

# Research on the Legal Attributes of Personal Online Shops and the Problems in Their Transfer

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**Abstract**—The Internet economy has brought about some new legal issues, and the transfer of personal online stores is one. Through the analysis of the transaction mode in the transfer of personal online stores, this paper gives suggestions for the transfer of online stores from the perspective of e-commerce platform and buyers and sellers, in order to have a positive impact on the transfer of personal online stores. Through this analysis, on the one hand, the conclusion is that personal online stores have different legal status based on business activities and non-business activities. On the other hand, due to the multiplicity of personal online stores, e-commerce platforms often set restrictions on their transfer. The setting of the restriction clause has its reality and legitimacy, but there are also many problems, which should be regulated based on the user agreement.

**Keywords**—Personal online shop; Online store owner; Principle of distinction; User agreement

## I. INTRODUCTION

As China entered the Internet era, there have been tens of thousands of online trading platforms. The major online trading platforms provide a broad space for people to conduct online transactions, which facilitates people's lives and consumption patterns. However, the main body of online transactions is not its network platform, and it is various online stores, including both individuals and businesses. Among them, a personal online shop refers to an online shop set up on a network trading platform provided by a third party for the purpose of engaging in online transactions for natural persons, individual partnerships, or individual industrial and commercial households that have not obtained industrial and commercial registration, and is linked with personal real-name information. In real life, from the perspective of law, how to define the quality and ownership of personal online stores, and how to use legal thinking to analyze the problems in the transfer of personal online stores, which is very worthy of study and discussion.

## II. THE NATURE AND OWNERSHIP OF PERSONAL ONLINE STORES

### A. The nature of personal online shop

In today's electronic age, personal online stores are increasingly becoming a manifestation of narrow personal virtual property. As with other forms of virtual property, a personal online store is characterized by the legality of the property's possess ability, exclusivity, value, scarcity and exchangeability. Regarding the nature of virtual property, in

theory, there are "property rights", "intellectual property rights", and "debt claims". The "property theory" thinks that the virtual property of the network is the virtual network itself and the possessive electromagnetic record existing on the network. It belongs to the category of abstract objects and is the product of expanding the object of objects into virtual space. "Intellectual Property Theory" believes that because the virtual property of the network is novel, creative, reproducible and requires the characteristics of the carrier, and it can be used as an intellectual achievement created by the network company. The "debt claim" is mainly based on the technical service contract relationship between the online trading platform and the online store operator. It is considered that the virtual property is evidence that the user can request the service provider to provide specific service content.

**Conclusion:** I agree with the viewpoint of "property theory". In the theoretical system of property law, the object of property rights should be a physical object, a thing that possesses a certain space and possesses tangible features. However, with the development of economy and science and technology, the scope of things gradually breaks through the limitations of physical characteristics. As long as they have the possibility of legal exclusive control, they can be identified as objects. The virtual property possesses the characteristics of the property right, and thus the virtual property is dominant. But this dominance is different from the traditional way of dominance. This domination is achieved by the connection with the right of the object to achieve the ultimate control over the object. The direct control of the object of rights by the property right is no longer limited to the state of actual possession, but extends to the link of rights. Such rights associations or associations are ubiquitous in the dominance of intangible objects (such as light, electricity, sound, radio spectrum) or legal artifacts. Although there are different views on the legal nature and legal status of virtual property, this does not affect the dominance, exclusivity, and value characteristics of virtual property, which are available in personal online stores. The personal online store obtains profits through business operations, and excludes the interference of others and the e-commerce platform through the store password, and independently controls the operation and development direction of the store. Therefore, I believe that the nature of the personal online store as a virtual property is controlled by the owner of the online store as a kind of thing.

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### B. Ownership of personal online stores

As a virtual property similar to a property, the ownership of a personal online store is controversial. One view is that the virtual property is owned by the network user. The operator or the network platform only provides the user with a place to store the virtual property. They have no right to delete or modify the virtual property of the network user at will, and its nature is similar to that of the bank. The account or the deposit in the Alipay account, this view is "user ownership theory." Another point of view is that the ownership of the virtual property belongs to the operator, the virtual property is provided by the operator to the user, and the user only enjoys the right to use the virtual property, not the ownership. This view is "operator ownership theory".

I believe that for the attribution of virtual property, the "user ownership theory" should be adopted. First of all, the personal online shop as a kind of thing is controlled and dominated by the shop owner. Since the registration of the personal online shop, it is independently controlled by the owner of the personal online store. By setting a password, it excludes the interference of the operator or the network platform and others, and makes independent decisions. Although it still exists in the network space of the operator, in essence, it has been separated from the actual management and control of the operator. Secondly, operators have taken certain management measures for online store operations and platform order, but they cannot change the ownership of personal online stores. For example, in Article 24 of the Taobao Rules, if the number of goods sold in a shop that has been created for five consecutive weeks is zero, Taobao has the right to release the store. This rule gives Taobao the right to release the store in the event that the store continues to operate without business activities, but this is only a measure of the platform based on regulating the store owner's business activities and maintaining the order of the platform, and cannot change the personal online store. In summary, I believe that the personal online store, as a property, is owned by the owner of the online store.

## III. LEGAL STATUS OF PERSONAL ONLINE STORES

### A. Related disputes

Since the birth of the personal online shop, there has been a constant dispute over whether it is the legal subject or the legal object.

#### 1) Subject theory

(1) Commercial subject. It is believed that the legal position of the personal online shop should be the commercial subject, and the reason is mainly based on the following points. First, the personal online shop is in line with the implementer's behavior, the commercial behavior is the regular occupation, and the commercial subject of the three elements of the commercial conduct in its own name Qualification; Secondly, the transaction object of the personal online shop is not specific. It is a far-fetched practice to define it as an ordinary civil subject. Finally, online business activities have the same essential characteristics as traditional business activities, and solve the purpose of employment and survival. It is impossible to deny the profitability of the personal online store business activities. Therefore, it is biased to claim that the personal

online store can not become a commercial subject in order to solve employment and survival.

Whether individual online stores can be used as individual industrial and commercial households is also controversial. Supporting the personal online shop as an individual industrial and commercial household system, the individual industrial and commercial households have the characteristics of profitability and businessability, and after the industrial and commercial registration, they should face up to the legal status of the commercial subject of the individual online shop as an individual business owner, and register it. Recognize the status of its individual industrial and commercial households. In this regard, in the legislative proposal, there is a view that the individual online shop can be registered as an individual industrial and commercial household in the industrial and commercial administration, and can only engage in business activities after holding a business license, including online business activities. However, there are also opinions that the individual industrial and commercial household system is a product of the planned economy. The large number of individual online stores in the current market economic system are all registered as individual industrial and commercial households, which is not only difficult to operate, but also dampens the enthusiasm of individual online shop operators, hinder the development of e-commerce.

(2) Civil subject. Scholars who identify personal online stores as civil subjects believe that the current personal online store business is mainly for survival and employment, not to obtain investment profits to realize the value-added wealth, and there is no font size, no business premises, so this kind of personal online shop should be recognized as an ordinary civil subject and is adjusted by civil law. The personal online shop that is regulated by commercial law as a commercial subject should be limited to operators who have a font size and a business location but do not have a corporate form.

#### 2) Object theory

There are few opinions in favor of a personal online shop that is a civil object. The proponents believe that personal online stores have been widely recognized as a kind of virtual property. At present, the dispute over whether virtual property is property or not is the dispute of property rights, creditor rights and intellectual property rights, which is a major premise in civil objects. The personal online shop is the object of the owner of the online store who enjoys civil rights and bears civil obligations. It carries the objectivity that can satisfy people's material interests and also exists outside the store owner.

### B. Conclusion: the distinction between the legal status of personal online stores

I believe that to recognize the legal status of a personal online store, it is necessary to distinguish between a personal online store and an online store owner and the relationship between the two. Scholars' dispute over the legal status of personal online stores, although the focus of their debates is on whether personal online stores are civil or commercial entities, and whether personal online stores are civil or civil objects, the essence of which is to confuse personal online stores and online stores. The relationship of the owner. As a kind of property, a personal online shop is owned by the owner of the

online store. The legal status of the personal online store is different from the legal status at the time of transfer and inheritance, and should be treated differently. The personal online shop is the virtual property that the online store owner applies for on the third-party platform. The relationship with the store owner is very close, but the two are independent concepts and cannot be confused.

*1) In the business activities, the status of the personal online shop is commercial subject*

The legal subject is the main body of the legal relationship. It refers to the entity that enjoys or bears the legal effect of changes in social resources in accordance with the law. There is also a view that the legal subject is a person who is under the framework of legal regulation and has the responsibility to bear the burden of rights. Although the scope of the legal subject is gradually changing with the development of the times and the progress of the social economy, in the final analysis, it is the person who has the right to assume the obligation. In business activities, engaging in business activities and dealing with consumers, although these acts are carried out by the shop owner of the online store, but the real contract with the consumer to complete the contractual obligations and bear the contractual responsibility is actually Personal online store itself. According to the principle of relativity of the contract, the online shop at this time, as a party to the contract, has the obligation to bear the rights and assumes the dominant position in the legal relationship.

Among them, regarding civil subjects, there is a view that any entity in life must be entitled to legal relations in civil law in order to become a subject of rights. Only those who have the subject qualification can become the subject of the right or the legal relationship. The commercial subject is also the main body of the commercial legal relationship. It is the subject that can participate in the commercial legal relationship in accordance with the law, engage in commercial activities in its own name, conduct business activities, and enjoy commercial rights and assume commercial obligations. In the business activities, the personal online shop contracts with the unspecified consumers in their own name, and implements the business behavior. The main purpose of the registration is to obtain profits through commercial activities, which is in line with the qualifications of the subject of commercial legal relations. Therefore, I believe that in the business activities, personal online stores exist as commercial entities.

In addition, I believe that personal online stores do not belong to the category of individual industrial and commercial households. Individual industrial and commercial households engaged in industrial and commercial operations must be approved and registered according to law. According to my test data, as of August 2010, Taobao has a total of 2.6 million stores. According to the "Zhejiang Online Retail Industry Development Report" issued by the Zhejiang Provincial Department of Commerce, by June 2015, the number of Taobao stores in Zhejiang Province alone reached 1.47 million. It can be seen that the development of online stores in China is rapid and the number of growth is staggering. If online shops are required to conduct business activities, it is not only unrealistic, but also increases the burden on administrative

personnel, and it will limit the production enthusiasm of operators and limit the development of the economy.

*2) In the case of non-business activities, the legal status of a personal online store is an object*

Traditional jurisprudence believes that the object of legal relationship refers to the object pointed to by the rights and obligations of the subject of legal relations, also known as the object of rights or the object of righteousness. The subject of legal relations is broadly divided into objects, people, spiritual products, and behaviors (behavior results). In the case of transfer inheritance, the personal online store exists as an object of the sale contract relationship and the inheritance legal relationship between the two parties. The legal subject at this time is the parties to the contract of sale and the parties to the inheritance relationship, not the personal online store itself. As mentioned above, the legal subject is the person who is under the framework of legal regulation and is responsible for the burden of rights. Under such circumstances, the rights and obligations between the parties shall be borne by both parties, and the personal online shop shall not be entitled to the obligation to assume the subject matter of the contract or part of the property of the heir.

Moreover, the personal online shop as a kind of property has property and is owned by the owner of the online store. The civil object refers to the object that the civil rights and the civil obligations of the subject of civil legal relations are common to, and has the interests and objectivity. Among them, the property rights object has four most important basic attributes: value, scarcity, dominance, and existence outside the human body. The personal online store combines these four attributes. First of all, the value of personal online stores is reflected in meeting the needs of people. Online store owners are profitable by engaging in business activities. Online stores also provide more convenient and efficient shopping methods and ways for thousands of buyers to adapt. And the era of rapid development; Secondly, the scarcity of personal online stores is reflected in the time and energy consumed by the operation of high-selling merchants. A network store with stable customer groups and good reputation is in the online store platform. Today, it is rare to see; once again, the dominance of personal online stores is reflected in the independent control of all online stores by online store owners, eliminating the interference of others and operators, and it is difficult to operate from the online store where the store owner is operating. It is difficult for others who do not know the store password to manipulate the online store's business activities. Finally, personal online stores exist outside the human body. As a virtual property, a personal online store exists within the cyberspace, and its operation must rely on third-party operators or e-commerce platforms. Therefore, in the case of transfer inheritance, it is justified to identify the legal status of a personal online store as an object.

In summary, I believe that personal online stores have the same value attribute as traditional things because of the profit, goodwill, reputation and other property interests brought by their business activities. Personal online stores can be used as a kind of The civil object is disposed of or inherited. However, in the business activities, the personal online store assumes the risks in the business activities, assumes the contractual rights,

and fulfills the contractual obligations. At this time, it exists as a commercial business entity. Therefore, it is realistic and justified to treat the legal status of individual online stores.

#### IV. THE ACTUAL DEMAND AND TRANSFER MODE OF PERSONAL ONLINE STORE TRANSFER

##### A. *The demand for personal online shop transactions prompted the birth of related platforms*

With the development of electronic technology and the formation of the e-commerce industry chain, the influence of the e-commerce industry on people's lives has been expanding. Online retail has gradually penetrated into all walks of life across the country. The most obvious performance is the prosperity and network of online transactions. According to the 40th "Statistical Report on the Development of China's Internet Network", as of June 2017, the number of Internet users in China reached 751 million, and the total number of netizens increased by 2.92 million in half a year, with a half-year growth rate of 2.7%. In the first half of 2017, business transaction applications continued to grow at a high rate, with online shopping, online take-out and online travel booking subscribers increasing by 10.2%, 41.6% and 11.5% respectively. The characteristics of consumption upgrade in the online shopping market are further revealed, and user preferences are gradually shifting to quality, intelligence, and new category consumption. The so-called online store transaction refers to the act of disposing of the online store, that is, the act of one party selling or transferring the personal online store registered by itself to the other party. With the reduction of the registration threshold of online shops in major platforms, the number of online store registrations has surged. At the same time, many online stores are not engaged in business activities, and are often idle. In this context, in order to facilitate the transactions between sellers and buyers, the major networks The store transfer platform came into being.

##### B. *Operation mode of personal online shop transfer platform*

At present, there are two main modes of operation for the online store transfer platform. One is the intermediary mode, which represents platforms such as the dance bubble network, Yidian worry-free, miracle network and other transfer platforms. The other is a non-intermediary model, representing platforms such as Yishang, easy to shop and so on. The difference between the non-intermediary mode and the intermediary mode is mainly that the non-intermediary mode supports the direct contact between the buyer and the seller. When the user enters the platform, the user must first purchase the store card package, and then directly enter the store link that he wants to purchase, directly communicate with the store seller, and agree to complete the price. The transfer, and the pre-purchased store card package can be deducted when paying the purchase price, thus making the transaction transparent and convenient. This mode is relatively simple and easy to operate, so I won't go into details here. The following mainly discusses the operation mode of the intermediary mode online store transfer platform.

##### 1) *The salesman is actively looking for the online store to be transferred*

The salesperson of the online store transfer platform searches for online stores with a tendency to transfer through modern science and technology and Internet communication means. The usual way is that the salesperson searches according to the keywords given by the platform, and searches according to the factors such as the reputation of the store and the sales area. The store then communicates with the owner through the online shopping platform communication method to interrogate whether the seller intends to transfer the store. If the agreement is reached, the store can be placed on the online store transfer platform after the valuation, waiting for the buyer to come to buy.

##### 2) *Online store transfer platform evaluates the value of online stores*

The online store transfer platform evaluates the value of the online store mainly including the online store reputation, praise and store classification. It also determines whether the online store has a deduction, whether there is a through train, the baby description is consistent, and the seller has a good service attitude. Bad, average refund rate and other factors are measured. This will make the price between different online stores very different, ranging from a few thousand to several hundred thousand dollars. According to statistics, the average transaction price of online stores is around 6-7 thousand (there may be tens of thousands in the crown level), and the average transaction price of Tmall stores is 10-15 million.

##### 3) *Publish information on multiple platforms to facilitate online store transfer*

In order to find a wider range of online shop buyers, the salesperson will simultaneously release information on various platforms such as 58 City, Gathering Network, etc. in their online store transfer platform, and explain the transfer process and price, and leave contact method. When the buyer who intends to purchase the online store sees the information, he will communicate with the salesman. The salesman answers the various questions of the buyer and handles various problems in the transfer process, and finally signs the transfer agreement to promote the transfer agreement.

#### V. E-COMMERCE PLATFORM LIMITS THE EFFECTIVENESS OF INDIVIDUAL ONLINE STORE TRANSFER TERMS

At this stage, in the process of registration of personal online stores, e-commerce platforms often stipulate certain restrictions on transfer terms in the service agreement. Take the Taobao Platform Service Agreement as an example. "The account transfer clause stipulates that the user account is associated with the credit information of the user account only when there is a legally stipulated law, a judicial ruling or a Taobao agreement, and meets the user account transfer process stipulated by the Taobao platform rules. In this case, you can transfer the account. Once your account is transferred, the rights and obligations under the account will be transferred together. In addition, your account cannot be transferred in any way, otherwise Taobao platform has the right to pursue your breach of contract, and All responsibility arising therefrom is borne by you. The store creation and store transfer terms stipulate that by creating a store on Taobao, you can post new

or second-hand goods and / or service information and reach deals with other users. Based on Taobao management needs You understand and recognize that the same user can only open one store on Taobao. Taobao can close other stores that you open at the same time on Taobao. Due to the indivisibility of the store and the account, the store transfer is essentially the transfer of the store operator account, the store For the relevant requirements and restrictions of the transfer, please apply the transfer clause of Article 3.2 of this Agreement. According to the provisions of the agreement, the user's shop can be transferred only after there are legally stipulated provisions, judicial decisions or Taobao's consent in three cases, after the process stipulated by the Taobao platform rules. The effectiveness of these regulations after the signing of the user agreement between the buyers and sellers of the personal online store is worth studying.

#### *A. The rationality and reality of the e-commerce platform restricting the transfer clause*

As far as the current status is concerned, the restriction transfer clause set by the e-commerce platform still has its reality and rationality in the context of online shopping. First, limiting the terms of the transfer does not violate the law. According to the invalid situation stipulated in Articles 52 and 53 of the Contract Law and the invalidity of the exemption clause in the contract, the restriction of the transfer clause does not restrict the right of the operator to expand the e-commerce platform because the store transfers and Not the primary right as a personal online store operator. Second, the restriction of the transfer terms is in line with the needs of transactions in the network environment. First, because of the particularity of online shopping and traditional shopping, it is difficult for users to accurately judge the quality and style of products during shopping. Therefore, the operation of online store brands behind the online store with good reputation is And the control of product quality is very much related to the owner of the store itself. In addition, the online store opened by the online red group and the anchor group, the user only purchases the product through the trust of the favorite net red or anchor, if the online shop Free transfer will cause consumers to doubt the goodwill and product quality of the store; secondly, due to the lack of a corresponding publicity system after the online store transfer, many online stores are not informed by the consumers after the transfer, so that the consumer is trading The weak position in the process is not conducive to maintaining transaction security. Finally, restricting the transfer clause is conducive to the protection of consumer rights. If the online store is allowed to transfer freely, it may cause the real name registration system of the e-commerce platform to exist in name only, which is not conducive to consumers to select goods through the credit evaluation of the operators, which is not conducive to safeguarding consumer rights. Therefore, the restricted transfer clause of the e-commerce platform still has its rationality and legitimacy.

#### *B. Regulation based on user agreement*

Network users are usually required to agree to the content of the user agreement before applying to the e-commerce platform for registration of the online store. In a rapidly evolving network environment, it is an inevitable choice for the development of personal online stores to regulate the rights and obligations between platform operators and network users based on user agreements. At present, major e-commerce platforms are reminding users in a reasonable and conspicuous manner that users are required to click on hyperlinks in the choice of terms that have significant stakes, and that the user agreement is agreed before the registration of the account or during the registration process. The rules and agreements must be acknowledged. In the question of whether the form of such a hyperlink reaches the point of prompting the other party in a reasonably significant manner, this paper considers that this is not a reasonably significant way. In the process of registering users, in the face of complex user agreements, they are often not read carefully, and basically do not read other rules and protocols attached to the user agreement. I believe that at least the user should browse the window and draw a line on the content that involves significant benefits. As for the other agreements attached to it, it should also be based on the content to determine whether to exclude or restrict the rights of users, reduce or exempt the rights of the platform operator, and should not of course apply to the user.

The trade-off between the interests of network service operators and network users is a very important issue that needs to be considered by user agreements. The restriction transfer clause set by the network platform operator is to maintain the security and convenience of the network transaction through the electronic contract format clause, but the legitimate rights and interests of the consumer should also be maintained through the user agreement. At present, only based on the user agreement and through the improvement of the law, can we better balance the rights and obligations between network users and network platform operators, protect the interests of all parties, and promote economic development.

## VI. CONCLUSION AND ADVICE

At this stage, the network environment is developing rapidly. The thresholds for registered shops of major e-commerce platforms are relatively low, and the cost of registering online stores is not high. In addition, the current online store transfer still lacks practical rules and standards, and industry supervision is very chaotic. For these issues, this article has the following recommendations:

From the perspective of operators and e-commerce platforms, we must comply with the increasing demand from users for online store transfers and take corresponding measures. First of all, it is possible to formulate relevant transfer rules, starting with the online shop transfer behavior in the regulation platform, and clarifying the rights and obligations of buyers and sellers on the whole. Secondly, you can set up a special department, recruit professionals, and sign a tripartite agreement with the user, so as to eliminate the problem of disconnection between the agreement and the platform between users. Thirdly, the flexible registration of the real name system will change the online store registration

information transferred by the tripartite agreement to protect the interests of both buyers and sellers. Finally, the corresponding announcement rules are set, and the transferred store is required to make a public announcement on the specific location of the platform homepage and the front page of the store, thereby protecting the consumer's right to know.

From the perspective of the buyers and sellers of the online store transfer, first of all, to find a reliable and regular online store transfer platform, check whether the online store transfer platform has professional certification of the relevant e-commerce platform, and reduce the transaction risk. Secondly, the buyer should confirm whether the online store is actually existed, whether it is a store of the regular network network sales platform, and then remit money after careful confirmation to avoid being fraudulently remitted by the single party. Finally, it is necessary to complete the online store transfer process through legal procedures, improve the contract, and lower the trading risk.

With the development and prosperity of the network economy, the profit from the operation of online stores, the low cost, easy to understand the operation, making the purchase of online stores to become a new choice for people who are keen on online entrepreneurship. However, the current unified rules for online store transfer have not yet been formed, and supervision is still not in place. There is a great risk to users and operators who buy and sell online stores. It is hoped that the network supervision department will issue uniform rules as soon as possible, set aside the fog of the online store transfer field, and protect the legitimate rights and interests of relevant parties and consumers.

#### REFERENCES

- [1] Lin Xuxia. On the Nature of Virtual Property Rights[J]. *China Law*, 2009, (01): 88-98.
- [2] Lin Xuxia. Research on virtual property rights [M]. Beijing: Fajin Press, 2010.139.
- [3] Wu Handong. Hu Kaizhong. Research on the system of intangible property rights [M]. Beijing: Fajin Press. 2005.455-477.
- [4] Song Aiqin, Cai Fenghua. On the Necessity and Feasibility of the Real Name System and Business Registration of Online Shops[J]. *The Rule of Law (Journal of Shanghai University of Political Science and Law)*, 2008, (06): 52-55.
- [5] Dong Wei, Zhou Wei, Liu Caixi. Reflections on the Registration and Supervision of Online Stores [J]. *China Business*, 2012, (02): 120-121
- [6] Wu Di. On the division system of commercial subjects in China [J]. *Business Culture*, 2011, (5): 58.
- [7] Sun Zhanli. Research on Electronic Contracting Method [M]. Beijing: Law Press, 2008: 52.
- [8] Zhang Xiaobo. Research on the Qualification Regulation System of Online Business Subjects in China [D]. Shanghai: Master's Thesis of East China University of Political Science and Law, 2008.
- [9] Long Weiqiu. General Theory of Civil Law [M]. Beijing: China Legal Publishing House, 2002: 165.