

Discussion on the Nature of Network Virtual Property and Civil Protection Measures - From the Perspective of a Contract Dispute Case

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Abstract:

In the face of the "Internet +" era, the rapid development of digital economy, the legislative mode of virtual property has been in suspense, which is not conducive to the protection of virtual property, and it is unable to cope with the challenges brought by the complex information era. In terms of legal attributes, virtual property conforms to the characteristics of usufructuary right in real right. The usufructuary right of virtual property is obtained by network users by signing contracts with network operators. With the shutdown of network servers, the usufructuary right is eliminated. Network virtual property has certain unique attributes. During the game activities of network users, the virtual property created has value and belongs to the personal income of network users. So far, our legislative status cannot satisfy the protection of network virtual property, the qualitative and protective measures of virtual property, the restriction of format clause and so on.

Keywords:

Network Virtual Property, Usufructuary Right, Measures of Protection, Standard Terms

1. Introduction

With the rapid development of Internet technology, the virtual property of the network comes into people's vision, and is gradually closely related to daily life, showing a complicated phenomenon. However, at present, the relevant legislation of network virtual property is still not perfect, and the positioning of network virtual property is fuzzy, which will inevitably lead to problems in the processing of virtual property cases, such as different sentences in the same case, which will greatly affect the quality and efficiency of the case, which is not conducive to the protection of virtual property. Therefore, it is particularly important to clarify the specific attributes of virtual property to solve the dispute over virtual property. This article first addresses the specific attributes of virtual property, and combined with the specific

case of the case analysis, to find out more conducive to the virtual property protection schemes.

2. Raising the Problem - Taking a Contract Dispute Case As An Example

Xu, a player of an online game, registered an account and recharged 93,343 yuan and 21,008 yuan respectively through his two mobile phone numbers. The status of its two mobile phone accounts belongs to the advanced account with all kinds of advanced equipment and pets and the VIP account with high fighting power respectively. On September 1, 2020, the game operation company issued a notice of game suspension. The game will stop recharge and new account registration on September 30, 2020, and the server will be officially shut down on October 30, 2020, including a compensation plan. The game will stop the recharge service and the registration of new accounts on December 30, 2020. On January 15, 2021, the server will be officially shut down, the game characters and other data will be completely cleared, and the compensation plan will be announced. The compensation plan is to issue a certain amount of virtual currency compensation every day during the period from the game recharge to the official shutdown. Xu believed that the online game company's action of shutting down the game constituted a breach of contract, so he filed a lawsuit and asked the network operation company to return the 114,351 yuan of the money it had recharged, and pay the notary fees, legal costs and other expenses arising from the rights protection.

The court of first instance rejected all of Xu's claims for lack of sufficient basis. The court of second instance held that the game player Xu and the online game operation company constitute a contractual relationship between the network service. According to the Terms of the Platform User Agreement, the online game operating company can shut down the game at any time, and Xu has been informed that the closing of the server by the game operating company does not constitute breach of contract. When terminating the operation, according to the principle of fairness, Xu's unused virtual currency shall be returned in the form of legal currency. The court of second instance finally ordered the game operator to return 25,300 yuan to Xu, while rejecting Xu's other claims.

3. The Attribute Dispute about Network Virtual Property

3.1. Legal provisions for the positioning of virtual property

Virtual property is a kind of virtual material created by network producers, which is possessed, used and benefited by network users by means of data as the carrier and attached to media such as website platform. There are many kinds of virtual property, such as online games (game accounts, game characters, game equipment, etc.), E-mail, virtual currency and so on. With the progress of Internet technology, the types of virtual property are still showing a growing trend of expansion.

As far as the legislation status of virtual property is concerned, Article 127 of the Civil Code recognizes the property attribute of virtual property, and virtual property has property rights and interests. For the specific nature of virtual property, the first legislative draft of the General Provisions of Civil Law, the virtual property for the first time appeared the legal term, and the virtual property was characterized as real right, although it was not shown in the official General Provisions of Civil Law, it can

be seen that legislators intended to classify virtual property into the domain of property right. Later, the Civil Code issued in 2020 followed the provisions on the protection of virtual property, but did not specify its specific nature and protection methods in the form of specific laws. Up to now, there is still a lot of blank space in the legislation of virtual property.

From the point of view of the legislative logic of the Civil Code, the relevant provisions of virtual property are located after the “other civil rights and interests” in Article 126. In the context of civil rights in Chapter V of the Civil Code, Articles 109 to 125 stipulate specific personal rights and property rights in civil rights, while Article 126 provides a full statement of other civil rights that do not conform to personal rights and property rights, thus indicating that virtual property is not a “civil right” but only a “civil rights and interests”. It can be seen that under the current legal background, the degree of protection of virtual property is weak, and it can only seek relief in the case of infringement.

3.2. Qualitative discussion of virtual property

As far as the specific nature of virtual property is concerned, because the positioning of virtual property in relevant laws has been left blank, there is a large space for discussion. There has been a great controversy about the nature of virtual property in the academic circle. As for the specific positioning of virtual property, the mainstream views mainly include the theory of real right, creditor's right, intellectual property right, new property right and so on. Scholars who support the “real right theory” believe that virtual property conforms to the characteristics of objects, and it is most appropriate to apply the property law to protect it. Scholars who support “creditor's rights theory” believe that in the legal relationship around virtual property, there are several contracts such as network service contract, virtual property sales contract and so on, which are mixed together to form a mixed contract. The realization of debtor's rights depends more on the technical support and cooperation of network operators, so virtual property should be identified as creditor's rights. “Intellectual property theory” can be divided into two main viewpoints. One is that virtual property is created by the operators of intellectual achievements, players enjoy the right to use the product; Second, players create new intellectual achievements in the course of game activities. Scholars who support “new property rights” believe that the division of virtual property into existing theories is not suitable for some situations, and it is necessary to break the shackles of traditional theories and create a new type of property rights.

Based on the above views, this article is more inclined to the view of property rights. First of all, virtual property should not be identified as creditor's right, the object corresponding to creditor's right is behavior, and the subject constrained by creditor's right is only the two parties who establish the contractual relationship. When the rights and interests of the right holder are infringed, according to the relativity of the contract, they can only ask the other party to compensate for the loss. However, when the subject of infringement is a third party other than the parties to the contract, it is impossible to obtain complete rights relief in the mode of relying only on creditor's rights relief. From this point of view, the theory of creditor's rights can not provide comprehensive protection and relief for virtual property, so virtual property should not be defined as creditor's rights. Secondly, virtual property should not be identified as intellectual property. Although virtual property is produced by network developers, the novelty of some of its information is not enough to meet the novelty standard

required by intellectual property. Moreover, for the new property rights of virtual property, although virtual property is an important right in the information age, in the current legal system, it is inconsistent with the legal stability to hastily add a new right, and for the new property rights, relevant laws need to design a complete legal system, which will increase the legislative cost to a large extent. Therefore, the establishment of new property rights is not the best choice.

This paper considers that the virtual property as real right is more in line with its intrinsic characteristics and can adapt to the development of modern society. If we want to classify virtual property as real right, the first obstacle we face is whether virtual property is the object of real right. The object of the real right is mainly embodied as the *res corporales*, but it does not mean that the *res incorporales* cannot constitute the object of the real right. Matters that have no specific form, such as electricity, natural gas and wind power, are also gradually classified in civil law with the progress of science and technology so as to adapt to social development. As for virtual property, it can be included in the scope of real right through relevant interpretation of Article 127 of the Civil Code.

Secondly, as for the issue of real right as the eminent domain, some scholars believe that the fact that virtual property is attached to the network platform provided by the network operator has become a key obstacle that the virtual property of the network does not have the real right attribute. Virtual property has its unique property in the form of network virtual things, that is, it can only exercise its rights by connecting to the network and logging in to the network platform provided by the game operator. At the same time, the usufructuary right which virtual property belongs to is a kind of restricted right, which is not completely dominant. The owner of the virtual property is the network operator. The network user can use the virtual property through the platform provided by the network operator and only enjoy the right to possess, use and benefit from the virtual property. The network user and the network operator obtain the usufruct of the virtual property by signing the form contract. During this period, the network user and the network operator are in an equal position, and the network user has the right to occupy, use and benefit from the virtual property. The network operator needs to ensure that the relevant network users' rights are implemented, and when the network server is terminated, the usufructuary rights are eliminated.

4. Return to the Case - Analysis of the Completeness of Virtual Property Protection Measures

In online games, the acquisition of virtual property can be divided into three stages: in the first stage, game users sign format terms with network operators before entering online games; The second stage is the game users in the process of online games, through various ways to obtain virtual property; In the third stage, the network operator shuts down the game server and the virtual property ceases to exist. The following will follow the sequence of three necessary stages in the whole process of using virtual property, analyze the rationality of relevant factors affecting the protection of virtual property, and then draw a conclusion whether the protection measures of virtual property are complete enough.

4.1. The reasonableness of the standard terms

In online games, if users want to enter the game for game experience, they must first accept the network service agreement (standard terms) provided by the network operator in order to enter the game. However, in reality, most network users do not pay enough attention to the legal issues related to their own rights and interests contained in the network service agreement. They have not fully read or even browse the network service agreement or even have doubts about the terms, but they choose the consent option and enter the game in order to obtain the game experience. At present, the relevant provisions of the format clause are not perfect, but when the judge decides the case, this format clause often becomes the important legal basis for dealing with the network virtual property related cases.

This case is based on the Provisions of the Supreme People's Court on the Time Validity of the Application of the Civil Code of the People's Republic of China. The establishment of the contract and the disputes arising from it are established before the implementation of the Civil Code, and the relevant provisions before the implementation of the Civil Code shall apply. According to the provisions of the Platform User Agreement, the trial court determined that the network operator's behavior did not constitute a breach of contract.

However, the standard terms signed by the network operator and Xu contain "We reserve the right to unilaterally suspend the performance of this Agreement and terminate this Agreement at any time, without prior notice and without any reason". "The user fully understands that: Except for the circumstances stipulated in Article 22 of the Interim Measures for the Administration of Online Games, the online virtual currency not used by users and the game service not expired shall not be discounted or returned. Whether it is fair and reasonable remains to be examined.

4.2. Virtual property acquisition and ownership

The acquisition of virtual property includes two steps: first, the network producer creates virtual property through technical labor; second, the right to use virtual property is transferred to the network user by signing the format terms with the network user. The users of online games create new virtual property in the process of playing online games. There are three main ways for network users to create virtual property: first, they can obtain virtual property by replenishing real currency; The second is to acquire virtual property with other online game players through trading means or by other game players gift way; The third is that the game player obtains through the "labor" method of condensing his time and energy.

In this case, the acquisition of virtual property involves not only the virtual currency obtained by Xu through replenishing money, but also the equipment acquired by Xu through spending the virtual currency during the game. In addition, it also includes the virtual property such as the game equipment acquired by Xu through "labor".

According to the property right attribute of virtual property, the game user enters the initial interface of the game. The source of all equipment in the game is the online game operator, and the game user can exercise the rights of possession, use and income in the game. However, through the creation and consumption of the game users, the virtual property in the game often increases or decreases at the end of the game, and the value of the virtual property is different from the original. Virtual property is owned by the network operator, but this does not deny the fact that users of the game create virtual property during the course of the online game. New virtual property created by users during the game is still valuable compared to the original

virtual property. Although the virtual property should belong to the network operator, it cannot deny the new value created by the network users in this process.

4.3. Loss caused by game server shutdown to network users

When the game server is shut down by the game operator, the game server is shut down and the usufructuary right is eliminated. Shut down the server for the game users, not only the loss of the game experience, the user's virtual property also immediately no longer exists, so it seems that the network game server closed to the game users caused by the impact is self-evident.

In this case, Article 8.14 of the Platform User Agreement Terms signed by the Game Parties stipulates that “We” reserve the right to unilaterally suspend performance and terminate this Agreement at any time, without prior notice and without any reason. Such suspension or termination may be due to our dissolution, cancellation, merger or division, or the termination or early termination of the contract between us and the company that owns the product regarding our agent operation of the game. It may also be due to national laws, regulations, policies and orders of state organs, or other force majeure events such as earthquake, fire, sea, typhoon, strike, war, or other reasons other than those listed above. Two months before shutting down the server, the company announced in the form of an announcement that it would officially shut down the server and clear all data such as characters in the game. Then the shutdown time was adjusted in the form of an announcement. During this entire period, the request to shut down the servers was made unilaterally by the game operators without any consultation with the game users. Game users have been in a passive position, forced to accept the claims made by the operators. The behavior of game operators to shut down servers in this way is questionable for the fairness of network users.

4.4. Network virtual property loss relief mode

In reality, taking online games as an example, the network virtual property suffers losses, and the source of the infringement can be either the network operator or the game user who signs the standard contract, or the third party outside the contractual relationship.

In this case, the rights subjects involved in the network virtual property are respectively network operators and online game users, and there is a contractual relationship between the two parties. Xu on the grounds that the network operator does not belong to the normal business behavior, to the people's court to request the network operator to return all the money for the two accounts. The court of first and second instance both held that the game operator has the right to terminate the contract at any time, and its shutting down of the server according to the operation situation is a normal business behavior, in line with the industry practice, and in line with the relevant provisions of the Platform User Agreement signed by the two parties and the Notice on Strengthening the Management of Virtual Currency in Online Games issued by the Ministry of Culture and the Ministry of Commerce, so it does not constitute a breach of contract. Although the fairness of the standard terms signed by both parties in this case is disputed to some extent, Xu did agree to the relevant provisions of this clause before entering the game, and there is no evidence to prove that Xu was against his true intention when he signed the terms, so it is difficult to seek relief on the grounds of breach of contract by the other party.

As virtual property belongs to the scope of real right, in the path of relief, it can also be the Angle of infringement, for Xu held virtual property damage relief. The virtual property Xu harvested until the game server was suspended mainly consists of two aspects: one is the real currency recharged into the virtual currency, the other is the virtual property created through his own "labor". The real currency that Xu recharged has been converted into virtual currency, part of which is used to buy game equipment and other purposes. Xu has realized his corresponding rights in the game. For the currencies converted into virtual currencies and not used, the court of second instance relied on Article 22 of the Interim Administrative Measures for Online Games, which had not been repealed at the time of the case. And Article 2 (11) of the Notice on Strengthening the Administration of Virtual Currency in Online Games issued by the Ministry of Culture and the Ministry of Commerce [Article 2 (11) of the Notice on Strengthening the Administration of Virtual Currency in Online Games stipulates that when terminating the service, users shall terminate the virtual currency that has been purchased but not used by users. The online game operator must refund the money to the user in legal currency or in any other way acceptable to the user.] This article also agrees that the Internet operator should be ordered to return the virtual currency that Xu has bought but has not used. But in addition, although the virtual property should belong to the network operator according to the usual-right attribute of the virtual property, it is undeniable that Xu also has certain value for the virtual property created by his own "labor". This paper believes that relevant evaluation should be carried out on this part of the virtual property. The company shall pay compensation to Mr. Xu in real money or in any other way accepted by Mr. Xu.

5. Suggestions on Improving Virtual Property Protection Measures

The relevant issues reflected in this case are a microcosm of the inequality between game operators and network users in the entire online game environment. As a prerequisite for game users to enter the game, there are some phenomena such as avoiding their own responsibilities and restricting the rights of the other side. When users play online games, they create new virtual currency that has some value, but when the server shuts down, the virtual property is wiped out. At present, there are still loopholes in the virtual property protection measures, which need to be improved and perfected.

5.1. Limit the content of standard terms

Standard terms are unilaterally made by network operators. Although it facilitates the transaction mode between network operators and users, in reality, operators evade the law for their own interests in an endless stream. Some scholars put forward that the restriction of standard terms can refer to the legislative mode of standard terms in the civil law of Germany, Europe and other countries to set a blacklist of standard terms and specify the types of invalid standard terms, so as to be more conducive to handling contract disputes. In addition, under the legislative mode of standard terms, for online games, the formulator of standard terms is forced to consult users' opinions on the contents involving users' rights and interests in the terms, so as to encourage network operators to continuously improve the content of standard terms, ensure the fairness of standard terms and safeguard the rights and interests of both parties. In the content of standard terms, set the minimum reading time of game terms and mandatory options to further strengthen the network users' attention to the standard terms.

5.2. Guarantee virtual property relief for network users

When online game users participate in the game, the virtual currency purchased through real money but not put into use, and the virtual property created by online users through their own efforts and time spent in the game should be included in the income of individual users. In the case that unused virtual currency is converted into real currency, it can be returned according to the proportion of virtual currency purchased by users. However, in the case of virtual currency created by network users themselves, there are still some obstacles in the conversion mechanism. Based on this point, it is necessary to establish and improve the relevant network virtual property evaluation mechanism, strengthen the relevant construction in this field, and then guarantee the relief of the loss of network users' virtual property.

5.3. Formulated and introduced relevant legal interpretations

At present, the legislation of virtual property is still limited. Virtual property is still in a state of fuzzy location boundary, which has a certain obstacle to the protection of virtual property. The Supreme People's Court should issue a judicial interpretation of Article 127 of the Civil Code as soon as possible to clearly define the positioning of virtual property and its protection methods. In addition, the standard terms related to the signing of virtual property also need to be further restricted to balance the rights between network users and network operators. As virtual property is located in the network environment, its audience is mainly young groups. In the current era of new media intelligence, in addition to the traditional propaganda, online media and other relevant channels can be used to make legal publicity videos and other ways to carry out legal education to the group, so as to increase the legal awareness of the public for the protection of their own rights and interests, so as to further promote the protection of virtual property.

6. Conclusions

Network virtual property as the product of the Internet era, we need to strengthen its protection. However, the lack of related legislative protection documents of virtual property hinders the protection of virtual property. Relevant legislative departments should clarify the specific attributes of virtual property, characterize virtual property as usufructuary right in real right, and clearly restrict the relevant legislation about users' own rights and interests in the standard clauses. At the same time, strengthen the supervision within the industry to achieve the coordination of industry supervision and legal supervision; We will intensify the publicity of the law and enhance the legal awareness of the masses to safeguard their legitimate rights and interests in virtual property, thus strengthening the legal guarantee for the development of the Internet in the information age and contributing to the construction of a socialist society with Chinese characteristics in the new era.

Conflicts of Interest

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