

Analysis on Legal Issues of Digital Property Inheritance Under The Background of Digital Survival Era

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Abstract: With the rapid development of Internet technology, the continuous popularization of information technology and digital technology, people's lives are also moving towards digitalization. One of the impacts it brings is the emergence of digital property and the rising proportion of digital property in personal property. Digital property has broken through the traditional concept of property. Although the Civil Code of the People's Republic of China clearly includes it in the scope of legal protection, there are still a lot of gaps in the legal definition of digital property. With the growth of Internet users, the inheritance and ownership of digital property will inevitably be involved in the near future. This article first elaborates on the definition, types, characteristics, functions, and necessity of inheritance of digital property; At the same time, based on the reality, it analyzes the problems existing in the inheritance of digital property. Finally, corresponding improvement suggestions are proposed to address the issues, in order to provide a positive role for the improvement of the digital property inheritance system.

Keywords: Digitization; Digital property; Inheritance.

1. Introduction

With the continuous development of digital economy, people's life is gradually stepping into digital. Under the background of digital survival era, everyone's clothing, food, housing, emotional life, and way of thinking will leave traces on the Internet, and personal digital property will be continuously created in the process of Internet use. With the growing age of Internet users, the ownership of digital property and subsequent inheritance will inevitably be involved in the near future. According to the "White Paper on Chinese Wills (2022)", an increasing number of "post-90s" and "post-00s" are starting to make wills. The age group for making wills is becoming younger, The content of inheritance also includes the original tangible property, and it has begun to transform into virtual property, and more and more testator lists digital property such as game account as the inheritance.

2. Overview of Digital Property

2.1. Definition and classification of digital property

Article 127 of the Civil Code of the People's Republic of China states: "Where laws provide for the protection of data and network virtual property, such provisions shall apply." The regulation recognizes the existence of data and network virtual property and clearly includes the scope of legal protection, but does not make a clear definition of personal digital property. In addition, the Civil Code has also made provisions on the protection of online personal information to prevent personal information from being leaked and abused, which provides a certain legal basis for the protection of digital heritage.

Draft for the Protection of Digital Heritage drafted by UNESCO defines digital heritage as "unique human knowledge and expressions, including information generated in digital form or converted from existing analog resources to digital form, related to culture, education, science, management, as well as information in other fields such as technology, law, medicine, etc. These native digital resources

are only in digital form and have no other forms, including text, databases, still and animated images, audio tapes, photos, software, and web pages."

From this, it can be seen that digital property mainly refers to digital information stored, processed, transmitted, and shared through networks or electronic technologies. It is another form of property brought by modern science and technology, which is different from tangible property in the real world. It can include:

(1) Social accounts, short video accounts and related content published in the accounts: such as WeChat, QQ, Xiaohongshu, Tiktok, Kwai and other short video accounts. These accounts may contain the user's personal information, photos, videos and other content, involving personal privacy and personal specificity.

(2) Personal documents and audio and video resources: such as the document resources in Baidu Netdisk, personal network albums, space logs, etc., These digital resources are specific manifestations of user personal information and have a high degree of privacy and privacy.

(3) Game account: The game account is equipped with a large number of game equipment, which can be used for trading, circulation, and has property attributes.

(4) Virtual currencies issued by the website: such as Q coins, Bitcoin, etc., these virtual currencies have a certain value in reality and are therefore also part of the digital heritage.

(5) Other valuable digital forms of property.

2.2. The characteristics of digital property

As a new thing spawned by the rapid development of information technology, digital property has different characteristics from traditional property. Combined with the above definition of digital property and specific property forms, its characteristics can be summarized in the following aspects.

(1) Virtuality and dependency

Digital property is the product of the development of network information technology, and the Internet world is a virtual world that is relatively independent of the real world.

Therefore, unlike property in the real world, digital property does not have the physical form, but exists in the virtual form, with data, text, images, audio and video as the carrier, attached to the Internet, and has the virtuality and dependency.

(2) Duality and privacy

As we all know, digital property is created by individuals. Individuals log on to microblog, WeChat and other service platforms through their account passwords, publish digital content such as text, images, audio and video, record their words and deeds, daily life, emotional expression and other content on the Internet, involving the personal information of the creator, with a high degree of privacy. Individuals have the right to possess, use, benefit from and dispose of their own virtual digital property in the network. After the Internet user is offline, these digital properties will not disappear because of the user's offline, but exist on the network server, controlled by the server operator. If users and their heirs want to obtain these digital properties, they generally need the cooperation of the server operator, so the digital properties have duality.

(3) Dynamicity and value uncertainty

Digital property exists in the network world in the form of binary code, which can be modified and updated at any time, so it has dynamicity. This dynamicity allows digital property to be edited and modified according to the user's needs. Moreover, due to the irregular editing and modification, coupled with the absence of specific and fixed asset evaluation standards, the value of digital property is uncertain.

2.3. The role of digital property and the necessity of inheritance

The emergence of digital property is the product of the development of informatization and digitalization, and it also has a certain role and value. First of all, digital property is an extremely important knowledge resource. Individuals work and create through email, social media accounts, and other means, which includes their personal life trajectory and thought process, as well as work and business information. These materials are an important spiritual legacy of Internet users, and after the death of users, they can even be used to help heirs complete unfinished work or affairs and safeguard the interests of the family.

Secondly, with the continuous development of digital lifestyle such as we-media bloggers, online games and e-commerce, the proportion of digital virtual property in personal property is rising, such as game equipment, short video accounts, virtual currency, game characters and other digital property with real value, which can be used for trade circulation to promote the healthy development of the Internet information industry, and needs to be properly managed and inherited.

Most importantly, digital property also plays the role of spiritual sustenance and is people's spiritual home. The emails, photos, and creative videos left behind by users after their death can help their family and friends preserve the precious memories of the deceased, constantly reminisce about the deceased, truly feel the existence of the deceased, let them experience the past again, become a part of family inheritance, and stimulate people's sense of belonging and identification with the family. In the non-information age, people will keep their personal belongings as a memorial after the death of a loved one. Nowadays, obtaining the digital heritage of the deceased is also the best way for people to remember their relatives and friends, so personal digital assets must be properly inherited.

3. The Legal Dilemma of Digital Property Inheritance Under the Current Legislative Background

3.1. The legal status of digital property is unclear

At present, some countries have not yet made clear legal provisions on the inheritance of digital property, which poses legal risks and uncertainties in the inheritance of digital property. Although Article 127 of China's Civil Code recognizes that virtual digital property and real legal property are equally protected by law from the legal level, it does not make a specific definition of digital property, and does not make clear provisions on its concept, scope, change and other legal issues. The Inheritance Code of the Civil Code does not provide operational provisions on how to inherit digital property, only summarizing principles. At the same time, there is no detailed operational guidance on the issue of digital property inheritance at the judicial interpretation level.

Due to the lack of specific operational laws and regulations or judicial interpretation, the legal status of digital property is awkward, and judges have greater discretion in the trial of specific cases, and different judgments in the same case often occur, resulting in greater uncertainty in the inheritance of digital property. If the legislative gap is not filled in time, it will cause many family and social conflicts in the long run, and seriously damage judicial credibility, which is not conducive to the development and implementation of the rule of law.

3.2. Exclusion of rights to inheritance of digital property in network service agreements

Since there are no clear regulations on the inheritance of digital property in our country, the ownership of digital property is mainly adjusted according to the agreement signed between users and network service operators. Before using digital products, users must sign corresponding service agreements. Network operation service providers often add a large number of standard terms in the service agreements, stipulating that users only have the right to use their accounts, and ownership belongs to the operator. When users have not used or their services have expired within a certain period of time, the operator has the right to revoke or cancel the relevant product accounts and exclude the inheritance rights of digital property.

For example, Tencent stipulated in the registration agreement that the ownership of wechat and QQ belongs to Tencent, and the account user does not support inheritance or recovery after the death of the user, and the withdrawal of funds needs to provide proof. Bilibili (Site B, provided by Shanghai Kuanyu Digital Technology Co., LTD and its affiliates) stipulates that after obtaining the confirmation and consent of the user's immediate family, the user's account is listed as a "memorial account" and protected. This measure protects the user's privacy and respects their wishes, while also taking care of the deceased's relatives and fans' thoughts about the deceased. Provide support from the technical level, but still exclude the heir's right to inherit the account.

3.3. Conflict between digital property inheritance interests and privacy protection interests

Article 40 of the Constitution of the People's Republic of

China stipulates: "The freedom and confidentiality of communication of citizens of the People's Republic of China are protected by law. Except for the needs of national security or the investigation of criminal offenses, public security organs or inspection organs shall inspect communication in accordance with the procedures prescribed by law, no organization or individual shall infringe on citizens' freedom of communication for any reason." In addition, Articles 110 and 1032 of the Civil Code also protect citizens' right to privacy. It can be seen that privacy, as a fundamental right of citizens, is strictly protected by the law.

However, there are many kinds of digital property, many of which, such as the chat records of the deceased, photo albums, emails, video dynamics, etc., record what individuals say and do on the Internet, daily life, emotional expression and other content, involving the user's personal information and personal privacy, with a high degree of privacy. If this kind of digital heritage is inherited against the will of the deceased, it will also violate the privacy of the deceased, and may even violate the privacy of the third party. If the privacy of a third party is damaged by the heir's inheritance of digital property, the third party has the right to file a lawsuit against the heir in accordance with relevant laws and regulations, asking him to stop the infringement or compensate for the corresponding loss, resulting in new disputes.

4. The Solution Path to The Problem of Digital Property Inheritance

4.1. Formulate laws and regulations related to digital property

However, there are many kinds of digital property, many of which, such as the chat records of the deceased, photo albums, emails, video dynamics, etc., record what individuals say and do on the Internet, daily life, emotional expression and other content, involving the user's personal information and personal privacy, with a high degree of privacy. If this kind of digital heritage is inherited against the will of the deceased, it will also violate the privacy of the deceased, and may even violate the privacy of the third party. If the privacy of a third party is damaged by the heir's inheritance of digital property, the third party has the right to file a lawsuit against the heir in accordance with relevant laws and regulations, asking him to stop the infringement or compensate for the corresponding loss, resulting in new disputes. The biggest dilemma currently faced by digital property is that there are no laws to abide by. The Civil Code only makes general provisions on digital property, which is unable to deal with the blowout digital property inheritance disputes in the era of the explosion of digital information. Therefore, it is necessary to improve the legislation on digital property inheritance in China's current laws and build a systematic legal system for digital property at the legislative level.

First of all, we should clarify the scope of digital property, determine the specific definition and content of digital property and its legal nature, establish and improve the digital property registration system, clarify its ownership and attribution, and provide legal basis for the inheritance of digital property.

Secondly, it is necessary to clarify the inheritable scope of digital property. Since the inheritance of digital property may infringe the personal privacy of the decedent and the relevant third party, the inheritable scope of digital property should be clarified from the legal level. For some digital property with

strong property attributes, such as convertible digital property, marketing or commercial social accounts with property value, and electronic shops with credit rating evaluation, etc., can be included in the category of inheritable digital property. For some highly private digital assets, such as private social accounts and credit accounts closely related to digital assets, in order to protect the privacy rights of the deceased and related third parties, it can be inferred that they cannot be inherited without the explicit consent of the deceased.

At the same time, in order to ensure the needs of other rights parties and public powers, a special inheritance application system can be set for some business accounts and office accounts, and the court can decide whether to inherit or not. Make the inheritance of digital property truly realize "There are laws to abide by", reduce the situation of different judgments in the same case, enhance judicial credibility, and provide legal protection for digital life.

4.2. Standardize and optimize network service protocols

In the protection of the inheritance right of digital property, the main problem is the unreasonable standard terms in the network operation service agreement. In order to reduce operating costs and reduce operational risks, network operators often adopt a "one-size-fits-all" approach to limit the inheritance of digital property by heirs, and even exclude inheritance rights through format clauses. China's "Civil Code", "Consumer Rights and Interests Protection Law" and other relevant laws stipulate that the drafting of user agreement and other standard clauses should abide by the principle of justice and honesty, and have to reasonably arbitrarily increase the obligations of one party or exclude the rights of one party. The internet is not an illegal place, and the standard clauses in network operation service agreements that increase one party's obligations or exclude one party's rights are illegal acts and should be regulated.

At the same time, the network service agreement should be regulated from the legal level, requiring it to clarify the network service operator's obligation to assist the user's network virtual property inheritance, and clarify the main responsibility and platform responsibility of the network service operator, so as to ensure the smooth realization of user rights. In addition, it should also clarify the responsibility of network service operators for the safe custody of network virtual heritage, prevent account theft or loss, and ensure the exercise of the successor's right of inheritance.

4.3. Encourage users to develop digital property inheritance plans during their lifetime

According to the Civil Code Succession Code, there are two kinds of inheritance: statutory inheritance and testamentary inheritance. If the deceased has established a valid will form for the digital estate, then the property can be distributed according to their own wishes. An effective digital property inheritance plan can reduce unnecessary disputes, better safeguard the real will of the decedent and the inheritance rights of the heir, and effectively avoid the risk of digital property inheritance.

The digital property inheritance plan should first clarify the quantity, ownership, inheritable scope and other contents of the digital property, formulate the digital property list, designate the beneficiaries of the digital property, and designate heirs through wills or trusts and notarize them

according to relevant laws and regulations. If there is a large amount of digital property, a digital property manager can also be selected and entrusted to professionals or professional institutions to manage the digital property, handling a series of issues such as digital property management, protection, and inheritance. In addition, for digital property inheritance plans, privacy protection should also be emphasized. The risk of inheritance plan leakage can be avoided by setting passwords, using dual authentication, limiting the disclosure of digital property information, and other methods.

5. Summary

The inheritance of digital property is an unavoidable legal issue under the background of digital survival era. However, at present, the inheritance of digital property is still faced with a legislative gap, the exclusion of inheritance rights in network service agreements, and the conflict between inheritance rights and privacy rights. In response to these difficulties, we must speed up the legislative process and fill the legislative gap in digital property inheritance, so as to protect the legitimate rights and interests of every Internet user and maintain judicial credibility. At the same time, to abandon unreasonable format clauses, balance the conflict of interests of all parties, Internet users should also strengthen the awareness of protection and inheritance of digital property, and effectively safeguard their legitimate rights and interests.

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