

Property Attribute and Property Ownership of Virtual Property

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Abstract: Virtual property has increasingly become a key issue, particularly regarding its nature, ownership, and goodwill acquisition, all of which are worthy of study. Analyzing these issues can contribute to a better understanding of how to develop laws and regulations to protect virtual property.

Keywords: Virtual property; Ownership; Goodwill acquisition

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1. Brief introduction of the case and the focus of the dispute

In 2020, the plaintiff Wei and the defendant Chen signed a sales contract. The contract stipulated that Chen would transfer game equipment from the game *Fantasy Westward Journey* to Wei, with Wei paying 30,000 yuan for the equipment. After the contract confirmed the transaction was completed, Chen was prohibited from filing any official complaints. Following the transaction, Wei immediately sold the batch of equipment in-game. Nine days later, the account was locked by the game officials. Upon addressing the issue with Chen, Chen provided Wei with his game account and password^[1]. Wei discovered that Chen had submitted a theft report for the account, leading the game officials to recover some of the items. Wei then sued Chen for breach of contract, demanding the return of the 30,000 yuan and compensation for liquidated damages.

The main points of dispute in the case are (1) the legal nature of virtual property; (2) who holds the property rights to the virtual property; (3) the validity of the contract between the two parties; and (4) the issue of virtual property and the principle of good faith acquisition^[2].

2. Legal analysis of the focus of the controversy

2.1. The legal attribute of network virtual property

China's current civil law does not provide specific regulations on network virtual property. During the

legislative process, a draft was proposed to incorporate network virtual property into existing provisions, but due to significant controversy, it was not adopted. There are notable legislative gaps regarding network virtual property^[3]. However, given China's increasingly prosperous gaming market, numerous disputes concerning network virtual property have arisen, making it necessary to supplement and improve relevant legal provisions. Presently, there are several theories regarding the property nature of network virtual property.

The property rights theory posits that network virtual property is a special type of object. In civil law, an object refers to material products that exist outside the person, can meet societal needs, and can be controlled by humans. First, network virtual property can be directly controlled by players^[4], such as the ability to upgrade, discard, or use various in-game items. Second, network virtual property can satisfy players' emotional needs by providing enjoyment within the game, which also serves social functions by connecting different people. Thus, it holds considerable value for players. Third, network virtual property exists independently of the player; it remains in the virtual world, unaffected by the player's presence in the real world, continuing to exist solely within the game environment^[5]. Based on this analysis, network virtual property can be considered a type of object under civil law. However, traditional legal thought holds that only objects in the real world are recognized as such, raising difficulties in accepting internet-based items as objects.

Another theory suggests that virtual property is a form of intellectual property. Players develop various in-game items and characters from scratch. Although players initially receive identical data from the official game server, over time, they personalize their accounts through time and effort, leading to different outcomes. This process can be considered an intellectual activity, making the account development a form of intellectual property. Intellectual property is intangible^[6], similar to virtual property, which cannot be physically touched in the real world. Moreover, intellectual property rights are exclusive, belonging only to the intellectual property holder. While virtual property ownership remains controversial, further discussion will follow in this article. Additionally, intellectual property rights are time-bound, meaning they can only be enjoyed within a specific period, a characteristic closely tied to the legal nature of intellectual property. Intellectual property must generally undergo legal procedures to be recognized. In these respects, there are certain challenges when applying intellectual property rights to virtual property^[7]. While virtual property reflects players' intellectual efforts through time and energy investment, it is not yet granted rights through formal legal procedures.

In this case, both the first-instance and second-instance courts ruled that network virtual property is immaterial, disposable, and tradable. The author believes that virtual property can be categorized as a new form of property with certain characteristics of property rights, though it differs from traditional real rights. Essentially, virtual property is a type of data information. Although this data is initially created by game operators, it takes on different characteristics depending on the player, and the resulting items are considered the players' labor outcomes^[8]. In the modern world, the property value of information is increasingly recognized, with significant interests tied to big data analysis. Most entities in society acknowledge the property value of information. Virtual property, as a form of information, undoubtedly possesses value, and since players contribute to its creation, it should be rightfully acquired by them.

2.2. If network virtual property is a real right, who should hold its ownership?

First, players invest significant time and energy in the process of playing games. For example, in the popular game *Genshin Impact*, players must explore extensively to fully unlock the world map and navigate where they wish to go. The development of game equipment and characters also requires substantial effort. Each player has

a unique understanding of the game and may choose to develop different game characters and equipment, which reflect their intellectual activities. The operator only provides an initial account^[9], which is essentially blank, and the subsequent development of the account depends entirely on the player. The increase in account value is directly attributable to the player's efforts. The Western concept of ownership control is derived from the idea that private property is acquired through personal labor, and any increase in value gained through private labor can naturally be controlled by the individual^[10].

Second, players provide a form of consideration within the game, as many games require a purchase to play. Players pay money to enter the game, which suggests they should have the rights to the virtual property. Additionally, some games require players to pay for rare characters and valuable equipment. If these items do not belong to the player, this would be patently unreasonable. The view that players merely purchase the right to use these items is also flawed. If only the right to use in-game items is obtained, then the destruction of items in the game should be considered a violation of the operator's ownership, leading to penalties, which does not align with real-life practices^[11].

Third, assigning virtual property rights to players could benefit the operators. Many game developers argue that game development is costly, with considerable uncertainty surrounding market success. If a game fails to attract players, the economic returns may be poor. However, granting ownership of virtual property to players addresses concerns when an operator ceases operations, which could otherwise infringe upon players' rights. A solution to this would involve informing players in advance, allowing them to sign a formal contract that stipulates the conditions under which the operator will discontinue services^[12]. This arrangement would balance the interests of both operators and players, ensuring players' rights are protected. Additionally, it would incentivize operators to develop games without fear of adverse effects. Considering players' interests during game development would also improve customer service, ultimately benefiting operators.

2.3. Whether the contract signed by both parties is valid

In this case, the court of first instance held that the contract signed by the two parties constituted malicious collusion, which damaged the interests of a third party, rendering the contract invalid. According to *Fantasy Westward Journey's* Player Code, NetEase does not recognize transactions conducted on trading platforms not officially provided by the company. This implies that players engaging in private deals outside of NetEase's platform are considered to be acting against the game's rules. Additionally, the court of first instance argued that since the parties only had the right to use the network's virtual property, the transaction was malicious and harmed the interests of NetEase.

The court of the second instance, however, ruled differently on the validity of the contract. It found that Chen held property rights over the virtual property in his account, and his right to voluntarily dispose of this virtual property to gain profit should be legally protected. The company's restrictions on offline transactions, which excluded the legal rights of players, should not be used to invalidate the contract.

This ruling by the court of second instance is more justifiable. First, even if Chen does not fully enjoy ownership of the virtual property, this cannot be grounds for invalidating the contract. A contract is valid even when a party does not have the right to dispose of the property. Second, both parties in the transaction were simply seeking to fulfill their respective needs. One aimed to make money, and the other sought to improve their game experience. The harm to NetEase's rights is uncertain, and the accusation of malicious collusion is unfounded. Therefore, the first-instance court's assessment of the facts was flawed.

NetEase's Player Code represents a formal contract, and not all its provisions are automatically valid. For instance, restricting offline transactions effectively excludes the legal rights of players, which can be deemed invalid and non-binding on players. As the provider of these standard terms, NetEase holds a natural advantage. If players refuse to sign the contract, they may be denied access to the game. Often, players may not thoroughly read such contracts due to their typically extensive content ^[13].

2.4. Network virtual property and good faith acquisition

Let's examine the constitutive elements of good faith acquisition. The first condition and prerequisite for good faith acquisition is that the transferor lacks the right to dispose of the property. If the transferor is the actual right holder, the issue of lacking the right to dispose would not arise. In reality, unauthorized disposals of virtual property typically occur due to account theft, which causes the rightful owner to lose control of the account. Alternatively, the owner may have shared the account password with someone else for use, only for that person to sell the account without permission.

In the case of theft, if it constitutes goodwill, the rules for goodwill regarding chattel would not apply to theft, and similarly, the unauthorized sale of a stolen account should not constitute goodwill. However, there is a special goodwill system in place. If the rightful owner knows their account has been stolen and was illegally transferred to another party but does not make a claim within two years, they may lose their rights to the account under the goodwill system ^[14].

The second condition is that the assignee must be in good faith, meaning the assignee is unaware that the transferor lacks the authority to dispose of the property. The law does not protect the interests of malicious parties. If the assignee is in good faith, their interests should be safeguarded to protect the security and order of transactions. However, determining good faith and malice in network virtual property transactions can be challenging.

First, network virtual property does not have a standardized value. Its worth depends on the buyer's perspective; for instance, a person who does not play games may find it worthless, whereas a dedicated player may attribute high value to it. Second, due to the anonymity of online transactions, buyers may find it difficult to verify whether the seller is the true owner. However, transaction records can provide insight: if the buyer and seller have previously engaged in multiple transactions, the likelihood of good faith increases, as the buyer may have concluded through past experience that the seller is the legitimate owner. Additionally, if the buyer has made numerous purchases of virtual property, they may be familiar with such transactions, making it easier to assess whether the other party is acting in good faith.

Another key issue is the point at which good faith is judged. There are two perspectives: one suggests it is when the account and password are delivered, while the other suggests it is upon logging into the game. From the standpoint of preserving the integrity of the game, good faith should be judged at the point of logging into the game. As a special type of virtual item, the legitimacy of a game account can only be confirmed when it is used, and this also helps the buyer determine whether the seller is the actual right holder ^[15].

3. Revelation advice

In today's society, the game industry is developing at an increasingly rapid pace and is becoming more closely intertwined with people's lives. The law should adapt to the changes in real society. Currently, there are

numerous legislative gaps in the game industry, which can result in harm to vulnerable players. Situations arise where operators violate players' rights, leaving players unable to protect their interests. Additionally, other players may cause damage to a victim's account, such as by compromising an account through unauthorized access.

The issue of financial account theft is common, and in reality, neither operators nor public authorities are able to adequately safeguard the interests of players. Operators may view such incidents as normal aspects of game operation, while law enforcement is often unable to open a case. Players invest considerable time, money, and emotional energy into their accounts, yet are left with no recourse for compensation when wronged, which is highly unjust.

There is no doubt that game accounts possess property attributes, regardless of ownership. The destruction of an account equates to the destruction of property, and those responsible for this destruction should be held accountable. At the same time, the game industry today includes a significant number of individuals who specialize in selling in-game items, with many relying on this as a profession. However, there is a lack of relevant legislation governing this area, and more legal frameworks should be established to regulate it. As the game industry continues to grow, the potential harm and impact will also increase.

Disclosure statement

The author declares no conflict of interest.

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