

Dissertation on Legal Attributes of Network Virtual Property

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Abstract

Network virtual property is a specific service rule congregation. Essentially, it represents a specific service claim right carried on software skills. Users' rights to use and exchange network virtual property are not "eminent domain" but to exercise and transfer obligatory rights. According to basic theories about real right and obligatory right in continental legal property system, the proposition of real right doctrine could not come into existence. Network virtual property right should be filed into obligatory right.

Keywords: network virtual property; legal attribute; obligatory right

Network virtual world is a virtual reality world of a technology. The main manifestations of the current are internet games, online virtual life and so on. Because it is the reality of social virtual and real, so it must have some of the key concepts in the real world. Virtual goods if only occur in virtual space can not be in the legal sense of virtual property, only the reality of society has undergone some kind of contact is likely to be defined as the legal sense of the property^[1]. In which part of the network concept and behavior, such as network virtual war between the virtual characters, virtual business relationships, etc. There is no occurrence and the reality of social relations, and therefore are only illusory symbols and ideas, not in the adjustment range of realistic social laws; but some have occurred in the real-

istic interaction. One of the most important issues is the network virtual property. The property has generated real online and offline transactions, and also produces a specialization in reality assessment of trading platforms, which get legal professions' attention and become one of the hotspots.

1. Definition of Network Virtual Property

Network Virtual property refers to under the network environment, the computer simulation of the real thing in the network acts as a property of an object similar to the real society. Its biggest feature is: No matter the form or nature can only exist in a specific network environment. This and other network things, such as e-mail, electronic money, the network works, etc. are essentially different. For these objects, the network is only one carrier only; left the network does not affect its value. Such as email, which is the value of the information it contains, and this information can be in other ways, such as the use of paper as carrier material preservation. For virtual property, such as a network game of "equipment", left the network, in reality, absolutely can not stand alone.

Currently, the definitions of network virtual property are generally broad and narrow^[1], in which a narrow virtual property refers to online games and online virtual life account, goods, equipment, class, Dan, pets and other online virtual objects. This article only

studies the narrow virtual property, which mainly has the following characteristics:

Firstly, it can only exist in network virtual space. This is a main feature different from other network objects only as information carriers of a real object (such as email, electronic money, electronic books, etc.). Network virtual property regardless of the form of expression or its expresses of information, functionality, content only through a computer network space to reflect, and that it can only exist in a particular generation in cyberspace.

Secondly, in reality there may be actual or potential transaction, the property has a certain practical significance; such as game equipment can be traded in the real world, realized as real money, which means it has penetrated into the real life, the reality of social relations had impact, becoming one of the elements. That is the reason why we need to study it in the law, but also different from the other main features of the pure network objects.

Thirdly, with relative independence, according to certain rules hold by an Internet account ID; although its emergence and existence are from the network operator or developer to provide overall network space, it is also an integral part of a relatively independent, may under certain conditions hold by the account number and an ID represents the ID of the user. It is another feature of things different from other network things.

2. Brief Views on Legal Attitudes of Network Virtual Property

Current views on network virtual property in academic knowledge can be roughly divided into “Doctrine of Real Right”^{[2][3]}, “Doctrine of Obligatory Right”^{[1][4][5]}, “Doctrine of Intellectual Property Right”^[6], and the “Doctrine of New Property Right”^{[7][8][9]}, and other four. Doctrine of Real Right Property

advocates using the concept of real right to adjust the legal relationship of network virtual property, emphasizes the network user ID’s ownership and control. The idea considers that a “Network Virtual object” is actually an electromagnetic record, and “has the same basic attributes with objects of civil law, so in theory to recognize network virtual property should treat it as a special object, and apply the existing relevant provisions of real right”^[3]. The main point of “Doctrine of obligatory right” is based on the signed service contract between the user and service providers for obtaining rights to use network software. It is not the focus of the virtual item itself, but rather it reflects the service contract relationship. That is in the network the relationship of the player and the game provider is a contractual relationship. Virtual property itself is a part of rights players can enjoy^{[1][4][10]}. The “Doctrine of New Property Right” advocates a new conceptual representation of property right for “network virtual property”, thus avoiding the legal disputes on real right or obligatory right. The “Doctrine of Intellectual Property” considers that although the game has been programmed by software providers to create a potential role, items, etc., it is able to achieve and have a specific feature through the players in games to pay labor and wisdom, so a virtual property is a player’s intellectual achievement, and should be protected by intellectual property right.

“Doctrine of Intellectual Property Right” is from the misunderstanding of software technology in network technology generation. We know that intellectual property right protects a creative intellectual effort, requiring the object-knowledge products must have original creation features. Therefore, game software developers should be able to enjoy their games’ developed intellectual property right. And for

players, though also put wisdom and labors, it does not mean that virtual goods are their creative intellectual achievements without the extent of its originality^[11]. In fact, online game virtual property is set in the program for game developers is completely known, but its emergence is attached conditions. Once a game account (player) has the appropriate conditions, it is bound to get the virtual object (Actually in a software program the “thing” represents the logical relationship given by the game account). Therefore, users’ creation process to get network virtual object does not actually any creative work, and also does not produce any new results. They do only job is to execute the game program setting process. It does not meet the protection requirements of Intellectual Property Right.

3. The Plight Analysis of Network Virtual Property on Real Right Views

In modern legislative practice, many scholars advocate to state “non-physical things” into the scope of protection of real rights, which makes sense. Because as the development of human technology, originally purely natural forces of light, electricity, heat and other non-physical things have been controlled for human and applicated, and in accordance with the wishes of mankind to produce the corresponding value, therefore, can be incorporated into the concept of property rights. However, it is not appropriate to directly extend this concept of non-physical objects to “network virtual objects”, and then advocate “network virtual objects” as non-physical things to get real right protection, just based on light, electricity and other non-physical things can be incorporated into the concept of real right. This view did not notice the essential difference between “network virtual objects” and optical,

electrical and other physical things. From a physical point of view, light, electricity and other non-physical things are consistent with our traditional concept of physical things. Light, electricity, heat and other physical things essentially are energy. In physics “mass-energy equation $E = MC^2$ ” gives a direct conversion between matter and energy relations, reveals the consistency of matter and energy. Nuclear power is its practical application example. But the “network virtual objects” are completely different with those non-physical things. First of all, a “Network Virtual Object” is not a physical presence. It’s just a kind of visual effect generated by modern computer technology. Of course, some people may use electromagnetic record as the basis for its physical existence, but it has no practical significance to treat electromagnetic record as the physical basis of “network virtual objects”. In fact, the “network virtual object” is just an idea of the human mind, but perceived by others through video and audio of computer technology. This so-called “material” did not have its corresponding physical basis with essence. So it simply can not be called “object”, and it is not the problem of “real right”. Further, if the future humans mastered the relevant technology, a person’s dream would be displayed in a similar sound and light technology, and then whether the items in a dream dreamed of can be a “material”? This is obviously absurd.

4. Legal Basis of Doctrine of Real Right on Network Virtual Property

The author believes that the rights of network virtual property embody a kind of obligatory right. It is a part of the service contract signed by the user and the service provider for obtaining the use right of network software, as reflecting a specific service contractual relationship

between the service provider and the user. The game software itself is the carrier of this service relationship, and network virtual property is a service rule subset which is hosted between users and service provider's specific request-service rules. It reflects a user's claim for the service provided by a service provider, namely obligatory right. Combination of the above analysis, the "network virtual property" is in full compliance with the concept and characteristics of debt. But because it is a new thing, the technical principles to support its existence and operation of are different from the traditional things.

For the "Doctrine of Obligatory Right", one of the main objections is about "Right of Control, Right to the World"^[12], which is the most important division sign between real right and obligatory right. Objected opinion is that "the players may freely dispose of such network virtual property after getting the virtual goods without the agreement of any other person, including games supplier". They think it reflects "the characteristics of Right of Control, Right to the World, and the obligatory right with claim is clearly do not possess this characteristic"^[9]. And that "Players can control the network virtual property. Players can use their own rules of the game within the network virtual property, which is embodied players' domination of the network virtual property, but obligatory right does not have this domination right"^[13]. But what's the fact? From the previous analysis, we can see that the "network virtual property" has been given the "thing" impression, mainly because of the use of computer technology for video. In essence, it is a request-service code set of specific rules recording the claim and service between users and service providers. Players pay the right price; the game operators provide products and services, among them is an establishment

of a contractual relationship, and "network virtual property" embodies the players can obtain certain rules of the game entertainment services and content. Looking further ahead, the network game software is a special product. On the one hand it is the subject in the service contract; meanwhile, it is also the most specific service mode set of rules. In fact, while users acquire the right to use the software, the parties' claim-service rights and obligations have been clearly defined by the software. Users can use any of the acts required by the software, and the user does not have the function of software lacked.

In the real judicial environment, under normal circumstances the transfer of obligatory right needs to inform the debtors and obtain their consents. Such as in our contract law creditor must notify the debtor for the transfer of obligatory right. But the users of the "network virtual property" seems not notify the debtor. Therefore it seems contradictory with the legal requirements of transfer on obligatory right. In fact, taking into account the characteristics of the online world, the author believe that the user in the transaction process of "network virtual property" has fulfilled its legal obligation to inform the debtor and get their confirmation. When a user (a creditor) proposes specific service request to the service provider (the debtor) and without directly informing the operator in the traditional way, but through the network issuing a directive to the software, then the software responding accordingly to complete a process of request-service. Any transaction of "network virtual property" must be completed through the carrier's software system. Throughout the legal relationship, the game software is the representative of the operator in the network. Therefore, since the game software has received the user's request and execute it, it can be

considered as have notified the debtor and get the approval. The transaction is realized by the user giving the appropriate instruction and execution of game software. So, the command issued by the user is also the notification procedure, and the execution process of the software is the confirmation process. Further, if the operator considers giving more clear notification and validation for the conduct of such transactions, then it is entirely possible through increasing logic orders in the software program, which is equivalent to set the corresponding provisions in the contract. Therefore, the directive-response pattern set in the program is the creditor-debtor agreed notice -- acknowledgment mode.

In summary, the "network virtual property" embodies the right to request service, is a relative right. In civil law of continental law system, the property right of "network virtual property" should belong to the scope of obligatory right. The protection of "network virtual property" is applicable to the rules of obligatory right.

5. References

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