



# A Study of the Judicial Practice to Tackle the Virtual Property Thefts in China Today

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**Abstract.** Technology is a double-edged sword. While benefiting human life, it also provides cybercriminals with more emerging and hidden criminal methods and ideas. As a result, the virtual network property has also become the object that China's criminal law should protect. The act of stealing virtual property on the Internet should be punished as the crime of illegally obtaining computer information system data or the crime of theft. The difference in the punishment provisions between the two leads to differences in handling such acts in our country. The premise of how to correctly understand the criminal behavior of "stealing network property" is to clarify whether "virtual property" should have the attribute of "property" as defined in criminal law. This paper will analyze the foreign recognition of this behavior by analyzing the practice of trial, the theory, and the comparative and statistical methods. It will start from the theory base on the trial practice and summarize the ruling documents on the behavior of stealing virtual network property in China through discussion. This research aims to determine the behavior of breaking up and analyzing the theft of virtual network property, providing some ideas to unify our judicial practice by summarizing relevant viewpoints through the demonstration.

**Keywords:** Crime of Theft · Virtual Property · Crime of Illegally Obtaining Computer Information System Data

## 1 Whether "Virtual Property" Has the Attribute of "Property" as Defined by Domestic Criminal Law

First of all, we need to clarify what properties virtual property has and combine the characteristics of "property" in the traditional legal cognition and the identification of "property" in domestic criminal law to analyze whether the virtual property can be classified into criminal law in the "property" range.

Some scholars think: "Virtual property should be the same as the property of civil law, so the virtual network property should be taken as a special thing" (Lixin and Zhonghe, 2004). Some scholars hold contradictory views on the concept that virtual property should be identified as property in criminal law and believe that virtual property and property (property) as the object of property crime belong to completely different legal matters. Treating virtual property as property not only completely disturbs the

hierarchical relationship of absolute rights, creditor's rights, and intellectual property but also deconstructs the behavioral elements of property crime. And it completely breaks through the linguistic boundaries of the property (Xinjiu, 2013).

In the traditional understanding, Posner and other scholars believe that legal property must meet three conditions: first, it has value due to scarcity; second, it can belong to a specific subject, which can exclude others from sharing and interference.; Third, it can be transferred to others at a specific price. According to these three conditions, tangible objects are most likely to become legal property. The domestic criminal law provisions define the scope of property (all properties mentioned in the article are the private property of citizens, not public property) mainly from Article 92. Citizens' legal income, savings, houses, and other means of life, the means of production legally owned by individuals and families, the legal property of self-employed individuals and private enterprises, and the shares, stocks, bonds, and other properties legally owned by individuals. The scope of the online virtual property mainly includes virtual game accounts, game currency, and "equipment", "and weapons" in virtual games, as well as Bitcoin, Dogecoin, and even user registration information in virtual networks and transaction records. These are the private property of network users or network service providers.

Property characteristics are mainly reflected in three aspects: tradability, the same as property properties in ordinary reality, and virtuality, which is the relationship between virtual property and property in ordinary reality. The most significant difference is that online virtual property is intangible, while property in the narrow sense is tangible. How to analyze and demonstrate intangible property and include it in the scope of criminal law property has also become how to deal with theft of online virtual property. The premise of conviction; the third is reproducibility. Here, the reproducibility of virtual property on the Internet is different from the content of "reproducibility" embodied in the printing and manufacturing of money. Virtual property is a kind of electromagnetic data, a network. The service provider generates it by writing a fixed program. The "birth" method of such property means that even if the perpetrator illegally steals the virtual currency or equipment on the victim's virtual account, it can be recovered or recovered by a particular method recover.

### **1.1 Online Virtual Property and "Property" Defined by Domestic Criminal Law Are Both Negotiable**

There is no dispute that online virtual property has the same feature as "property" in domestic criminal law, which is negotiable. Network virtual property: In the network field, network users have formed a set of systematic trading habits by transferring all their properties to others at a specific price and constantly transferring them at a price. A steady stream of buyers and sellers in a field will follow these trading habits to trade (Xingliang, 2008).

For example, in the game field, players sell in-game currency, refer to rules and habits similar to online virtual currency transaction methods, and exchange a certain amount of game currency for a particular real currency, forming the concept of "circulation" between each other. This feature is consistent with the traceability of "property" in domestic criminal law, whether it is cash, gold, stock bonds, or real estate, as long as it

is an item with a specific value. The conversion between value and price can be realized through the transfer of value.

## 1.2 Network Virtual Property Has the Characteristics of Virtuality

Undeniably, the virtuality of virtual network property is the most significant difference from the real property. Citizens can see and control real property, while the online virtual property cannot be seen or touched. Therefore, the most crucial question is whether citizens can realize online virtual property control.

The essence of things is domination and exclusive domination over things (Huiming, 2006). From the perspective of the obligee's dominance over online virtual property, although the obligee cannot control the virtual currency and other properties on the Internet, the obligee can still achieve control over the interconnected network of digital information (indirect domination)—the purpose of controlling virtual property on the Internet. From the perspective of the exclusivity of rights, once the right holder owns the virtual property on the Internet, others cannot set the same plural rights for the exact property content. In other words, if the right holder owns a kind of online virtual property, it will naturally be able to exclude other people's dominance over the object, and others cannot infringe at will (Wanqin, 2017).

For example, an online player who loves to play games creates a game account with some in-game currency, "equipment," and "weapons." These properties can be exchanged for real currency at a specific value. Furthermore, the player can independently control all the property in the game account and exclude any third party other than himself from simultaneously possessing the property in the account. Therefore, even if the online virtual property has the characteristics of virtuality and is fundamentally different from real property, it is still possible to extend the application of property in the sense of domestic criminal law to the virtual property by making use of the right argument for "things".

## 1.3 Network Virtual Property Has the Characteristics of Reproducibility

Virtual property is reproducible. Network virtual property exists in the virtual world of the Internet. In essence, it is a kind of parameter or code. The parameter code can often be copied, so reproducibility has become its characteristic, especially in online games. Based on the current technology, since online games are independently designed by the operators, the critical data (or codes) in the games are all in the operators' servers. Therefore, evaluating online virtual property is often a problem in domestic trial practice became a big problem.

For example, the perpetrator stole several game coins from the victim's game account, but how to convert them into real currency value is often controversial. Some people think that this kind of currency is just electromagnetic data. However, the player's "hype" makes it much higher than its value, and the operator of the game server can "regenerate" or "rebuild" the player's in-game currency directly through the program, so the virtual game currency is not at all. Nevertheless, it has considerable value; and some scholars believe that after the perpetrator steals a certain amount of game coins in the victim's game account, an "equivalent conversion" method can be adopted according to the time

of the theft - that is, the currency transaction price in the game is used. Next, calculate the amount of crime committed by the perpetrator, and finally, determine the sentence based on the amount of crime. Here, I prefer the latter statement.

## **2 The Judicial Status of the Theft of Online Virtual Property in China**

How should criminal law regulate the theft of virtual property online? From the perspective of legislation, since the reform and opening up, my country's Internet information technology has developed rapidly, resulting in a rapid increase in Internet crimes, especially crimes involving the virtual property. In practice, theft of game equipment and theft of online accounts often occurs (Bingzhi & Jianfeng, 2008). Domestic legislation has gradually begun to face up to the importance of protecting online virtual property. As a result, relevant legislation and judicial interpretations in China have also been introduced one after another, such as the Criminal Law Amendment (VII. Article 285 of the Supreme People's Court and the Supreme People's Procuratorate jointly passed the Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases Endangering the Security of Computer Information Systems but did not clarify the attributes of virtual property. From the perspective of network virtual property crimes and maintaining network security, this also provides a basis for the judicial system to use criminal law to punish related crimes (Yang, 2021). In short, whether it is the amendment added by the "Amendment," The charges or the judicial interpretations promulgated by the Supreme People's Court and the Supreme People's Procuratorate later have a common problem, that is, the provisions of the two only cover a few cases of cybercrime one-sidedly. They cannot cover the basic definition of all cybercrimes. Coupled with the continuous development of society, the means of crime are becoming increasingly sophisticated, which cannot meet the needs of the current society to pursue a unified means of punishing crime cases involving virtual property on the Internet.

From the perspective of domestic judicial practice, after reviewing 50 domestic cases of theft of virtual property on the Internet, the court found that the number of verdicts of the perpetrator's theft of virtual property on the Internet is equivalent to the crime of illegally obtaining computer information system data., and a few convicted the perpetrator of the crime of violating the freedom of communication. Among them, in almost all the cases in which criminals steal virtual property on the Internet and are finally punished for the crime of infringing the freedom of communication, the purpose of the criminals is often to illegally possess or sell them for profit, which is different from the constituent elements of the crime of infringing on the communication freedom. Its bias will not be repeated in the following. I will only analyze the two most controversial crimes and demonstrate the most suitable crimes, to provide a reference for the unified practice of China's criminal law in the future.

## **2.1 Crime of Illegally Obtaining Computer Information System Data**

### **2.1.1 The Act of Stealing Virtual Property on the Internet Determines the VC Crime of Illegally Obtaining Computer Information System Data**

In domestic judicial practice, there are not a few cases of the crime of stealing virtual property and illegally obtaining data from computer information systems, and the reason for the judge's determination of this crime is that electromagnetic data determine the virtual network property, and the virtual network property cannot be identified. It is covered in the scope of "property" in criminal law. Some judges believe that as long as there is a violation of national laws and regulations, intrusion into computer information systems and illegal access to stored, processed, or transmitted data are serious. No matter whether the computer information system data has property attributes or whether it is virtual property protected by criminal law, it should be All shall be convicted and punished for the crime of illegally obtaining computer information system data (Jingguang, 2019).

### **2.1.2 Disadvantages of Determining the Crime of Illegally Obtaining Computer Information System Data**

However, the view that this crime determines the theft of virtual property on the Internet has significant limitations. First of all, the behavior object of the perpetrator is virtual property, but determining the final amount of crime is a significant difficulty, and judges who hold this view believe that there has never been a value calculation that can be accepted and unified by the public. In this case, even if the offender's behavior is found to have violated the crime of illegally obtaining computer information system data, it is impossible to make the offender bear the corresponding legal responsibility through sentencing (Haisong, 2018).

Secondly, the chapter on this crime is to disturb the public Order chapter, and the original purpose of legislators establishing this chapter is to protect the public order of society. Finally, theft of online virtual property infringes on the victim's property legal interests, which differ from social and legal interests. Therefore, I believe it is unbiased to identify the theft of virtual property based on the crime of illegally obtaining computer information system data.

## **2.2 Crime of Theft**

I think that it is most appropriate to treat the theft of virtual property on the Internet as the crime of theft. First of all, from the perspective of the syllogism analysis, the constituent elements of the theft crime are that the perpetrator illegally steals other people's property for illegal possession. Without analysis, the objective behavior of the crime of theft is stealing. That is, the property of others is transferred and owned by specific means against the subjective will of others (Ping & Jingang, 2019). The behavior of stealing virtual property online is entirely consistent with the objective behavior of the crime of theft; The stealing object of the crime is the property of others, that is, "property" in the sense of criminal law, while the virtual property on the Internet has many property attributes, which are exclusive and unique to the owner. In judicial practice, the property in the

crime of theft is expanded to be interpreted as Online virtual property not only helps to expand the scope of definition but also unifies the identification of the online virtual property in both academia and judicial practice and more conducive to sentencing. If the habit is converted into real money, it can be determined as the amount of the offender's crime. Ultimately, the judicial organ can convict and sentence the offender through the final amount so that the offender can bear the corresponding criminal responsibility. This kind of judgment is more likely to be recognized by society than the crime of illegally obtaining computer information system data.

### 3 Conclusion

The economic base determines the superstructure, which leads to the inherent hysteresis of law. With the continuous development of society, new criminal methods emerge in an endless stream. The future progress of the Internet will also provide more new criminal methods for criminals. Therefore, the law needs to be constantly updated and explained to cover more crimes. It is also necessary to unify the determination of theft of online virtual property. Determining the attributes of virtual property and regulating the behavior of stealing virtual property can provide ideas for domestic judicial organs and a reference for legal thinking between countries.

As for crimes against virtual property, Germany stipulates in Article 263 of the Criminal Code: "If, with the intent of illegal possession, he or she gains improper property benefits by making illegal adjustments or modifications to another person's computer, using improper or incomplete data, illegally using electromagnetic data, or by other means making illegal changes to another person's computer program that result in loss of other people's or social property, A sentence of not more than five years of liberty or a fine for computer fraud." From the above clauses, it can be seen that Germany has acknowledged general property characteristics through criminal law and punished the behavior of invading others' computers to steal virtual property with a computer fraud crime.

Through the analysis of South Korean laws, it is found that no matter in criminal legislation or criminal justice, South Korea is still advanced in protecting virtual property. It uses the "computer use fraud" crime to regulate the behavior of stealing virtual property. In addition, it uses the crime of robbery to regulate the behavior of seizing other people's network accounts and other virtual property using violence or threat. There is no doubt that the ownership of virtual property is recognized in criminal law.

Virtual property is also a part of national private property and should be protected by national laws. The protection of virtual property has been regulated in China's civil law and related judicial interpretations, but there are still some gaps in the content of virtual property in domestic criminal law and judicial interpretations. The author suggests that the theft of network virtual property in China should be regarded as the crime of theft, which is not only conducive to the identification of the attributes of the virtual property but also conducive to the conclusion of the amount of crime in the sentencing process. By absorbing the legal practice of other countries and combining it with China's national conditions, the scope of the interpretation of property in Chinese criminal law will be expanded through the promulgation of criminal law amendments to regulate a series of

cyber crimes. The demonstration and analysis of virtual property behavior will provide a certain reference value for the future unification of criminal behavior in China's judicial practice and academia. Moreover, it is also hoped that it can be used for other countries whose norms for online theft of virtual property are still blank or incomplete in some thought paths.

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