

Study on the Inheritance System for Virtual Property on The Internet

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Abstract: With the progress of Internet technology, the network has become an indispensable part of people's lives. Due to the economic development to promote productivity and production mode to produce changes, so that the network virtual property gradually received people's attention. The protection of network virtual property in China is only stipulated in Article 127 of the Civil Code. However, this article is only a guiding provision for network virtual property and network virtual property inheritance has not yet made clear provisions, therefore, this paper will focus on the attributes of network virtual property, the necessity of inheritance, and the problems arising in the process of inheritance research, and strive to find appropriate solutions.

Keywords: Online virtual property, Inheritance system, Value assessment, Privacy protection.

1. Introduction

The legality of network virtual property is officially recognised and protected by law in the General Principles of Civil Law in 2017, and with the introduction of the Civil Code in 2020, as well as the increasing number of cases of network virtual property disputes, network virtual property inheritance is again being paid attention to. Network virtual property belongs to the network virtual world of new things, very unstable, academic research on network virtual property has not reached a unified opinion, especially in the qualitative, object scope, the applicable law of the issue of greater controversy controversy. In addition, there is an urgent need to solve the problems of heirs' proof, value assessment and division after the case of network virtual property, as well as how to solve the conflict between heirs and users' privacy protection. This paper will take the Civil Code, which will be formally implemented in January 2021, as the background, and by referring to domestic and foreign academic views and combining with China's specific practice, further improve the construction of the virtual property inheritance system on the basis of the predecessors, in order to find a solution to the current virtual property inheritance.

2. Legitimacy of Inheritance of Virtual Property on The Internet

Property is an object of value that is gradually created by human beings in the course of production and life by relying on labour in the process of social development. Unlike traditional property, cyber virtual property is incorporeal property, such as homes, cars, currencies and so on. Today, with the rapid development of the Internet, network virtual property is classified as inheritable property because it has the characteristics of traditional property, so network virtual property has come into being.

2.1. The Concept and Characteristics of Network Virtual Property

Due to the update and development of Internet technology, as well as the diversification of user needs gave birth to network virtual property, China's Civil Code has not made

specific provisions on the concept of network virtual property. At present, the academic community on the network virtual property in the concept of the two main differences - broadly speaking and narrowly speaking. [1] Therefore, under this disagreement, we need to clarify the basic characteristics of network virtual property, so as to clarify the concept of network virtual property.

Firstly, virtual property on the Internet is virtual in nature. The sale and circulation of virtual property is mainly through the Internet, in the real world circulation with the current information technology can not be done for the time being. At the same time, its virtual nature is also manifested in the value of network virtual property exists in the virtual space, such as QQ, tencent video, netease cloud music VIP members can only be realised in the virtual value, the user can only log in the account in the virtual space to enjoy the value of the network virtual property brought about by the benefits. Secondly, the network virtual property is valuable. With the change of social life, people's needs from food and clothing to the gradual pursuit of spiritual abundance. People's time and money invested in network virtual property is increasing, network virtual property is an asset that can be calculated and measured by money, so network virtual property has the characteristic of value. For example, game skins, virtual currency (Bitcoin), network accounts, etc. Again, the legality of network virtual property. The creation, acquisition, use and annihilation of network virtual property are subject to the law. [2] Therefore, the basis of network virtual property rights is derived from the legitimacy of the right, which does not ipso facto belong to the operator or belong to the user. [3] Therefore, for the user to pay labour in the network formed network virtual property, in the premise of not violating the laws and regulations can be protected by law, can become legal property in accordance with the order of inheritance inheritance. Finally, the time limit of network virtual property. The generation of network virtual property is determined by the Internet industry and network virtual space. Network virtual property may have a lot of uncertainty, may be due to business risks, technology updates, users stop using and other reasons lead to its loss of original value. Therefore, the inheritance of network virtual property also needs to overcome this difficulty.

From the analysis of the above characteristics, it can be seen that the network virtual property is a kind of property that exists in the virtual world of the network, can be measured by the real unit of measurement and has a time-limited nature.

2.2. Properties of Virtual Property on The Internet

On the network virtual property inheritance of the object of the right, there are three main theories in the academic community. First, the scholars who advocate the theory of property rights believe that network virtual property not only belongs to the paradigm of the right of property and its legal nature is the right of property, is a kind of virtual property rights. A natural person takes the network virtual property as the object of his property right, and the network virtual property will become his legal property after his death. [4] The second, the claim theory scholars believe that the network virtual property is essentially a service contract between the network service provider and the user. The user agreement contains the relationship with the network virtual property is essentially a debt relationship, the user only has the right to use, the operator has the right of ownership. Thirdly, scholars who advocate intellectual property theory believe that network virtual property is a new type of property, belonging to the intellectual achievements, so network virtual property should be treated as intellectual property.

In response to the above viewpoints, this paper adopts the theory of property rights. Although the existence form of network virtual property is different from that of general objects, it still enjoys the general characteristics and attributes of objects. However, the user only enjoys the right to use the network virtual property, while the network operator has the right of disposal, in order to protect the legitimate rights and interests of network service operators. That is, the possession of network virtual property is both the possession of the network operator and the possession of the network user. [5] The right of inheritance of network virtual property mentioned below is the right to inherit the right to use the network virtual property.

2.3. Inheritability of Online Virtual Property

First of all, network virtual property inheritance in our country there is a legal basis. According to article 127 of the civil code and article 1122, paragraph 2 of the provisions of the civil code, [6] China's civil code clearly the status of the legal effect of the network virtual property, but does not exclude the network virtual property as a legal property in accordance with the provisions of the rules of inheritance for inheritance. Therefore, only in accordance with the provisions of the law and through legal procedures to obtain the network virtual property heirs enjoy the right of inheritance.

Secondly, the inheritance of online virtual property is in line with social values and ethics. At present, the solution to the problem of inheritance of network virtual property with spiritual value is a problem for people. On the one hand, the solution to the inheritance of network virtual property not only allows the heirs to obtain the economic value of the inheritance but also reduces the cost of estate management. On the other hand, the emotional value of the network virtual property for the heirs is also important. [7] The network virtual property with spiritual value carries the spirit of mankind, which to a large extent expresses people's memories, thoughts and feelings. Therefore, in accordance with the

provisions of the constitution and the law of the network virtual property inheritance is the people's heart, in full compliance with the people's self-interest.

Finally, the network virtual property inheritance has a realistic basis. In practice, the network virtual property inheritance has been recognised by people, such as a company in nanjing virtual property trusteeship, essentially is the industry institutions to carry out the network virtual property inheritance business. Users and the company signed a commission agreement after the user will account and password to the company for hosting, when the account user died hosting company will be the user's account and password to the heir, so that the account to be inherited that is to complete the hosting obligations. Visible, in social practice, people have long been on the network virtual property inheritance to provide the appropriate solutions, although there are still many limitations and problems, but the network virtual property inheritance is the general trend.

3. The Reality of Inheritance of Virtual Property on the Internet in China

With the progress of society people's concepts are more and more tolerant and open, some young people have written their virtual property in the will. But the network virtual property to achieve inheritance, mainly facing the macro and micro double difficulties. On the macro level, there is no complete inheritance system and procedural provisions. In the micro, network virtual property inheritance itself also exists many unclear.

3.1. Unclear Object and Scope of Inheritance of Virtual Property on the Internet

At present, China's legislation has not yet stipulated the network virtual property inheritance system, also did not list the network virtual property can be inherited scope and object, only in the academic discussion of this topic. Network virtual property according to its value can be divided into: network virtual property with economic value, network virtual property with spiritual value, comprehensive network virtual property. People are divided on the network virtual property containing spiritual value because it mostly involves the issue of user privacy. In this regard, the academic community has three views: the first view that the deceased does not enjoy the right to privacy, the protection of the privacy of the deceased is to protect the rights and interests of the relatives of the deceased, so this kind of property can be inherited. The second view is that the deceased still has the right to privacy, with the nature of the personality of the network virtual property involves the user's privacy, so against its inheritance. The third point of view that the network virtual property involving privacy should be dealt with differently, such as based on whether the heir signed a confidentiality agreement and make a distinction. Therefore, we not only need to unify the current controversy, but also need to clarify the type of network virtual property, in order to clarify the object and scope of inheritance.

3.2. Difficulty in Proving the Subject of Inheritance of Virtual Property on The Internet

In general property inheritance cases as long as the heir does not violate the rules of inheritance, not to the detriment of the legitimate rights and interests of the decedent or other

heirs, in the traditional property inheritance of the parties do not have greater difficulties in evidence. But the network virtual property of the virtual nature and time is different, the difficulty is mainly reflected in the acquisition of evidence and preservation of two aspects.

In terms of obtaining evidence, one aspect lies in the heir's proof of the user's identity and relationship. If the heir is able to prove that the online virtual property belongs to the legitimate property of the heir, there is generally no difficulty in obtaining evidence. However, as the user may have stolen or fraudulently used other people's information to register the account when registering the account. After the death of the user, it is often difficult for the heirs to provide proof of the user's identity and proof of inheritance relationship, which may lead to difficulties in protecting the legitimate rights and interests of the heirs. On the other hand, network operators often use various reasons to restrict inheritance. When the user passes away, only the network operator knows the user's account login information, once the operator refuses it will be difficult to get evidence. [8] Such as signing a user agreement or refusing to provide the heirs with relevant data and information on the grounds of protecting user privacy.

With regard to the preservation of evidence, network virtual property is different from traditional property because of its time-limited and dependent nature. If the heir to the number or value of network virtual property evidence and value assessment, it is likely to be limited by the use of network virtual property of the statute of limitations, then the heir will be difficult to preserve the evidence within a certain period of time. At the same time, the heirs will also be unable to obtain evidence and preservation due to the immaturity of the evidence collection technology. As a result, the network virtual property suffered damage can neither be successfully inherited nor be able to prove the loss suffered by the loss and then get the corresponding compensation.

3.3. Incomplete System for Determining and Dividing the Value of Network Virtual Property

Once the inheritance has begun, it is necessary to evaluate and divide the virtual property on the Internet if multiple parties are involved. The special nature of cyber virtual property requires standardised staffing and more professional valuation methods for analysis, evaluation and estimation. At present, the value assessment agencies and methods available on the market are uneven, and the relevant authorities have not yet formulated uniform pricing standards, resulting in wide variations in the assessment of property values.

Firstly, the main body of the assessment of the value of network virtual property is not clear. At present, there are several kinds of value assessment subjects: the first kind, assessed by the inheritance by the person, the inheritance in accordance with the user in the use of the product or enjoy the services invested in the time, money to make a rough estimate. The second type, network operator assessment. Some people believe that the network operator, as the developer of the product, has a more comprehensive knowledge of the property, so it should be assessed by the network service provider. Third, assessment by a third party organisation. Most people believe that the network service provider has an interest in the case and should be assessed by a third-party organisation. The fourth type, assessment by experts. This group believes that the value of online virtual property may fluctuate in the market, and that the professionalism of value

assessment organisations in the market varies, so it is recommended that experts be hired to carry out the assessment.

Secondly, there is no uniform standard for the method of assessing the value of cybervirtual property. There is no legislation on the value assessment standard of network virtual property, and the market changes may also lead to differences in prices. [9] And the value of network virtual property assessment methods and procedures are not mature, the main body of the assessment can only be in accordance with the relevant legal norms, in reference to the market price of the value of network virtual property assessment, so at present China's relevant laws and regulations most of the time can only be used as a reference to the value of the assessment, and can not directly get a standard answer.

Finally, the public has not established the concept of assessing the value of virtual property on the Internet. In practice, when the parties are unable to provide a property value assessment report, the court will usually prompt the parties to accept mediation or reach a settlement on their own. At this time, the heirs will adopt the method of self-assessment for the sake of convenience, in which case it cannot be ruled out that there may be uneven distribution of property or losses caused by the two parties. It can be seen that people are willing to "settle privately" precisely because they have not established the concept of value assessment, and the continuation of such a phenomenon will make the system of assessing the value of virtual property on the Internet stop moving forward.

3.4. Conflict Between Inheritance of Online Virtual Property and User Privacy Protection

Our activities in the Internet will inevitably leave Internet traces that involve personal privacy. Such as the user's registration information, chat records, published logs, photo albums and so on. Users enjoy the right to privacy from others. When a user registers for the first time, the user will normally sign a user service agreement. The user agreement stipulates the operator's obligation to protect the user's privacy. When the network virtual property inheritance began, the operator in order to limit the user inheritance or protect the user's privacy usually do not cooperate with the heir's request. However, in today's consumer rights protection awareness is increasing, the user's privacy is no longer the network operator's talisman, but has become a powerful force for the heir to request inheritance. [10] Disputes over inheritance cases of online virtual property have been rising year by year, and how to effectively coordinate the protection of both in the process of inheritance and privacy protection has become a major issue. According to the above, network virtual property covers real economic value and spiritual value, while privacy just belongs to the spiritual value, which may contain the user's emotional investment in network products. The main conflicts are between network operators and heirs and between heirs and users. We need to find a way to reconcile the two parties to solve this problem, so that the network virtual property can be inherited smoothly while protecting the privacy of users.

4. Suggestions for Improving the Inheritance System of Virtual Property on The Internet in China

At present, it is not realistic to reintroduce the idea of separate legislation on the inheritance system of network virtual property one year after the promulgation and implementation of the Civil Code, and it is more in line with the current social situation to establish and improve it in the form of judicial interpretation. Therefore, the following section will put forward suggestions to improve the existing problems of network virtual property, in order to improve the network virtual property inheritance system.

4.1. Clarifying the Object and Scope of Inheritance of Virtual Property on the Internet

Based on the foregoing, this paper adopts the property rights doctrine. Despite the diversity of online virtual property, they all have commonalities. Therefore, we can classify them into the following three categories:

The first category, online virtual accounts. The most important functions of network accounts are communication, shopping and entertainment. This kind of network virtual property can be distinguished according to the account's personal attachment attributes and the degree of privacy. Used for chatting account is mostly virtual property with spiritual value, the court in the trial of such accounts with strong personal attributes and involving personal privacy, should fully consider its special characteristics. Accounts used for games or commercial operations should be considered for property value assessment and division. The second category, the network virtual shop. The continuous improvement of network information technology has promoted the birth of the e-commerce industry. In judicial cases, disputes in cases of online shops do not account for a minority. This type of nature of the online shop in reality is generally known as real estate, and in the network is called virtual real estate. The third category, online virtual currency. Virtual currency is a more common type of online virtual property, which can be measured in real money. Although the circulation of this type of online virtual currency is limited to the Internet, i.e., it can only be used and circulated in a game or in a particular software, it can be divided and inherited in quantity.

4.2. Establishment of the Obligation of Network Service Operators to Provide Evidentiary Assistance

According to the rules of evidence, the heirs will be unable to prove their case due to the special nature of virtual property on the Internet and the obstruction of the network operator. In order to avoid such problems, we can establish the obligation of the network operator to assist in proof. This is done as follows:

Firstly, the network operator should seal the relevant data and information at the time of the heir's application for inheritance in order to avoid its transfer or deletion. Although the positions and responsibilities of the heir, the decedent and the network operator are different, the network operator's position is fairer than that of the others and it is technically capable of doing so. It is also important to note that the network service operator has to comply with the law and regulations in order to guarantee the heirs' right to claim their

property, while maintaining a sound internal control system.

Secondly, the network operator should conduct a reasonable review when the heir applies for access to evidence. Once the succession has begun, the heir shall provide the network operator with the relevant supporting documents. The network operator shall carry out a formal examination of the supporting documents, and shall immediately access them if they meet the conditions; if they do not meet the conditions, it shall immediately inform them in a reasonable manner. In the case of missing materials, it shall be informed of the corrective materials at once within a reasonable period of time, and shall not retrieve them if the corrections are not made after the notification is overdue. Relevant departments should fully fulfil their responsibilities to regulate network operators.

In addition, we need to pay attention to several issues. First, a sound system of real-name registration of users. Face and iris recognition can be used when registering accounts to ensure that users do not impersonate or steal others' information for registration. Secondly, network operators shall not restrict the inheritance of the right to use network virtual property by means of user agreements. The user agreement must follow the principle of fairness and its content must not restrict the rights of users. Lastly, electronic evidence preservation techniques should be improved to avoid the invalidation of evidence.

4.3. Improving the System for Assessing and Dividing the Value of Virtual Property on The Internet

In accordance with the foregoing, there are four types of assessment subjects that currently exist in China. Both the heir and the network operator may be biased in their assessment, which is not conducive to ensuring the rights and interests of both parties. If assessed by experts, on the one hand, the cost of hiring experts is high, on the other hand, the number of experts is not enough to cope with such a large number of disputes over network virtual property. Therefore, this paper prefers the third-party specialised agency to assess the value of the property.

Suggestions for improving value assessment: First, third-party assessment organisations must have professional qualifications. Institutions engaged in value assessment must be accredited by the State, and practitioners must receive professional training and obtain relevant certificates. Secondly, third-party appraisal organisations should have the appropriate legal personality and carry out their work in accordance with legal procedures. At the same time, the appraisal organisations should take full account of market conditions and follow the laws of development of the market economy when appraising property. [Thirdly, the relevant supervisory authorities should actively fulfil their supervisory duties and carry out random checks and evaluations on the work of the third-party appraisal organisations on a regular basis. Fourth, the third-party value appraisal institution should strictly follow the confidentiality agreement and fulfil the confidentiality obligation for all kinds of materials involving privacy provided by the parties. They shall be liable for damages if a breach of confidentiality results in losses to others.

Suggestions for improving the division: Firstly, the division of online virtual property should fully guarantee the autonomy of the parties. According to the provisions of Article 1132 of China's Civil Code -- Succession,[12] the

autonomy of the parties is affirmed. If the parties do not negotiate the division against their will, the court shall divide it in accordance with the agreement reached by the parties. Secondly, the parties may divide directly according to the type of online virtual property. Such as network virtual currency, game coupons and other property can be distinguished according to the number can be used to solve the direct division. Third, the two sides negotiated the auction to divide the proceeds of the price. This method is applicable to cases where the heirs do not claim ownership of the online virtual property, but only claim the right to inherit the price.

4.4. Safeguarding User Privacy in the Inheritance of Online Virtual Property

According to the judicial interpretation issued by the Supreme Court [13], it can be seen that China adopts the mode of indirect protection, so there is no conflict between the right of inheritance and the right to privacy. From the perspective of legal inheritance, when the inheritance begins it means that the deceased has given up the meaning of personal privacy protection. When the heir submits the inheritance application to the operator according to the procedure, the operator should actively cooperate with the application rather than rejecting it on the ground of protecting the privacy of the deceased, because it is more suitable to be the eligible subject of the privacy protection of the deceased compared with the next of kin of the subscriber. From the perspective of testamentary inheritance, after the commencement of inheritance, the decedent has actually indicated that the heir can know and access his/her privacy, so the operator cannot reject the heir's request on the grounds of privacy protection. It should also be noted that the heir should ensure that the privacy of the decedent is not infringed upon by others, or else he can be held liable in accordance with the law. [14] How to reconcile inheritance and privacy protection is as follows:

First, users are free to choose to sign an agreement on the inheritability of virtual property on the Internet. When a user first registers for an account, the network operator should confirm the user's wishes and then draw up formal terms and conditions for signing an inheritance agreement with the user. If the user signs this agreement, he/she will be considered to have given up this part of his/her privacy and this part of his/her property can be legally inherited. If the user does not sign the agreement, it means that the user does not want to give up his/her privacy, so this part of the virtual property cannot be inherited, but the network operator cannot restrict his/her account registration. When the user passes away, this part of the property can be disposed of in accordance with the user's wishes, and if the user does not make a disposal plan, the network operator can destroy the data involving privacy. Second, encourage the development of network heritage trusteeship business. The main body of our country to make a will gradually younger and younger, the number of wills involving the inheritance of network virtual property is also increasing year by year. The development of network heritage trusteeship business is essentially to dispose of network virtual property according to the user's will, which is also an exploration of the inheritance of Internet virtual property in China based on foreign experience [15].

5. Conclusion

This paper through the case citation, understand the current judicial status of disputes over network virtual property cases

in China, on the basis of the concept of network virtual property, characteristics, attributes and other aspects of the analysis of the justification for the inheritance of network virtual property. At the same time, this paper from the network virtual property inheritance status quo, to explore the network virtual property inheritance object and scope, inheritance subject evidence, network virtual property value determination and division and the user privacy protection aspects, and through the comparative study of extraterritorial legislation and practice experience put forward in line with China's basic conditions of the handling of several points, in order to solve the urgent need to legislate the judicial practice of the network virtual property inheritance problem. However, it must be pointed out that this paper is still in the process of drafting the legislation. However, it must be pointed out that this paper still has many deficiencies. Because of the failure of in-depth study of practice, this paper can only be broader on the network virtual property inheritance to put forward relevant recommendations for improvement, there may be bias. Therefore, the exploration of network virtual property inheritance system is still a long way to go.

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lawsuit with a people's court requesting compensation for moral damage, the people's court shall accept the request in accordance with the law.”

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