Study on Legal Attribute of the Network Virtual Property

Qian Zhang
Law School, East China University of Political Science and Law, Shanghai 200062, China.
18553107351@163.com.

Abstract. Article 127 of the General Provisions of the Civil Law of the People's Republic of China on the Network Virtual Property has responded to the social hot spots and embodied the characteristics of the times. It has important theoretical and practical significance, especially, this article provides the legal basis for the network virtual property to be brought into the scope of civil law protection. However, the legal attribute of the Network virtual property is still controversial. There are different viewpoints in the theoretical circle, such as nothingness theory, claim theory, intellectual property theory, real right theory, etc. Starting from the definition of the network virtual property, this paper briefly expounds several theoretical viewpoints on the legal attribute of the network virtual property, and makes a reasonable evaluation. It also discusses the legitimacy of bringing the network virtual property into the category of object of real right, in order to provide theoretical support for future legislation and legal application.

Keywords: Network Virtual Property, legal attribute, real right, legislation.

1. Introduction

According to the 40th Statistical Report on Internet Development in China issued by China Internet Network Information Center (CNNIC) in August 2017, China’s Internet users had reached 751 million, accounting for one fifth of the total number of Internet users worldwide, and the Internet penetration rate has reached 54.3%. According to the China Internet Development Report (2016) issued by the China Internet Association, China's online game market reached 134.58 billion yuan in 2015, and the number of online game users reached 391 million, an increase of 25.62 million over the end of 2014. It accounts for 56.9 % of the total number of Internet users. With the rapid popularization of the Internet and the increase of the number of Internet users and online game users will inevitably lead to Internet disputes, especially the network virtual property disputes. Article 127 of the General Provisions of the Civil Law of the People's Republic of China, passed on March 15, 2017, stipulates the protection of data and the network virtual property, which provides a judicial guarantee basis for resolving civil disputes involving the network and promoting the development of the internet economy. However, the connotation and legal attributes of the network virtual property are in urgent need of further theoretical research.

2. Definition of the Network Virtual Property

Before defining the connotation of network virtual property, it is necessary to make a general introduction to the property in civil law. “In many ways, property is a vague, uncertain concept, but according to the general theory, the so-called property has economic value and refers to the totality of rights and obligations that are combined for a given purpose. (See Liang Huixing, “General theory of civil law”. Law Press,1996, p.104.) Property in legal sense often embodies the basic characteristics of value, scarcity and discretionary power. The so-called value refers to the state of people's satisfaction and the subject's need for the object, which includes both material and spiritual aspects. The so-called scarcity emphasizes the attribution of property and is the only property right that the subject obtains from the property object in law. The domination refers to the subject's control and utilization of the exclusiveness of the property object. Therefore, from the basic characteristics of property, the property in civil law is the combination of the objects with certain conditions and exclusive right of control.

From the actual situation, the network virtual property has the basic characteristics of immateriality, value, legitimacy and other property attributes. They mainly exist in the network space, and they are
virtual goods of exchangeable value and circulation that are obtained through the network users to invest time, energy and money and stored in the form of data, for example: game account level, virtual currency, virtual equipment and so on. It is mainly divided into three categories, the first is the virtual property with economic interests, such as props and equipment in games; The second is virtual account property with both economic and emotional significance, such as online shop, qq number, WeChat, e-mail and so on; The third is the virtual property of money class. For example, the so-called "integral", "quota" and other items with economic value issued by the network operation. (See Long Wei Qiu, “Research on Virtual Property Related to Online Games”. Internet World. (2017) No. 6, p. 44.) According to Article 127 of the General Provisions of Civil Law, the property attribute of network virtual property has been recognized and brought into the category of the object of civil rights. This provision has also laid a legal foundation for bringing the network virtual property into the category of objects. It not only increases the category of the object of real right, but also provides the legal basis for the protection of the rights of the network virtual property, the network platform and the users. (See Yang Li Xin, “The meaning of network Virtual property under the General provisions of Civil Law”. Economic. August 15, 2017, 8th Edition.) However, the provisions of Article 127 of the General Provisions of the Civil Law are too principled, and there are disputes about the legal attribute of the network virtual property, which is the core theoretical issues and needs to be researched.

3. Legal Attribute of the Network Virtual Property

The premise of protecting a new type of right object in civil law is to clarify its legal attribute, which is an important basis for constructing the path of legal protection, because when the real right is infringed, the basic civil remedy is the right of claim in substance, such as returning the original property, removing the obstruction, restoring the original state, etc. When the creditor's right is infringed, the basic civil remedy is compensation for damages. The Civil remedy for intellectual property right mainly includes requesting cessation of infringement and requesting compensation for losses. Therefore, the specific claim basis of network virtual property needs to be further studied and improved (See Jiang Ping, “Review of General principles of Civil Law”. Journal of Zhejiang Gongshang University. (2017) No. 3, p. 9.), that is to say, the legal attribute of network virtual property must have a clear orientation, otherwise it will be difficult to protect it. this paper starts from the debates and discusses the legitimacy of the network virtual property belonging to the scope of the object of real right.

3.1 Several Viewpoints on the Legal Attributes of the Network Virtual Property in Theoretical Circle

Nothingness theory. This theory insists that the network virtual property exists only in the virtual space, and its form of existence is limited to a string of characters provided by the network operators, or a series of electromagnetic records. The network virtual property has no value in the real society when it is not in the cyberspace. So, it is difficult to regulate not necessary to bring the network virtual property into the scope of legal protection. Finally, it is considered that the network virtual property is nothing.

Claim theory. This theory holds that the virtual property right of the network should be a kind of creditor's right, and there exists a special contractual legal relationship between the network operator and the network user, which takes the network virtual property of as the object. Therefore, every network virtual property is a kind of creditor's right certificate, and the transaction of network virtual property is only the transfer of creditor's right certificate.

Intellectual property theory. This theory holds that network virtual property conforms to the characteristics of novelty, creativity and reproducibility of intellectual property rights. The network virtual property is the intellectual achievement created by network operators through intelligent labor input. The network operators design and create game roles, equipment, currency, accounts and other network items.
Intangible property theory. According to this theory, although the network virtual property must be some data or character that depends on the virtual environment of the network, that is, the form of its existence is virtual, but a considerable number of the network virtual property has already had some connection with the real world, such as the real transaction of the network virtual property. To some extent, the network virtual property has the general attributes of commodities, it has value and use value. The network virtual property can be protected by law as intangible property.

New right theory. This theory holds that the classification of the network virtual property right should break through the traditional system of dichotomy of property and define it as a new type of property right. Because the network virtual property has certain property value and should be protected by the law, but the dual property system structure adopted by the current legal norm is not enough to compatible with the network virtual property right, so, it is necessary to break through the traditional property right system structure of real right and creditor's right and set up the network property right as a new type of right.

Real right theory. According to this theory, as long as there is the possibility of legal exclusive domination or management and independent economy, it can be regarded as legal object. (See Yang Li Xin, “On the real right attribute and basic rules of the network virtual property”. Journal of the National Prosecutors College. (2004) No. 6, p. 6.) While the network virtual property has the possibility of legal exclusive domination and management. At the same time, the network virtual property has the same attributes as the object in civil law, so it can be regarded as the valuable object in the broad sense obtained by the owner through labor.

3.2 Comments on the Above Viewpoints

The author disagrees with the nothingness theory. The virtual and nothing in the network virtual property discussed in this paper are different. Nothingness is an unconscious state in which human consciousness cannot penetrate and touch. To some extent, it can be regarded as zero, but the virtual from the network virtual property is different from the meaning of nothingness. The network virtual property can be perceived, seen and heard through a series of programs.

The author also disagrees with the claim theory. If we regard the network virtual property as a kind of creditor's rights, we only make a clear position to the legal relation between the operator and the user, but neglect the right state of possession, domination and disposition of the network virtual property that the network users have. This state of rights is different from the attributes of claims.

The author disagrees with the intellectual property theory and intangible property theory. Intellectual property rights are characterized by exclusivity, creativity and timeliness. Although the network virtual property has many legal attributes of intellectual property, such as certain immateriality, certain openness and certain exclusive right to use and control. But in essence, because the network virtual property is not creative and exclusive, it is difficult to protect it into the traditional intellectual property system. ( See Liu Yue, “Research on Hot issues in Internet Law”. Intellectual property Press2008, p.143.) The network virtual property has a certain degree of invisibility, which is also its primary feature, but it does not mean that the network virtual property can be brought into the category of protection of intangible property. If the network virtual property is classified into the intangible property in the physical sense or the intellectual property in particular, it will not accord with the basic attributes of the property and the characteristics of the object, and it will lack the independent legal status in the theory of civil law. AS a result the network virtual property will not obtain adequate protection.

The author disagrees with the new right theory. Although the network virtual property is different from the real property, so it is difficult to use the corresponding rules to protect it, but it cannot be explained that the rights of the network virtual property should break through the traditional system of dichotomy of property. Therefore, breaking through the dichotomy of traditional property not only exaggerates the independence of network virtual property, but also splits its relationship with real property, and increases the difficulty of legislation, so this is not reasonable.
3.3 An Analysis on the Legal Attribute of the Network Virtual Property

Real right, as a legal category, refers to the right that the obligee has direct domination and exclusive power over the particular object, which has the content of direct domination of the property by the person and the effectiveness of confronting the third party outside the subject of right. (See Wei Zhen Ying, “Civil Law”. Higher Education Press 2007, p. 209.) The characteristics of domination, absoluteness and exclusiveness of real right are important signs of distinguishing from other rights. The main reason why the network virtual property is regarded as real right is that the attributes of the network virtual property conform to the characteristics and effectiveness of real rights.

Firstly, the network virtual property is a special object which occupies a certain space and has certain value. The network virtual property as a group of computer data often needs to occupy a certain disk space in the operator's server, though the disk space is invisible and the space is different from the space occupied by real object. But to some extent, the disk space also has the similarity with the real space. These similarities lay the foundation for the network virtual property to be protected under the category of real right. (See Yang Li Xin, “On the real right attribute and basic rules of the network virtual property”. Journal of the National Prosecutors College. (2004) No. 6, p. 7.) At the same time, the network virtual property is developed on the basis of the large amount of time, money and energy spent by operators. Before the contract is concluded between network users and operators, the network virtual property belongs to operators. Once the operators have a transaction relationship with network users, the ownership of the network virtual property will be transferred to network users. When the network users own the network virtual property, they can feel satisfied through the operation of the network virtual property, that is to say, the network virtual property is an important part of realizing their own value in the virtual network environment. Therefore, the network virtual property for users has a considerable value, which is consistent with the value of real objects. So, the attribute of network virtual property accords with the value characteristic of the object.

Secondly, the right of the network virtual property has the possibility of exclusive domination and management in the law. The right of the network virtual property takes the virtual property as the object of the right. Similarly, two or more real rights are not allowed to exist simultaneously in the same network virtual property. One of the important meaning of the dominance of real right is that the subject of right does not have to hold property realistically, as long as he has the legal right and can exercise this right when necessary. The exercise of this right will determine the fate of the property, so long as the subject of the right has the right to control the property from beginning to end (not on the condition of real possession), it is considered that the subject has the right of control over the property. After the transaction between the operator and the network user, although the network user does not possess the network virtual property realistically, he has independent and exclusive control and management power over the virtual property. That is to say, network users can use computer technology to control and manage the network virtual property in various ways, also can set passwords to prevent others from violating their own network virtual property. At the same time, network users can transfer and dispose of virtual property in reality according to their own wishes. (See Xu Lin, “A brief discussion on right attribute of the network virtual property”. Law and economy. (2009) No. 10, p. 113-114.) This also reflects the possibility that network users have exclusive control and management power of network virtual property in law.

Thirdly, the right of the network virtual property has the effect of asking for a right similar to the real right. The network virtual property refers to a special kind of object that the subject of right obtains legally and can dispose of according to his own wishes. When the subject of the right is in possession and disposal of the network virtual property, it is very likely to be infringed by others, which of course needs relief to protect the legal rights. At this time, the obligee can exercise the right of real claim similar to the real right, such as the right of requesting the infringer to return the network virtual property, stopping infringement and compensation for losses.

Defining the network virtual property as real right can solve the problem of ownership of the virtual propert, promote the healthy development of the network, clarify the responsibilities of operators and network users, and make the third party respect the network virtual property rights of network users. At the same time, it can provide a clear basis for solving legal disputes in this area.
Therefore, it is of theoretical and practical significance to define the network virtual property as real right, which can regulate the behavior of operators, network users and third parties, then reduce the legal disputes on the network virtual property and promote the healthy development of the network.

4. Summary

Article 127 of the General Provisions of the Civil Law of the People's Republic of China adapts to the rapid development of Internet technology, provides substantive norms for resolving disputes over the network virtual property, embodies the characteristics of the times and is of great significance. This paper attempts to study the connotation and the attribute of real right about the network virtual property, hoping to provide a certain reference to the legal norms of the network virtual property. But the research is still preliminary, and the author is looking forward to more, more in-depth research. In particular, the legal attribute of the network virtual property needs to be further discussed, and its judicial protection needs to be further investigated.

References

[12]. Master thesis:(Zhang Qian:” The study on legal issues of the network virtual property” (Master, Shandong University, China,2011). p. 3-6.