermediary view suggests that, when an offender uses fraudulent

means to deceive a platform, what is being deceived is not the machine itself but the individuals or systems behind it. In this view, the platform operators are misled into making asset transfers based on a misunderstanding, and the offender's actions can thus constitute fraud.

A more affirmative stance holds that when an offender uses deceptive means, the platform itself falls into a state of mistaken belief, thereby executing or facilitating asset transfers. This view also supports classifying such actions as fraud.

In summary, the negative, intermediary, and affirmative positions differ significantly in how they classify offenses involving third-party payment platforms. Although the intermediary and affirmative views reach the same conclusion in treating such offenses as fraud, the intermediary view still aligns with the traditional notion that machines cannot be deceived. In contrast, the affirmative position completely rejects this notion, advocating that machines, under certain circumstances, can indeed be deceived.

2.2. The Impact of the Theory of Presumed Consent

The theory of presumed consent demonstrates the feasibility of classifying offenses committed against third-party payment platforms as fraud. Presumed consent refers to the implicit agreement of users when they input account credentials and passwords into a platform, authorizing the platform to perform asset transfers according to predefined rules. This theory has a profound impact on how third-party payment platforms are perceived, expanding their role from mere technical intermediaries to entities with a certain degree of independent disposal awareness. This shift means that, once authorized, platforms have the right to manage and operate users' assets.

The theory of presumed consent has attracted considerable attention because it offers a new way of explaining and interpreting fraudulent activities involving third-party platforms, both in theory and practice. It also provides a basis for further analyzing the legal implications of platforms carrying out asset transfers under mistaken assumptions due to fraudulent inputs.

The application of presumed consent changes how platforms' disposal awareness and behavior are evaluated in cases involving property crimes. Traditionally, it was believed that machines cannot possess subjective awareness and therefore cannot be deceived. However, the theory of presumed consent argues that when a user fulfills certain conditions—such as entering valid credentials—the platform operates under the presumption of consent and executes the corresponding asset transfer. This shift has significant implications for legal practice, leading to debates about whether platforms have disposal authority and subjective awareness in fraud cases.

According to the theory, third-party payment platforms have disposal awareness because users implicitly authorize the platform's actions by meeting certain operational requirements, such as inputting account information and passwords. This behavior indicates that users grant the platform a degree of disposal authority, enabling it to carry out operations on their behalf. Moreover, the platform exercises independent judgment when reviewing payment requests, deciding whether to approve or reject the transfer. This decision-making process reflects the platform's substantial authority over fund management, affirming that it possesses both independent disposal awareness and operational capacity.

The theory of presumed consent challenges the traditional belief that platforms, as technical tools, cannot have subjective awareness and therefore cannot be deceived. Instead, it asserts that users' actions—by complying with platform rules—effectively authorize the platform to manage their assets, thereby granting it a form of subjective awareness. This perspective redefines the role of platforms in legal contexts, viewing their operations as legitimate asset management actions. As a result, the theory offers a new way to distinguish theft from fraud in cases involving platforms. The close link between platform operations and user authorization under this theory also influences the classification of crimes, shifting the focus from theft to fraud.

The adoption of presumed consent theory provides new interpretative tools for judicial practice, encouraging the treatment of property offenses involving platforms as cases of triangular fraud rather than theft. This shift opens up new avenues for legal research and aligns with the evolving nature of digital payment systems.

3. Justifying the Disposal Awareness of Platforms under the Theory of Presumed Consent

In light of the tension between theft and fraud classification in criminal law theory and judicial

practice, the theory that platforms lack disposal awareness is clearly insufficient to resolve the legal classification issues surrounding third-party payment platforms. This has prompted scholars to explore alternative theoretical approaches. Some argue that third-party financial service platforms, as entities independent from the rights holders, should be recognized as having independent disposal behavior and awareness in managing fund transfers and withdrawals.^[3]

3.1. Recognizing Independent Disposal Awareness Aligns with the Operational Logic of Online Payment Services

The operational mechanism of online payment services demonstrates that third-party payment platforms play a crucial role in managing and transferring funds, exercising substantial control over such transactions. The legal relationship between the platform and its users is grounded in service agreements and governed by custodial and entrusted relationships.^[4] For example, under Alipay's terms of service, the balance in a user's account differs from a traditional bank deposit and is not protected by deposit insurance. In essence, these funds represent prepaid value entrusted to Alipay for safekeeping, with ownership remaining with the user.

In online payment operations, the platform issues transfer instructions that determine the direction and movement of funds, demonstrating its decisive role in the transfer process. Additionally, the platform has the responsibility to safeguard these funds, further emphasizing its role as a custodian. In civil law, the relationship between a third-party payment platform and its users resembles that of a custodial agreement. The platform does not own the user's funds but holds them in trust.

In summary, third-party payment platforms not only have the legal status of custodians but also possess the authority to review and approve fund transfers. This indicates that these platforms have both independent disposal awareness and the capacity to act as decision-makers. Recognizing that third-party payment platforms have independent disposal awareness aligns with the operational logic of online payment services, accurately reflecting their role in fund management and transfer operations. This approach helps resolve the tension between theft and fraud classification in criminal law, providing a solid theoretical foundation for classifying property offenses involving third-party platforms.

3.2. Recognizing Independent Disposal Awareness Satisfies the Legal Elements of Fraud

In digital payment models, the disposal of assets must be approved by third-party payment platforms, and recognizing the independent disposal awareness of these platforms satisfies the legal elements required for fraud under criminal law. Analysis of the operational mechanics of third-party payment platforms shows that these platforms are the entities directly responsible for verifying objective credentials, such as encryption keys and account data. This means that the platform has the final authority to approve payment applications and execute fund transfers.

According to criminal law theory, one of the elements of fraud is that the rights holder must make a disposal decision based on a mistaken belief. The primary difference between fraud and theft is that fraud requires a voluntary disposal act by the rights holder, which depends on whether the rights holder has the necessary disposal awareness. Without such awareness, the offense would be classified as theft rather than fraud. In online payment transactions, users are not the direct parties managing fund disposal; instead, the platform assumes this role.

Because fraud requires the rights holder to have disposal awareness, the platform's role as the final decision-maker in digital payments aligns with this legal requirement. The platform reviews the payment request, determines the outcome, and executes the fund transfer, thus engaging in disposal behavior.

In other words, in cases involving the misappropriation of assets through third-party payment platforms, only the platform can meet the legal requirement of having the requisite disposal awareness. Through its review of encryption keys and account data, the platform decides whether to approve or deny fund transfers, demonstrating its engagement in disposal behavior. Thus, recognizing that third-party payment platforms have independent disposal awareness is consistent with criminal law theory. This recognition helps accurately distinguish between theft and fraud, providing clear theoretical guidance for judicial practice.

3.3. Recognizing the Disposal Authority of Third-Party Payment Platforms Aligns with Legislative Intent

Judicial interpretations classify certain illegal activities involving the use of others' credit card information via the internet as credit card fraud. Since transactions conducted through third-party payment platforms typically involve users' bank cards, these interpretations also apply to fraudulent activities in digital payment models. They thus grant third-party payment platforms independent disposal authority and make them eligible to be considered as the targets of fraud.

According to Article 5 of the Interpretation on Several Issues concerning the Application of Law in Handling Criminal Cases of Credit Card Mismanagement, issued by the Supreme People's Court and the Supreme People's Procuratorate in December 2009, the unauthorized acquisition and use of another person's credit card information via the internet or communication terminals shall be regarded as impersonating another's credit card and prosecuted as credit card fraud.

Since third-party payment platforms rely on users' bank accounts to operate, the linked accounts in these platforms represent virtual extensions of traditional credit cards. As such, the same judicial interpretations apply to the regulation of fraud committed through digital payment platforms, covering both unauthorized fund transfers and fraudulent transactions. The judicial interpretation recognizes third-party payment platforms as possessing independent disposal authority, making them legitimate subjects of fraud. This shows that the legislature and judiciary acknowledge the independent agency and disposal awareness of third-party payment platforms in online financial transactions.

Specifically, third-party payment platforms exercise independent authority by reviewing user-submitted applications and deciding whether to approve or reject fund transfers. This decision-making power grants them substantial disposal authority. Their independent status allows these platforms to act as direct targets of fraudulent behavior in cases involving illegal activities. This aligns with the legislative intent and judicial interpretations.

In conclusion, recognizing the independent disposal authority of third-party payment platforms and their eligibility to be considered targets of fraud reflects the spirit of the law. The platforms' authority to approve or deny transactions makes them active participants in financial operations, and their involvement in such operations aligns with legislative goals to regulate and address new forms of financial fraud.

4. Constructing and Recognizing the Disposal Awareness of Platforms under the Theory of Presumed Consent

4.1. Constructing Platform Disposal Awareness under the Theory of Presumed Consent

The theory of presumed consent explains how asset transfers conducted through third-party platforms align with the intent of disposal by distinguishing between formal consent and substantive consent. It demonstrates that platforms can act based on mistaken beliefs, thereby confirming that platforms possess disposal awareness when formal conditions are met.

First, the operation of third-party payment platforms relies on predefined conditions set by the platform's rule-setters. These conditions include formal requirements such as account credentials and passwords, with the platform implicitly agreeing to execute asset transfers when the conditions are satisfied. This presumed consent ensures that third-party platforms have technical disposal awareness: the system automatically initiates transfers once the conditions are met, representing the intent of the rule-setters.

Second, in practice, third-party payment platforms rely on formal consent, meaning that as long as a user provides correct credentials, the platform considers the transaction authorized. This formal consent is objective and can be verified through automated processes. However, substantive consent reflects the actual intent of the rule-setters after understanding the full context. If a user operates under false pretenses, such as by using another person's account, the formal conditions for consent may be met, but the substantive intent of the rule-setters is violated. In such cases, the platform technically disposes of assets based on a mistaken belief, acting under erroneous assumptions.

The element of mistaken belief is embedded in the predefined rules set by the platform, aligning with the theory of presumed consent. When an offender uses deceptive means, the platform executes the transfer, mistakenly believing the user has the right to transfer the assets. This mistaken belief is a

key element in constituting fraud.^[5]

Through the lens of presumed consent, it becomes clear that third-party payment platforms, though they perform disposal actions, can be deceived into acting under false assumptions. Thus, the theory establishes a foundation for recognizing platform disposal awareness, showing that the platform operates under both legitimate conditions and in situations where it is misled.

In summary, the theory of presumed consent clarifies that third-party payment platforms possess disposal awareness under the predefined rules of their operation. The distinction between formal and substantive consent explains how platforms can execute transactions that are technically authorized but based on deceptive inputs. This analytical framework not only highlights the operational mechanisms of platforms but also provides a solid theoretical foundation for determining whether platforms possess legal disposal awareness.

4.2. Recognizing the Scope of Platform Disposal Awareness under the Theory of Presumed Consent

Building on the previous analysis, it is essential to further explore the scope of platform disposal awareness. To concretize and refine the theory, three dimensions—the object, the content, and the state of possession—are critical in guiding the determination of disposal awareness. These dimensions cover the core elements of disposal awareness, ensuring a comprehensive and systematic evaluation of the legal effects of automated platform operations.

4.2.1. Awareness of Possession of Tangible Property or Financial Interests

In asset transfers, the disposer must be aware that they possess tangible property or financial interests. This awareness can be broad or abstract. In many cases, possession is not explicitly declared by the possessor but is inferred from the long-term control and actual authority they exercise over certain items.^[6]

In fraud cases, the act of “disposing of property” involves both static possession and the dynamic transfer of that possession. This means that the disposer must have a clear awareness of the transfer of assets. Under the theory of presumed consent, third-party payment platforms are assumed to have disposal awareness once predefined conditions are met. This technical disposal awareness means that when these conditions are satisfied, the platform’s actions represent the intent of the rule-setters to authorize the asset transfer.

Disposing of tangible property requires a higher degree of individual awareness and direct control over specific items. However, the concept of financial interests is more abstract and general. On platforms, users’ actions—such as entering account credentials and passwords—are treated as consent to transfer financial interests, even if the users are unaware of the exact amount involved. For example, in a “phishing link” case, the victim may believe they are authorizing a transfer of 1 yuan, but in reality, they transfer 300,000 yuan. Although the victim has a general awareness of the financial interest being transferred, they misunderstand the specific amount. According to the theory of presumed consent, the victim’s behavior still constitutes disposal awareness because their actions align with the predefined rules of the third-party platform.

Thus, under the theory of presumed consent, a platform’s disposal awareness is primarily based on the user’s compliance with platform rules and their control over account credentials. Disposing of tangible property requires specific possession awareness, while the transfer of financial interests relies more on abstract or general awareness. As long as the user formally consents within the platform’s framework, the platform can presume disposal awareness and execute the asset transfer accordingly.

4.2.2. Awareness of the Content and Nature of the Disposed Object

From the presumed consent perspective, third-party payment platforms should differentiate between tangible property and financial interests in terms of disposal awareness. For tangible property, two main views exist: the categorical distinction, which requires awareness of the property type but not quantity or value, and the appearance-based distinction, where awareness is inferred from recognizable features like packaging.

Financial interests, as intangible assets, lack physical attributes, so these views do not apply directly. Instead, a different standard is needed. On third-party platforms, users imply consent by meeting operational conditions, indicating awareness of transferring financial interests, even without detailed knowledge of the amount. Here, user actions alone satisfy disposal awareness, as they align with platform rules, focusing on intent over specific asset details.

4.2.3. Awareness of Changes in the State of Possession

To assess disposal awareness, the disposer must recognize that their actions change possession. For tangible property, the disposer doesn't need detailed knowledge of the property's value, quantity, or type; these are "mistaken beliefs" rather than core to disposal awareness. As long as the disposer understands they are transferring possession, they are considered to have disposal awareness.

Under presumed consent theory, the platform assumes users have disposal awareness when they follow platform rules. The platform's automated processes interpret user actions—like entering account credentials—as valid disposal actions.

For financial interests, which are intangible and cannot be assessed by appearance, disposal awareness is shown through the user's intent to relinquish a claim over assets. When users initiate transactions, entering account information and confirming payment signal disposal of financial interests. Even if users misunderstand specifics, their behavior indicates intent to transfer. In presumed consent, the platform's recognition of possession change relies on user actions, not cognitive details. For tangible assets, understanding possession transfer suffices; for financial interests, intent to complete the transaction indicates disposal awareness.

Presumed consent theory enables platforms to legally recognize and execute property transfers as long as user actions meet operational requirements, addressing differences between tangible and intangible assets while ensuring transaction legality.

5. Conclusion

The theory of presumed consent provides a clear framework for understanding third-party payment platforms' disposal awareness in fraud cases. This approach aligns digital transaction mechanisms with legal principles, supporting judicial clarity and adapting to evolving online payment systems.

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