

Study on the Attribute Dispute of Virtual Property and Countermeasures

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Abstract: *Due to the Internet economy's rapid growth and the gradual appearance of virtual property in people's minds, the law has lagged behind and the theoretical community's viewpoints are inconsistent, making it difficult for courts to apply the law on a consistent basis. In order to effectively prevent virtual property crime, it is important to examine the development of virtual property research, its concept, and attributes. To do this, this paper will examine the various perspectives held by academics and judicial practitioners regarding virtual property, as well as some pertinent legal and judicial developments in other nations. Finally, it will combine these analyses with case studies that pertain to the problem at hand.*

Keywords: *virtual property, legal attributes, legal application*

1. Formulation of the problem

Today's society has entered a new economic era of the Internet thanks to the explosive expansion of the Internet economy and Internet technology, which has led to the introduction of a number of Internet products including social media platforms and online games. Network dependence has become a major issue in society, and both criminal and civil actions are frequently brought about as a result of the growing growth of network users. The outcomes of theoretical study cannot be immediately transferred to judicial practice because theoretical circles prevent the ideas of researchers from being unified and there is no definitive evidence.

As for the concept of virtual property, legal attributes, and other fundamental theories, only Article 127 of the Civil Code of the Existing Law provides extremely comprehensive guidance. Judicial practice also exists in the absence of express provisions on the grounds of refusal to adjudicate the phenomenon, and some judges from the Existing Jurisprudence, the Law to find the Concept of Virtual Property, Legal Attributes, and Other Basic Theories. However, because the theoretical and judicial practice for virtual property attitude is not entirely consistent, the judicial practice, the judge's view for applying the law does not appear to be very comfortable, so there may be comparable cases of this court and the court's judgment.

2. Status of development of virtual property

From the judicial cases published in the judicial documents network, we can see that some judicial practice that virtual property does not have property attributes, and some believe that it has property attributes, so it can be seen that the judicial practice of virtual property in the understanding of the bias is very large, that in the specific practice of the application of the law bias will also be the same, there is no way to ensure the justice of the judiciary, the rights of the citizens, the authority of the law. So far, only the civil code on the virtual property of the problem gives the guidelines, but must be clear that the civil code on the virtual property of the guidelines is vague provisions, and cannot be 127 articles of the content of the concept of virtual property, legal attributes, and therefore on the attributes of the virtual property of the controversy is difficult to stop within a short period of time in practice.

2.1. Judicial practice

Virtual property is a new thing that emerged along with the development of the Internet. As early as around 2003, there have been civil cases of online game equipment theft against online game companies, as well as criminal cases of theft of QQ numbers; in 2009, after the emergence of bitcoin, there were civil and criminal cases involving bitcoin, ethereum and other "virtual currencies"; and after that, there are

constantly cases of virtual property being stolen. After that, cases of theft of virtual property continued to emerge. When the first case of theft of online virtual property appeared, the attitude of the Supreme Court was very clear, supporting the attribute of virtual property as property.

Since the emergence of virtual property in people's field of vision, not only the public's attitude towards virtual property, the court's attitude towards virtual property is irreconcilable, for example, some courts believe that the virtual property has property attributes, some courts believe that it has debt attributes, and some courts believe that it has intellectual property rights attributes. In short, although the first case of virtual property, the court found that the nature of the property, but also cannot affect the views of other courts on virtual property, and these divergent views lead to the judicial practice of the case of different judgments, "the embarrassing situation. The above points directly lead to the criminal law for the protection of virtual property on the path of disagreement, the attributes of virtual property directly affect the judicial practice for the illegal acquisition of other people's virtual property behavior. Theoretical debate on virtual property, one view is that virtual property does not have property attributes, in essence, only electromagnetic records, and the current laws, judicial interpretations have not clearly stipulated the legal attributes of virtual property, if the virtual property will be interpreted as criminal law property, it is likely to constitute an expansion of the interpretation of the law is not permitted, and will go against the principle of the law of crimes and punishment. [1] The criminal law of the People's Republic of China has not clearly defined the legal attributes of virtual property. And in the illegal access to computer information system data crime is written into the criminal law, the crime has become the regulation of virtual property crime "best" choice.

Prof. Liu Mingxiang also wrote an article in support of this [2] Professor Liu Mingxiang also wrote an article in support of this. However, from the judgment of judicial practice can be seen, the Supreme Court and the Supreme Prosecutor's attitude towards virtual property is not the same, for example, in 2013 in the development of the judicial interpretation of the crime of theft, there was a proposal to suggest that the virtual property will be included in the scope of the criminal law protection of property, but the people's court did not adopt this proposal, the court believes that the virtual property is included in the scope of the property is inappropriate for the interpretation of the judicial interpretation, the court advocated characterizing the violation of another person's virtual property as an information system data crime, but the Supreme Prosecutor issued a guiding case identifying the theft of an Internet domain name as a theft crime.

If the crime of illegally obtaining computer information system data is dealt with according to the crime of illegally obtaining computer information system data, then it should be considered whether the behavior of the perpetrator really destroys the management order of the society? This paper considers that the legal interest infringed by the perpetrator is the property legal interest of the victim. Thirdly, should the amount of the victim's property loss be included in the consideration of punishment? If it is not included, then how is the theft of virtual property worth 5 million dollars and the theft of virtual property worth 50,000 dollars reflected in the criminal law system? What needs to be seriously considered is whether the crime of illegally obtaining computer information system data alone can achieve the purpose of truly stifling such crimes. Of course, there are many other issues not considered in this paper and questions raised by other scholars, and the above questions are yet to be answered.

2.2. Civil law provisions

As early as 2016, when the General Provisions of the Civil Law (Draft) were considered, virtual property was included in the draft and the legal attributes of virtual property were clearly stipulated, but due to the different debates on the legal attributes of virtual property in various sectors of the community and the difficulty of unifying opinions, the draft article was deleted. It was only in the Civil Code promulgated in 2020 that general provisions on virtual property were made.

From the above mentioned process of deletion and addition of virtual property in civil law, the Civil Code does not directly stipulate the legal attributes of virtual property, but only gives a general guideline, but this paper believes that the lack of a clear point of view is to give the theoretical and judicial practice a better space to discuss this matter. However, due to the lack of clear provisions on virtual property at the legislative level, there will be great controversy in the future on the understanding of virtual property in the theoretical circles and the legal application of virtual property in the judicial circles. However, the positive guidance of the Civil Code is a demonstration of the legislator's attitude of attention to virtual property, since it is a positive guidance must have a certain positive significance on the legal application of virtual property, and also has a certain positive significance on the regulation of virtual property crimes.

3. Theoretical controversies and foreign legislation

3.1. Theoretical perspectives

In the civil field, Prof. Lin Xuxia proposes that virtual property belongs to information resources and arises in cyberspace, and Prof. Lin advocates the protection of virtual property by property rights.[3] Prof. Lin advocates the protection of virtual property by the right of property. Prof. Liang Huixing[4] Professor Liang Hui Xing believes that virtual property, such as game coins, game equipment and other types of electromagnetic records, is not an "object" in civil law, but an imaginary thing, and that virtual property only exists in the cyber world, where one must abide by the rules of the cyber world, and use and trade the virtual property in accordance with the rules. Visible for the definition of virtual property, scholars have their own point of view, in general in the field of civil law, the theory of virtual property cognition has the following characteristics: First, the theory on the attributes of virtual property is mainly the existence of property rights, claims, virtual property rights said the debate. Secondly, the theoretical community has its own views on the relationship between virtual property and information and data. Information including paper information and electronic information two categories, virtual property is a computer information, belongs to a kind of information.

In the criminal field, whether virtual property can be regarded as property in criminal law, those who hold the affirmative theory believe that Article 127 of the Civil Code stipulates: "If there are provisions in the law for the protection of data or network virtual property, they shall be in accordance with the provisions thereof", and based on the principle of unity of the legal order and the fact that there are no clear provisions in the law for property, it is believed that virtual property can be regarded as property. The negative theorists believe that virtual property is a kind of legal fiction claim between people and people, and the theft of virtual property will probably not cause it to be impaired or extinguished. Chen Xingliang [6] Professor Chen Xingliang believes that virtual property is property in criminal law and has value, and also supports its data attributes. Xiao Zhike [7] divided the virtual property into three main categories: identity information, equipment, and gold coins, and suggested that the scope of virtual property is too wide and should be interpreted in a restrictive manner, otherwise it may lead to inappropriate criminal punishment. Prof. Roland Chen [8] He delineates the boundaries of virtual property in five aspects and proposes criteria for identifying virtual property. Prof. Guo Jilong [9] Discusses the nature of virtual currencies and the characterization of infringement of virtual currencies from the perspectives of the pragmatic view of judicial order and the unified view of law and order, and proposes that the characterization should be base on the specific ways in which the interests of individuals or platforms are damaged under the digital economic order in full consideration. Ren Yuejin [10] et al. propose a new perspective to judge the characterization of the theft of network virtual property, adopting the perspective of the unity of the legal order, and arguing that the specific crime should be determined according to the attributes of the legal interests of the data. Criminal law scholars of virtual property research more will consider the direction of virtual property should be protected by criminal law, there is no need for criminal law punishment, in addition to the virtual property crime in line with the composition of what kind of crime, to consider the behavior of how to criminalize, it is necessary to explain the characteristics of the virtual property problem, criminal law scholars of the legal attributes of the irtual property hold different views. This controversy is reflected in judicial practice, that is, different judgments in similar cases, whether the characterization of property-type crimes or computer-type crimes, at this time it is necessary to sort out the legal attributes of virtual property.

3.2. Status of foreign legislation

Japanese criminal law academics define electricity as an object alongside property, the concept of property in criminal law is different from the concept of civil law, the concept of property in criminal law is compatible with electricity, the concept of property in Japan there are different doctrines, the academics take the doctrine of management possibilities to redefine the criminal law of the property. 1907 Japanese Penal Code in Article 245 made the provisions of the " Although this provision was made in the criminal law, the Japanese criminal law and civil law still hold the position that property and property interests are different, and that the two are not compatible unless specifically provided for in the law, as in the above mentioned provision of Article 245.[6] The Japanese Criminal Code and Civil Code have established the position that the two are incompatible unless specifically provided by law, as in Article 245 above. Although the Japanese Penal Code defines television as property, only if the Penal Code stipulates that it is property can it be an exception to the "entity" criterion for the determination of property. For example, the Tokyo District Judge, in ruling on a case concerning virtual currency, denied

that virtual currency has the property attribute, and more importantly, it does not meet the "entity" criteria for property in Japanese criminal law. Therefore, Japanese criminal law does not support the argument that virtual property has property attributes and considers virtual property to be a kind of electromagnetic data, i.e., it does not agree that property crimes should be used to regulate virtual property crimes. Based on the above discussion, virtual property naturally cannot become property in Japanese criminal law.

Baumann, a German scholar, has said that the "thing" in Article 242 of the Criminal Law should not be interpreted too broadly, and that he did not support the inclusion of electrical energy in the category of "thing" when it appeared, because this would lead to the concept of "thing" being blurred and confused. "There is no boundary and the concept is ambiguous. Later on, the attitude of German criminal law towards virtual property also shows that the scope of "thing" in Germany is bounded, and "data" cannot be included, and the German Criminal Code stipulates a special "crime of alteration of data" in Article 303a, which is to prevent the crime of "alteration of data". The German Criminal Code stipulates a special "crime of changing data" in Article 303a in order to prevent the boundary of "thing" from being too blurred, and this article contains penalties for the change and elimination of "data", which can be seen that the German Criminal Code does not include virtual property as "thing". It can be seen that the German Criminal Code does not include virtual property in the category of "things".

At the same time, the Swiss Penal Code also establishes a special "crime of unlawfully obtaining data" in Article 143, which explicitly stipulates that, in the case of virtual property crimes, if one unlawfully obtains another person's "computer data" for illegal profit, the crime shall be dealt with in accordance with the "crime of unlawfully obtaining data", and the Swiss Penal Code does not consider virtual property to be equivalent to traditional property. "Swiss criminal law also does not consider virtual property to be equivalent to traditional property.

4. Typical Case Study

The court of first instance ruled that the perpetrator Yue Mou and others constituted the crime of illegally obtaining computer information system data, and the Procuratorate filed a protest, thinking that although the defendants purchased computer information data, their purpose was to steal the gold coins in the account and obtain property benefits, and that their behavior should be evaluated in terms of their purpose, and the Procuratorate also suggested that the game gold coins had both data attributes and property attributes, and that therefore Yue Mou's behavior constituted the crime of illegally obtaining computer information system data and theft simultaneously. The Procuratorate also suggested that the game gold coins had both data and property attributes, so Yue's behavior constituted both the crime of illegally obtaining computer information system data and the crime of theft, and should be punished by a felony. However, the court of second instance held that Yue's behavior constituted the crime of illegally obtaining computer information system data. The court's decision was based on the following reasons: (1) Virtual property has no property attributes. Virtual property has no management possibilities, cannot be traded freely, cannot leave cyberspace to exist alone, and again its virtual nature is reflected in the fact that it arises in cyberspace and cannot exist alone without virtual space. Moreover, once the virtual property is downgraded by the operator, it no longer exists, i.e. the operator decides the existence of the virtual property. (2) It is difficult to estimate the value of the virtual property. If the property attribute of virtual property is supported, then it is inevitable to discuss its value, but the value of virtual property can't be assessed by the current property valuation system, and the virtual property is not like the traditional property can be widely circulated. (3) Computer crimes to regulate the crime is conducive to the protection of the network environment, and is conducive to the healthy operation of the network environment, and can't be confined only to the victim's property loss.

This paper maintains the view that game currency is virtual property and that virtual property is property in criminal law. The traditional sense of property is with management possibility, transaction possibility and value. Game coins act as general equivalents in the network world and can be obtained by traditional currency recharge or other game methods. According to the "Virtual Currency Management Circular", network operators are required to return the virtual currencies that have not been used by the users to the network users in legal tender or other ways when terminating the service. Played online games know that the game gold can be exchanged by a certain ratio from the legal tender, so that the property attributes of the game gold is not out of thin air, there is no doubt that, through the game tasks to obtain the game gold, it has the value of use, although the player to obtain the type of game gold did not pay the cash currency, but cannot negate the value of the property, the player is also in the process of giving the time and effort. The value of the game gold coin is recognized. In the court's decision can be seen, the court is not to the defendant's illegal income for the amount of theft to determine, is the court

directly identified the amount of crime, I think by the court directly identified the amount of crime may lead to the judge subjective determination of the amount of the crime of the components become more, may be biased. General amount of crime is calculated in three ways, according to the perpetrator of the crime, according to the victim loss, third-party institutions, this paper believes that if the victim is an individual user should be calculated in accordance with the loss of the victim, if the victim is a business should be in accordance with the third-party institutions.

Case 2: the perpetrator Liu Mou according to the requirements of Huang Mou, wrote a scanning telecommunications points of the software, and then use this software to scan the Zhejiang Telecom, Guangzhou Telecom user information, from which to steal the user's telecom points, and then in the points exchange mall will be exchanged for Xunlei activation code points into a number of things, resale so as to make a profit from it.

The court of first instance ruled that the behavior of the perpetrator, Liu, constituted the crime of theft. Mr. Liu appealed. It claimed that: Liu's defense proposed that the amount of theft described in the judgment is wrong, because the perpetrator still has points that have not been exchanged, and cannot be calculated together with those that have been exchanged, and proposed that the court's determination of the value of the telecommunications points in the wrong way, should be referred to by a number of parties to make a judgment in favor of the victim, instead of unilaterally using the value of the telecommunications company to determine the data provided by the company, and that the court should consider the telecom points and the redemption of the activation codes, etc. were sold at a discount. In addition, his defense claimed that the victims were telecom users rather than telecom companies. The court refuted the content of Liu's appeal and found that the amount of Liu's crime was not improperly determined in accordance with the principle of favoring the defendant, and that the court had already considered the discounted portion.

Traditional property has become the property to be protected by the criminal law precisely because of its value, possibility of management, and possibility of circulation, and virtual property is only formally different from traditional property, and of course it can be protected by the criminal law in the form of property. The court mentioned the estimation of the value of the telecommunication points stolen by the perpetrator in the judgment, the telecommunication company provides the network data, and then retrieves the transaction records of the perpetrator, and then combines the discount activities of the telecommunication company and so on in accordance with the minimum amount of the perpetrator's criminal amount, which is in line with the principle of the law of criminal punishment, although the traditional property value estimation is not suitable for the estimation of the value of the virtual property, but specific to individual cases will certainly have a difference. Although the current traditional way of estimating the value of property is not suitable for the estimation of the value of virtual property, but specific to the individual case will be followed, we do not have to find a uniform standard to measure the value of virtual property, but we follow the principle of "in favor of the defendant", it will not result in miscarriage of justice and wrongful conviction, the same case is different from the situation.

5. Pathways to solving virtual property crimes

From the current legislative and judicial point of view, how to criminalize virtual property crimes, there is no clear legislative provisions, judicial opinions are not uniform, and there are also different views in the theoretical community, so it is very necessary to discuss how to criminalize virtual property crimes.

5.1. Judicial interpretation

Judicial interpretations, so to speak, provide clarity in the way the law is applied. What this paper says, to solve the incrimination of virtual property crimes by way of judicial interpretation, is to suggest that judicial interpretation can give virtual property a limited scope. Since the legislation cannot give a clear solution, then the judicial should synthesize the academic community, the practical world of scholars, judicial practitioners and the public's views on virtual property, under the comprehensive consideration of the corresponding judicial interpretation. However, how to limit the scope still needs to be determined after profound discussion. Another point, our country can refer to foreign legislation and judicial practice, combined with the actual situation of our country, improve the judicial interpretation of the crime of virtual property, and limit the scope and type of virtual property, for judicial practice can have a clear legal basis.

5.2. Case Guidelines

The Research Office of the Supreme Court, in its "Research Opinions on How to Characterize the Issue of Using Computers to Steal Other People's Game Coins and Profit from Illegal Sales", suggests that virtual property is essentially electronic data, not property, but it also needs to be made clear that this opinion is only on the issue of game gold coins, and does not refer to other types of virtual property [7]. However, the Supreme Prosecutor pointed out in the No. 37 guiding case that network domain names are property. Obviously the opinions of the two high courts are also different, so it is still difficult to have a better guiding document to refer to in judicial practice.

Finally, this paper argues that virtual property crimes should be distinguished according to a typological approach, and that it may be that virtual property crimes do not require a uniform standard for punishment, but rather require careful consideration of exactly what constitutive elements of the crime are met by the act and purpose. Firstly, what cannot be ignored is the legal interests infringed by the criminal act, which requires a typology of virtual property to distinguish exactly what kind of legal interests are infringed. The second point to consider is the protection of the victim's rights and interests. Case 2 above mentioned the appellant's opinion, which mentioned a point is the case of the victim is not the telecommunications company but the telecommunications users, this paper believes that the opinion has a reasonable place, the perpetrator stole the points is the user account points, the victim should be the user.

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