Civil Law Protection of Network Virtual Property

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Abstract: With the rapid development of science and technology, the form of property is not confined to the traditional concept of real life any more, and it also includes network virtual property. Besides, economic benefits are considerable as the network industry grows, which makes trading of virtual property a very common behavior in the real world. In such situation, there are various disputes concerned with virtual property emerging. However, relevant research and legislation can’t make breakthroughs as virtual property has vague legal status, complicated process of identification, and different definitions as well as unsolved legal protection method in academic field. Compared with the development of the network industry, legislation in the scope of virtual property has lagged far behind, which is hard to be the theoretical basis for solving disputes. By analyzing the attributes of virtual property, and combining relevant cases with research results, the author seeks to put forward the protection rules of virtual property in line with the current situation in China, with civil law protection as the core. Possible further researches and prospects on protecting virtual property are also discussed in this article.

Keywords: Protection of Virtual Property; Civil Law Protection; Application of Civil Law

1. Attributes of network virtual property

1.1 About the theory of virtual property attributes

There are three representative theories about the virtual property attributes, which are theory of intellectual property right, theory of creditor’s right, and theory of real right.

1.1.1 Theory of intellectual property right

In this theory, the attribute of virtual property, which is explained from its source, is defined as intellectual property because players have devoted their time and creativity.

1.1.2 Theory of creditor’s right

This theory defines the attribute of virtual property as creditor’s rights, and believes that players pay game companies to obtain virtual property. The theory explains the attributes around the legal relationship between parties.

1.1.3 Theory of real right

This theory defines the attribute of virtual property as real rights, which is mainly based on the dominance and exclusiveness of virtual property and the feasibility of independent management in the economic field. It takes virtual property as a special items, and holds that the relevant provisions of existing laws on real rights should be applied to[1]. The theory goes straight to the key point and explains its attributes from the virtual property itself.

1.2 Opinions towards virtual property attribute in this article

Although the above theories have their own features and rationales, all of them have shortcomings. Firstly, intel-
lectual property is supported legally, and the achievements must be confirmed or granted based on special laws before the property being produced\(^2\). However, the reality is that none of the current intellectual property laws and regulations in China mentions the provisions are related to virtual property. Therefore, the theory of intellectual property lacks legal basis. Secondly, the theory of creditor’s right ignores the relationship between the player and the third parties, other than the online game company, when the player dealing with virtual property. It only focuses on the contractual relationship between the player and the company, which is obviously wrong. Although the relationship between the player and company is protected by creditor’s rights law, the relationship between the player and the third party is not. Especially when the third party steals the virtual property of the player through improper methods, the creditor’s rights theory is limited to the principle of contractual relativity, which means that the player can only claim compensation from game company. However, companies have limited ability to bear all compensation liabilities when the loss is big. Under such situation, insisting on the theory cannot protect rights of the both, and it is not fair and judicial. Therefore, the theory cannot reveal the attributes of virtual property accurately. Finally, the theory of real right takes virtual property as a special item, which is worth mentioning, but it is not enough to confirm that the player enjoy real right. After all, there are quite differences between virtual property and civil law in terms of changes in rights.

This article holds that virtual property should be regarded as quasi property similar to real right, based on the reasonable proposition of the theory of real right and combination of the advantages of the other two theories. Advantages are listed as follows when regarding virtual property as quasi property. First, it is beneficial to protect the interests of players. In view of the fact that the third party often steals the virtual property from the player by improper means, this opinion declares that the player has the right not to be infringed by others on the virtual property, which is conducive to preventing the infringement. Second, it can help regulate the trading behavior of virtual property. Currently, it is difficult to distinguish between right and wrong disputes in the transaction of virtual property, which is caused by the lack of relevant regulations. The author believes that virtual property enjoying quasi property right, from the player’s point of view, indicates that some provisions on real right in Property Law can be appropriately adopted in the transaction of virtual property, so that it is not so difficult to solve relevant disputes. Moreover, there are some standards for reference.

2. Analysis on the necessity and feasibility of civil law protection of network virtual property

2.1 The necessity of civil law protection of virtual property

The necessity of civil law protection of virtual property is mainly reflected in the current situation of virtual property protection and the exposed problems. Only by finding specific methods to solve the problems can we explore the efficient way to protect virtual property.

With the development of network technology, virtual property, as a new emerged thing, its rising status of makes it difficult for us to ignore its existence and development. What needs to be concerned is that the legal protection of virtual property in China is almost blank at present. On the one hand, there are almost no clear regulations on the protection of virtual property in legislation. On the other hand, the judges who have made disputes over virtual property in judicature interpret and use the legal provisions flexibly in line with the basic spirit and principles of the law, but they often have different or even opposite judgment trends because of the different understandings of the existing laws by the judges. The typical case is that Qi Lifeng accused Beijing Jinshan Digital Entertainment Technology Co., Ltd. (hereinafter referred to as “Jinshan Company”). Qi Lifeng accused Jinshan Company had frozen\(^1\) his game account and requested to restore the account on the grounds that it violated the terms of the game service contract. Regarding the case, the court of first and second instance had unexpectedly made two completely opposite judgments. The court of first instance held that the plaintiff had no subjective fault and decided to support the plaintiff Qi Lifeng. However, the court

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\(^{1}\) See the Civil Judgment of Haidian District People’s Court of Beijing (2005) Haiminchuzi No.16013; Civil Judgment of Beijing No.1 Intermediate People’s Court (2006) No.1 Zhong Min Zhong Zi No.2584.
of second instance held that a service contract relationship was formed between the plaintiff and the defendant, and the plaintiff should unconditionally accept the terms of the game, so the judgment supported the defendant Jinshan Company. It can be seen that different understandings of the flexible application of the law can lead different judges to make different civil judgments on the same virtual property dispute case. Although this is a brave and bold exploration and attempt in the civil law protection of virtual property, it also indirectly shows that in practice, the disputes of virtual property in China are solved in disorder. Moreover, attentions need to be paid to the current situation of civil law protection of virtual property.

Law is not clearly stipulated, both in the nature and the protection measures of the virtual property. When the virtual property dispute occurs, player still hopes to initiate an interest appeal to the court as a fair referee through litigation and accusation, because the player cannot get a fair referee convincing him from the game company. The increasing number of virtual property disputes in practice also corroborate this situation. As the referee of the conflict of interests, the responsibility of the court is particularly important. Twenty years after its born, the rapid development of commercial Internet has caught other slow-developing fields unprepared, especially the legal field. Even the United States, as the birthplace of the Internet, has not accumulated many formed legal templates for us to refer to. The gap between the development of Internet and the development of law is so big that it is difficult to fill in for a while. From the current situation of virtual property protection and the problems exposed, it can be seen that it is extremely urgent to strengthen the civil law protection of virtual property. Because of this, it is necessary to rely on our own exploration to promote the perfection of civil law protection of virtual property step by step.

2.2 The feasibility of civil law protection of virtual property

The feasibility of civil law protection of virtual property is mainly reflected in the legislative level. South Korea, which has developed game industry, is worth learning from. In South Korea, legislation clearly stipulates that virtual property has property value independently of companies, and companies have the obligation to preserve and protect virtual property for players. The status of virtual property in Korea is no different from money in bank accounts. Thus, South Korea believes that virtual property belongs to a kind of “electronic money” for protection. The related cases in China have also explored the protection of virtual property in practice. In the famous Li Hongchen case in 2003, both the first trial and the second trial ruled that the company should restore Li Hongchen’s lost virtual equipment, which made many players see the hope for legal protection of virtual property. They, therefore, joined the group of defending their virtual property rights through law, too. Although China isn’t takes legal precedent as its legal source, this famous case still provides a good beginning for the protection of virtual property in our judicial practice. From the above analysis, it is feasible to take civil law as the most basic protection level to protect citizens’ virtual property from infringement.

3. Application of civil law in virtual property protection

"Whenever the development of industry and commerce creates new ways of communication, law has to admit that they are new ways to obtain property.” Just as Marx and Engels said, law has to admit that virtual property is an important property right and make adjustments to adapt to the changes when virtual property has just stepped onto the historical stage. Article 127, which was approved in the year of 2017, first gets contents of online virtual assets involved in the General Rules of Civil Law, a big step in the civil law protection of virtual property in China[3]. As mentioned above, judges have different judgments due to different understandings of the existing laws in the judicial practice, whose beneficial impact on society and justice should not be underestimated. There isn’t one standard answer on the test paper of law protection of virtual property. Judges are the candidates, with the responsibility of the times, to hand in their own answers inalienably. However, due to the strict restrictions on judges’ discretion, and the hope that judges can pursue legal certainty, others still require them to follow some basic legal spirit and principles in the judicial practice of virtual property. It is generally believed that there are two types of rights, namely absolute rights and relative rights, in the field of civil law, according to the effectiveness of rights. In this classification, the basic framework of tort
law and contract law of civil law system is basically designed[4]. In China, there are mainly two types of civil disputes over virtual property, which are disputes between players and companies, and disputes between players. For the former type of disputes, it can be effectively resolved according to the contract law because there is a service contract between the player and the company. While the latter one is often confirmed that players enjoy quasi property rights, and remedies are provided for the infringement of real rights that infringe on other people’s virtual property according to tort laws, due to there isn’t contractual relationship between players. Therefore, the relief in contract law and tort law is mainly applied in the judicial practice of virtual property protection.

3.1 The protection by contract law

Since the contractual relationship between the player and the company, the company’s virtual account registration clause can be understood as an offer. Correspondingly, the player’s behavior of registering the virtual account is a promise. On this premise, the service contract has been declared as soon as the player successfully registers the game account. Therefore, when this kind of virtual property dispute occurs, relevant provisions of the contract law can be applied to. The following key points need to be put forward to improve the court’s practical work.

3.1.1 The recognition of the validity of standard clauses

When writing the terms of registration of virtual accounts, game companies will definitely not sit down and negotiate with players, and such terms will appear when every player register an account. Therefore, the service contract can be regarded as a format clause in accordance with the relevant provisions of the Contract Law. When dealing with virtual property dispute, the court, before confirming whether the player is in breach of contract, should do examining the validity of the format clause. It is necessary to judge whether the dispute belongs to the clause mentioned in the Contract Law that the game company shirk responsibility and increase the burden on the player. Besides, it is needful to evaluate the clause that exempts the company from losing the player’s virtual property due to major obsolescence, and whether the clauses involved are invalid. If the terms are invalid, the player need not bear the liability for breach of contract.

3.1.2 The termination of the contract

If the clause complies with the relevant provisions of the Contract Law and the player is in default, the company has the right to terminate the contract, according to the relevant provisions of Article 94 of the Contract Law. However, there is difference when terminating the ordinary service contract. Once this kind of contract is terminated, the virtual property, including creation and time, created by the player’s will be vanished in an instant. Therefore, considering the particularity of the contract termination, game companies should give players a certain period of time to transfer legally occupied virtual property before end the service contract. If players have objections to the cancellation of the contract, they have the right to raise objections to the people’s court or arbitration institution within a reasonable period of time. If not, the property shall be transferred within the specified time limit, and the losses caused by the delay shall be responsible for players themselves. Only in this way can the legal rights of both parties be guaranteed.

3.2 The protection by tort liability law

When the third party steals the virtual property by improper means, the player, as the obligee, has the right to request the protection of tort liability law. However, although the third party should undoubtedly bear tort liability for stealing, in practice, the infringer cannot find and confirm his identity due to the disadvantages and technical limitations of virtual network. Therefore, in order to make up for the losses suffered by the players, game companies should bear supplementary compensation liability for failure to fulfill the security obligations for the virtual property of the players. The reasons are discussed as follows.

Firstly, the virtual property of players exists in the specific space of online games which is running based on the services provided by companies. Therefore, the control and domination of virtual property is completely restricted by the provided service. In this case, companies should assume the obligation to ensure the safety of the virtual property of players[5].

Secondly, companies make profits through games. In accordance with the principle that risks and interests are con-
sistent, game companies should appropriately share the risk of illegal infringement of players’ virtual property to protect their legitimate interests.

Thirdly, the technicality is beyond doubt, and it has the obligation to use certain means to prevent the third party from stealing the player’s virtual property by improper means.

Moreover, it should also follow the following three requirements when judging whether the company should bear tort liability.

Firstly, adopt the imputation principle of fault liability principle. Only when the company is at fault can it be ordered to bear tort liability to the player. If the company is not at fault for the loss of the player, it should not be ordered in this way.

Secondly, whether the companies are at fault or not, judges depend on their endless security obligations within reasonable limits. Only if they fail to fulfill the obligations can they be held responsible for the losses.

Thirdly, players are in a weak position, compared with game companies’ stronger technical and economic capabilities, and the relationship between them is similar to the sales contract relationship between consumers and businesses. With reference to the relevant policies in the Consumer Protection Law, companies only need to restore the players’ status without infringement by changing game data, without much actual loss. It should be presumed that companies have failed to fulfill their security obligations unless they prove that they have fulfilled their obligations.

4. Conclusion

Theoretical or practical flaws both exist in the legislative protection and judicial relief in China, and there are bound to be plenty of obstacles and difficulties that need to be overcome in the future. Civil law protection of virtual property, to be a huge legal project, not only needs the combination of theoretical breakthrough and practical accumulation, but also requires a large number of law practitioners contributing their own efforts. It is an honor to participate in the process of exploring the civil law protection of virtual property. The author, expressing some personal views in this article, hopes to leave some footprints in the great history, and be true to the spirit and belief of a legal practitioner.

References