

Research on Legal Issues of Network Virtual Property Inheritance

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Abstract

With the development of information technology, network platform has become an indispensable part of our life. More and more users have opened accounts to enter cyberspace. They spend time, money and energy in operating in cyberspace. While expressing their emotions and recording bits and pieces, their behavior has also accumulated a huge number of "network virtual property". Today, the first generation of online immigrants have entered the old age. In practice, there is a realistic demand for the treatment and distribution of virtual property. The lack of legislation and the conflict between inheritance and privacy protection have brought challenges to the inheritance of online virtual property. At the same time, there are also problems that network service providers avoid inheritance through technical paths. In this context, in order to design a network virtual property inheritance system that fits the existing laws and can respond to social needs, it is necessary to clarify the inheritability of network virtual property from legislation, and regulate the network service agreement to ensure the realization of the right of inheritance. In addition, we should also pay attention to and solve the setting of the protection period of this kind of special property and the problem of no inheritance.

Keywords

Network Virtual Property; Network Virtual Property Inheritance; Privacy Protection.

1. What is Network Virtual Property?

1.1. Concept and Classification of Network Virtual Property

The essence of network virtual property is a new property type derived from the popularization of Internet technology, which is different from ordinary movable property and real property. The theoretical circle has not formed a relatively unified concept. Professor Lixin Yang believes that network virtual property is isolated from reality. It exists in cyberspace and is a new digital property that can measure its value with existing metrics. Some scholars interpret it as an information resource that is attached to the virtual world, exists in digital form, can be dominated by human beings, competitive and permanent, and users can add value to it.

At present, the classification of network virtual property is still confused. Professor Yide Ma made a more specific division of network virtual property. It is divided into account password type, information type, reputation type, virtual currency type and game equipment type. Professor Lixin Yang divides the network virtual property into virtual movable property and virtual real property. Professor Yan Li divides it into paid virtual property and free virtual property. The author believes that clarifying the classification of network virtual property can provide standards and ideas for judicial practice to deal with issues related to network virtual property inheritance.

1.2. The Legal Attribute of Network Virtual Property

Among the four existing viewpoints in the academic circles, the author tends to think that the network virtual property is a special kind of property. The traditional real right theory holds that the thing should be a tangible existence with space at the same time. But now the scope of

things has already broken through the category of physical things. The author believes that if the network virtual property has the possibility of exclusive control in law, it does not violate the basic concept of real right. Even if it does not have spatial attribute, it should also be a kind of real right.

2. The Present Situation and Problems of Network Virtual Property Inheritance in China

The lack of legislation is a major problem hindering the inheritance of virtual property, and the relevant behaviors of network service providers also increase the difficulty of inheritance. Not to mention the problems of network virtual property, such as difficult to evaluate the property value and difficult to distinguish the inheritable network virtual property objects. Therefore, it is of great significance to analyze and solve the above problems for the inheritance of network virtual property.

2.1. Lack of Legislation

Network virtual property was first known in the form of legal provisions in the general provisions of civil law promulgated in 2017, which was directly followed in the civil code. The inclusion of network virtual property in the civil code reflects the legislators' affirmation of its research value. Professor Lixin Yang believes that network virtual property should be included in the scope of heritage, and Junhai Liu also believes that it can be transferred and inherited according to law. The active discussion in academic circles is in sharp contrast to the cautious attitude of legislators. In order to avoid the dilemma of being unable to rely on and different judgments in the same case caused by the incomplete legislation of network virtual property in judicial practice, legislation needs to respond to this problem in time, put the improvement of legal norms on the agenda as soon as possible, or clarify the issues involved through judicial interpretation, make up for the current situation of legislative vacancy, and provide a good environment for network development.

2.2. There is a Conflict between the Network Service Provider and the Successor of the Virtual Property

There are conflicts of interest between network service providers, users and heirs, which are largely caused by service license agreements. The user license agreement stipulates in advance that the ownership of the account belongs to the network service provider. The user only has the right to use the account, and the account cannot be transferred or sold, some restrict inheritance. From the perspective of network service providers, after a user dies, the ownership of his account and the network virtual property in his account may be unknown. During this period, the network service provider must increase money investment in order to save his account and property. as a profit-making party, it agrees with users in advance that the ownership belongs to the network service provider through the license agreement, which can avoid losses and maximize benefits. For the heirs, the above-mentioned acts of the operator obviously infringed on their legitimate rights and interests.

As a preprogram for obtaining social accounts, game accounts and network services, users have no choice but to passively accept format terms. in practice, when registering an account, the user usually ignores the terms of service and directly skips the prompt for account registration. Even if users carefully read the service agreement, they cannot negotiate with the network service provider on the relevant terms on an equal footing. The autonomy of users and the maintenance of their legitimate rights and interests in the future will be affected under the above circumstances. Therefore, the above-mentioned acts of network service providers should be limited and constrained. Network service providers should not be allowed to abuse

their dominant position to damage the legitimate rights and interests of users and their successors.

2.3. There is a Conflict between Virtual Property Inheritance and User Privacy Protection

Once it is generally stipulated that the network virtual property can be inherited, the network virtual property involving the privacy of others will have the possibility of violating the personality interests of the deceased or others. Some scholars believe that there is a natural intimate relationship between the heir and the decedent. The heir has a natural advantage in maintaining the privacy of the deceased, and there is no possibility of violating his privacy. However, virtual property inheritance is not only the respect for the will of the deceased, but also the actual spiritual interest needs of the heir. Some network virtual properties are often related to the privacy of others. Bringing the network virtual properties related to personal privacy that users do not want to be known by others into the scope of inheritance may violate the personal wishes of the deceased or infringe on the rights and interests of others.

From the perspective of network service providers, according to the relevant provisions of the civil code, network service providers should give full play to their security role. In the service agreement, the network service provider usually promises to protect the user's privacy, but in fact, after the user dies, the network service provider often opposes the successor on the grounds of privacy policy, to prevent the inheritance of network virtual property.

3. Suggestions on Perfecting the Inheritance System of Network Virtual Property in China

3.1. Clarify the Inheritability of Network Virtual Property through Legislation

Because of the particularity of the nature of network virtual property, if we follow the general inheritance rules of traditional jurisprudence in the process of inheritance, it may cause confusion and is not conducive to the protection of the rights and interests of the heirs. Therefore, in order to avoid the problem of different judgments in the same case in judicial practice caused by the lack of legislation, we should keep pace with the times, clarify the matters related to network virtual property in legislation, and provide legal support for judicial practice.

3.1.1. Clarify the Inheritability of Network Virtual Property from Legislation

Clarifying the legal status of network virtual property is an important step to regulate the inheritance of network virtual property. At present, the civil code only makes principled provisions on the protection of network virtual property. There are two ways to solve this problem: one is to formulate a special regulation to protect network virtual property. The second is to introduce relevant judicial interpretations, and the Supreme People's court will interpretively define the network virtual property and include it in the scope of inheritable heritage.

From these two ways, the most direct way is to make special legislation on network virtual property, but due to the long legislative process, this way cannot be realized in a short time. Therefore, it is more time-saving and labor-saving to clarify the legal status and type scope of network virtual property inheritance through judicial interpretation and apply it to practice. After the relevant theories are mature, we can formulate a mature network virtual property inheritance system by accumulating experience in practice and regulating it at the institutional level through legislation.

3.1.2. It is Clear that the Network Virtual Property Involving Privacy cannot be Inherited

Combined with the above, to clarify the inheritability of network virtual property at the legal level and make up for the lack of legislation, we should first consider a question: can network virtual property involving personal privacy be inherited? Some scholars believe that network virtual property involving privacy is inheritable. If the deceased has no contrary agreement on network virtual property, it is presumed that his successor can obtain the inheritance right of network virtual property involving privacy after the user's death. Some scholars also advocate that the network virtual property involving privacy should be excluded from the inheritable scope.

The author holds a negative view on this issue. The specific reasons are as follows: the traditional personality right theory holds that personality rights such as the right to privacy cannot exist alone from the human body. This exclusive right disappears with the death of natural persons and is not inheritable. and according to the relevant rules of the inheritance law, what can be inherited as inheritance only includes relevant property rights, excluding personality interests such as the right to privacy. Therefore, the privacy related network virtual property left after the user's death should first respect the user's personal will. Without the user's independent decision, the network service provider shall keep such property confidential and shall not disclose it without permission.

3.2. The Realization of Inheritance Right is Guaranteed by Regulating Network Service Agreement

How to make network service providers reasonably agree on the content of the agreement and reach an agreement with network users equally is an important step in solving the problems related to the inheritance of network virtual property. The user service agreement cannot be used as the basis for excluding the legal inheritance right. In the relevant provisions, users should be allowed to transfer and inherit the network virtual property, and the relevant contents restricting users' inheritance rights involved should be deleted.

In addition, the network service agreement can be constrained by filing and review. Network service agreements are mainly operators, and users lack the possibility of negotiating and signing contracts on an equal basis. In the registration process, users do not read the agreements carefully due to lengthy agreements. In this regard, we should use other means to supervise the business behavior of network service providers in order to break the layers of barriers in the inheritance of network virtual property. Firstly, the service agreements provided by major network service platforms can be filed and reviewed through special institutions, focusing on the standard terms, relevant terms involving inheritance and circulation and personal information protection. The provisions that violate the basic principles stipulated in the contract law such as the principle of fairness and voluntariness shall be returned and a reasonable time limit shall be set for modification. Secondly, we should also establish a strong supervision and inspection mechanism to supervise the service agreement and specific behavior of network service providers, and formulate detailed punishment rules to avoid the continued infringement of users' inheritance rights.

3.3. Solve the Problem of Virtual Property Inheritance through Technical Path

Setting up a will is undoubtedly the best way to protect network virtual property, but at present, only a few users dispose of network virtual property by will. Although there have been online virtual property hosting projects in China, such as "China Digital Heritage Network", it is obviously not feasible to alleviate the conflicts in the inheritance of online virtual property only through this property hosting project because of the low popularity, the authority of the website and whether it can effectively protect users' privacy.

At this time, we can appropriately learn from Google's practice, set up a preprogram before the user registers and logs in for the first time, and set up an "estate manager" for himself. The user can independently determine the range of virtual property that can be inherited in the account, and provide convenience for future inheritance through the manager. In addition, after registration, users should also be allowed to change their estate administrator and estate scope at any time. On this premise, after the death of the user, the network service provider should timely notify and actively assist the inheritance; If the user has not set up an estate manager before his death, the network service provider can negotiate with the user's successor, delete the user's account information, or change the account into a "commemorative account". Once it becomes a memorial account, the account will not be able to log in, and the chat records related to the user's privacy will be permanently sealed. However, the news published on the public platform and not marked as visible only to themselves can still be viewed by relatives and friends. Friends can post Memorial information through messages.

3.4. Clarify the Protection Period of Network Virtual Property Inheritance

Under the background of regulating network service providers through technology path, there is still such a problem, that is, should network service providers keep the network virtual property "forgotten" in the inheritance process indefinitely?

In order to solve this problem, the protection period can be set for the heritage management of network virtual property. German law stipulates that "after the death of the network user, it shall be uniformly managed according to the general property inheritance, and after confirming its value, the inheritance right of the network virtual property as an inheritance will be protected by law within 10 years after the death of the network user. However, due to the rapid development of China's network, the 10-year protection period has greatly increased the operation cost and legal risk of network service providers. The setting of the protection period can be calculated as three years according to the limitation period of action in China.

The specific operation is as follows: after the user dies, the successor claims to inherit the user's network virtual property for a period of three years. During this period, the network service provider shall keep the network virtual property of the deceased. When the period expires and the successor does not claim the right of inheritance, it shall be deemed that the network virtual property has not been inherited.

3.5. Regulate the Network Virtual Property without Inheritance

The succession part of the Civil Code stipulates that property without inheritance belongs to the state. However, it is not conducive to the exertion of its property value to return all the uninherited network virtual property to the state. It should not be stipulated in general that all such property should be nationalized when there is no inheritance, and the specific circumstances should be discussed separately.

First, the transfer of ownership can be completed by the delivery or registration of ordinary movable and real estate, and its property value can be evaluated according to the established standards of the industry. As a virtual data form with the help of cyberspace, the management and ownership transfer of network virtual property must be assisted by network service providers, and the spatial scope of this kind of property is only limited to the website or server of the operator. And for the determination of its value, there is no specific evaluation standard or special evaluation organization in the industry. For the network virtual property, there are great differences in the determination of its value among stakeholders without determining the evaluation criteria.

Secondly, the network virtual property will be nationalized without inheritance, which will undoubtedly increase the burden. If it is returned to the country, the state should set up special institutions to manage the network virtual property, which undoubtedly increases the burden

of organizations and is not conducive to the economic utility of the property. Therefore, the disposal of such property should be discussed on a case-by-case basis.

The network virtual property of electronic currency, with clearly marked price in the industry, can be discounted according to the price and returned to the state after deducting relevant expenses; The business account used for operation can be auctioned and sold by the network service provider; When no one inherits the network virtual property in the private account, the network service provider has the right to recycle, cancel or re circulate such account, and technically eliminate the uninherited virtual property derived from the account.

4. Conclusion

At present, information network technology is an important part of China's social development. As a new thing, the inheritance and protection of network virtual property should receive more attention. In China's judicial practice, we should clarify the legal status and nature of network virtual property, regulate and improve this kind of property inheritance system, and bring it into the adjustment scope of laws and regulations as soon as possible, To resolve existing contradictions and disputes.

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