

Exploration on the legal protection of the reputation Right of the virtual subject in the meta-universe

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Abstract: To solve the problem of personality right of virtual subject is the premise of dealing with the needs of the rapidly growing metaverse inhabitants and protecting the reputation right of virtual subject. The virtual subject should exist independently from the personality interests of the real subject, that is to give the virtual subject an independent legal status. It is necessary to improve the legal provisions of the virtual subject's right of reputation tort, so that when the virtual subject's right of reputation is infringed, it can better identify the tortious acts and use relevant legal provisions to protect them.

Key words: meta-universe; Virtual subject; Right of reputation

In the digital world of the meta-universe, a virtual subject corresponding to and mapping to the real physical space will be formed, and various legal relations will be generated between these virtual subjects. So whether the virtual subjects exist in the metauniverse independently or in different ways of existence of the same subject, when the virtual subjects suffer from illegal infringement or slander by others, whether the law can protect them and how to protect them, is a brand new subject.

1. The legal personality of the virtual subject

(1) The virtual subject legal personality theory dispute

Virtual subject refers to the person or organization in the real world in the computer network with the IP address of the computer as the identification code, using TCP/IP protocol to carry out various activities in the computer network. China's Civil Code does not provide specific provisions on the legal personality of the virtual subject. Whether virtual subject is "person" in law, there are two opinions in the academic circle.

The "affirmation theory" holds that the independent protection of virtual subject has nothing to do with the real subject, and the identity of virtual subject acquired through a lot of practical activities in the virtual world has independent personality rights, which should be protected. Professor Yang Lixin put forward: "While the law protects the personality rights of natural persons, the protection given by civil law should also extend to the personality interests enjoyed by law before or after the birth of the natural person." On this basis, some scholars point out that the virtual subject in the network is a special subject of extended protection and has the legal status of "quasi-personality".

The "negation theory" holds that the virtual subject is the data set by the natural person, and the data has no consciousness, and there is no way to talk about the right ability. The existence of the virtual subject depends on the natural person in the real world. It is the digital identity of an individual or organization in the real world in the virtual space, and it does not have the ability of independent existence. The virtual subject can be deleted or changed. If the virtual subject is given legal personality, it does not conform to the stability of the legal subject and the legality of the qualification of the legal subject.

(2) The importance of assigning legal personality to the virtual subject

The right subject of the virtual subject's right of reputation is the virtual subject itself. The virtual subject has established its own interpersonal relationship and reputation in the virtual society, forming a certain sociality, and has no connection with the natural person behind it, unless other users know the real identity of the virtual subject. The virtual subject's activities in the virtual space will be subjected to various infringements, such as false speech, network violence, invasion of privacy, etc., which will damage the virtual subject's reputation. The protection of virtual subject's reputation right is not only related to the virtual subject's own legitimate rights and interests, but also related to the order and stability of virtual space. No matter in the real society or the virtual society, the subject of social activities should enjoy the legitimate reputation right and its interests. The protection of reputation right in virtual space is no less important than that in real society.

In the metaverse, the identity of the virtual subject is often represented by a nickname. Through its nickname, the virtual subject establishes the interpersonal relationship and reputation exclusive to this identity in the virtual society, and obtains certain status and popularity, and even gains economic benefits in the real world. Once the reputation of the identity is violated, it will greatly affect the development of its normal activities in the virtual society and cause economic losses.

2. The problem of protecting the virtual subject's reputation right

(1) The challenge of virtual subject's reputation right protection to existing laws

The torts of virtual subject's reputation right in the meta-universe are diversified in forms and difficult to judge in nature. The content form of the information sent by the users of the metaverse to the metaverse is unrestricted, which can be in the form of oral language, written form, emoticons, abbreviations and so on. Certain memes, when used, appear to some as entertainment, but others feel offended. At the same time, the Internet has the characteristics of fast transmission and update, infringement information once published, will spread quickly,

may be replaced by other information or deleted by the infringer, it is difficult to keep traces. Even if traces of infringement are retained by copying, the evidentiary effect will be greatly reduced, and it is difficult to be used as a basis for judgment.

There are also difficulties in the judicial procedure of the virtual subject's right relief. A network account composed of simple numbers cannot be a suitable defendant, let alone the virtual subject, a digital "person". Although each user's personal computer has an IP address, through the implementation of the corresponding technical means, you can find the IP address of the computer sending information, but the IP address is dynamic, can also use technical means to achieve the purpose of hiding. In addition, different from the general infringement, virtual subject reputation tort does not have a clear place of infringement and the defendant's residence.

Moreover, the virtual subject does not have a life cycle like a natural person, but is created and deleted in the virtual world, which means that the virtual subject's right capacity has particularity. In the meta-universe, virtual agents can still be created after being deleted. In this way, whether the original civil rights disappear or are taken over by the virtual subject, the current civil rights system cannot give an answer. In addition, capacity for civil conduct is the qualification of the civil subject to carry out effective legal acts independently, which is limited by age and mental state. Since the appearance and personal information of virtual subjects in the meta-universe can be set freely according to their wishes, adults on the meta-universe platform may actually be just minors, so it is impossible to judge the age of virtual subjects simply from their appearance and information.

(2) Whether the infringement of virtual reputation is enough to constitute reputation infringement

Some people point out that the virtual subject is the extension of the natural person in the real world in the network environment. Even if there is no one-to-one correspondence between the two, there is still some correlation. Since the real subject behind them enjoys the right of reputation in the society, the subject as its extension should also enjoy its own right of reputation. Another view holds that virtual subjects are artificially designed, artificially created and artificially produced. They have no independent consciousness and cannot express emotions, and do not exist in the real world, so they do not have the ability to perceive others to insult and slander them. The view of judicial practice is that the infringement of reputation right is constituted when the virtual reputation infringement materially affects the real social evaluation of the real subject behind it.

This paper holds that when the tortious speech causes material damage to the virtual subject's reputation, it should be recognized that the tortious virtual reputation constitutes reputation tort, and it is not necessary to take whether the tortious speech is related to the real subject as the prerequisite for taking responsibility and obtaining relief, which is conducive to protecting the virtual subject's exclusive reputation rights and interests in the virtual society and restricting the torts.

3. Legal protection of virtual subjects' reputation Rights

(1) Endow virtual subject with legal personality concept

First of all, in the metauniverse, the personality rights of the virtual subject are independent of the real subject. In other words, the virtual subject and the real subject enjoy independent rights and obligations in different fields. The obligations that the virtual subject needs to fulfill in the meta-universe, such as signing a sales contract, can generally be fulfilled through face-to-face transactions or mail delivery and other ways. If the obligations cannot be fulfilled, the relevant evidence can be submitted to the platform for review, and the platform and users can negotiate or the platform will return the transaction funds and commodities to their respective accounts, but the obligation cannot be directly extended to the real world.

Secondly, in the metauniverse, the virtual subject independently carries out civil legal acts in its own name and assumes responsibility for the debts generated in the metauniverse with all its virtual property. In order to prevent the real subject from using the virtual subject's right to independently bear legal responsibilities to evade debts, such as transferring the virtual subject's property to the real account or deleting the virtual subject to evade debts, it can refer to the "denial of legal personality" system of the application of the Company law. To be specific, if the real subject abuses the virtual subject's independent personality and seriously damages the interests of creditors, the real subject and the virtual subject shall jointly and severally bear the legal liability.

Finally, the object of personality right of virtual subject and real subject has different legal characteristics. The personality of the real subject cannot be modified, transferred and abandoned at will, while the virtual subject is generated based on the social evaluation in the data and meta-universe, and the destruction of data will not necessarily destroy the independence and integrity of the virtual subject. In the metauniverse, it is very common to buy, sell and delete the nicknames of virtual subjects and the virtual characters they attach to. It should be recognized that the transfer and abandonment of the object of the virtual subjects' personality rights is effective.

(2) The recognition of the virtual subject's reputation right infringement

On the one hand, the subject of virtual subject's reputation right infringement should be identified. The infringement of virtual subject's reputation right is the subject of infringement, which mainly includes the subject: metaverse user and network service operator. Among them, meta-universe users can be divided into two categories: the publisher of infringement information and the disseminator. The publisher of infringing information is the person directly responsible for the infringement of the right of reputation, and usually has the intentional subjective intention. The disseminators of infringing information generally have the subjective psychological characteristics of intention or negligence, but they should not be identified as the liability bearers in a one-size-fits-all manner, otherwise it will increase the duty of care of users to publish or forward speech, which is not conducive to freedom of speech. As a legal person providing technical services rather than content services, network service operators can refer to the haven and red flag principles. When network users provide preliminary evidence of infringement and their own identity information to network service operators, network service operators should take appropriate and

necessary measures according to the evidence provided. If necessary measures are not taken in time, And shall be jointly and severally liable for the enlarged part of the damage and the infringer. Where the network service operator knows or should have known that the network user infringes on the rights and interests of others by using its network service but fails to take necessary measures, it shall be jointly and severally liable with the user.

On the other hand, it is necessary to determine the constitutive elements of the virtual subject's reputation right infringement. The elements of the virtual subject's right of reputation tort include: the object of infringement is the virtual subject's right of reputation, the way of behavior is to publish insulting and defamatory remarks, and the consequence of the behavior is to reduce the virtual subject's social evaluation. If a certain behavior conforms to the above elements at the same time, then the behavior should be identified as the tort, and bear the corresponding legal liability.

(3) Improve the legal provisions on the virtual subject's right of reputation infringement

Virtual space is not outside the law, but the virtual subject's reputation right developed in the network virtual space has its particularity, and the traditional reputation right protection provisions can not be fully extended to the virtual subject's reputation right. Therefore, it is necessary to regulate the virtual subject's reputation right tort in legislation, so as to protect the virtual subject's reputation rights and related property rights and interests.

First, there is no geographical restriction in virtual space, so the location of the computer system equipment used in the infringement or the equipment providing network services can be regarded as the place of implementation of the infringement, which is conducive to determining the court of jurisdiction of the case.

Secondly, the corresponding way of determining tort liability for different torts is adopted. The subject of infringement here is divided into ordinary users and influential users. For ordinary users, the fault liability principle can be applied; Influential users, because of their high level of public trust, should have more duty of care than ordinary users when making comments, so the principle of no-fault liability can be applied.

Third, according to the characteristics of the meta-universe, a special form of responsibility is adopted. Generally speaking, the tort refers to the virtual subject rather than the real subject behind it. Unless the user knows the real identity of the virtual subject, the negative impact caused by the tort is limited to the virtual space of the metauniverse, so the infringer can be required to publish the apology information to the influential bulletin board or the prominent position on the platform of the metauniverse. If the virtual property loss is caused to the victim, the property loss should be determined according to the spread of the infringing speech and the damage degree of the infringer and so on, and the infringer should be required to compensate the victim.

In conclusion, the legal protection of the virtual subject's right of reputation in the meta-universe is a complex and constantly developing problem, which needs constant discussion and new solutions. The protection of the virtual subject's reputation right is very important to maintain a fair and just metauniverse. It can not only promote the creativity of the virtual subject and the development and innovation of the metauniverse, but also affect the healthy development of the virtual subject itself in the metauniverse.

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