

Уголовно-правовая защита виртуальной собственности The criminal law protection of virtual property

Цзинь Тао,

доцент юридического факультета Хэнаньского университета
(научные интересы: уголовное право),
Кайфэн, Хэнань, Китай
e-mail: yjj2111917@163.com

Яо Цзин-Цзин,

научный сотрудник, Институт борьбы с преступностью
и уголовной политики,
юридический факультет Хэнаньского университета,
Кайфэн, Хэнань, Китай
e-mail: yjj2111917@163.com

Jin Tao,

Associate Professor of Henan University Law School
(research interests: Criminal Law),
Kaifeng, Henan, China
e-mail: yjj2111917@163.com

Yao Jing-jing

Research Fellow at the Institute of Crime Control
and Criminal Policy, Law School of Henan University,
Kaifeng, Henan, China
e-mail: yjj2111917@163.com

© Цзинь Тао, Яо Цзин-Цзин, 2023

DOI: 10.17803/2587-9723.2023.6.086-095

Аннотация. Исследование правового регулирования отношений, складывающихся в виртуальном пространстве, вызывает все больший интерес в юридической науке. В статье анализируется проблема уголовно-правовой защиты виртуальных объектов. Виртуальное имущество — это объекты имущества, не имеющие материальной формы, которые существуют в цифровом пространстве. К ним относятся электронные деньги, программы, базы данных и многое другое. Они не могут быть осязаемыми или визуально воспринимаемыми, но они могут быть использованы и передаваемы через Интернет. Виртуальное имущество имеет свои особенности, которые отличают его от традиционного имущества. В настоящее время нет однозначного ответа относительно правового статуса таких объектов. Отсутствие уголовно-правовой защиты виртуальных объектов и необходимость ее введения — реалии настоящего времени. Решением проблемы представляются закрепление статуса виртуальных объектов посредством механизмов введения новой уголовно-правовой нормы в части ответственности за деяние в виртуальном пространстве.

Ключевые слова: уголовно-правовая защита, виртуальные объекты, виртуальное пространство, уголовная ответственность.

Abstract. Virtual property in the sense of criminal law has the dispute between data attribute and property attribute, which leads to the differences in the criminal law protection path of virtual property. Virtual property has dual attributes of data and property, data attribute is its physical attribute, property attribute its essential attribute. According to the essential attribute of virtual property, virtual property should be protected as property, and the property protection path should be adopted. Virtual property is divided into physical virtual property, account virtual property and currency virtual property. Virtual property with management possibility, transfer possibility, relative non-replicability and property value should be protected as property.

Virtual property should be protected by classification, and the property protection path should be adopted for physical virtual property and currency virtual property with property value. The account type virtual property and the physical virtual property without property value should be protected as data.

Keywords: Virtual property; Property crime; Crime of illegally obtaining data from computer information system.

The classification protection of virtual property is an important measure to solve the problem of unclear definition of virtual property attributes and confusion of paths for the protection of virtual property in criminal law. From the Web2.0 era to the Web3.0 era, the traditional attributes of virtual property have been unable to cover new properties such as digital currencies and digital collections. The theoretical community of Chinese criminal law has not reached a consensus on the connotation and extension of virtual property, and there are differences in the definition of the concept of virtual property. The misuse of the concept of virtual property leads to the discussion of the protection of virtual property is not in the same dimension, and the academic community cannot reach an academic consensus.

In the study of virtual property, some scholars demonstrate the property attributes of virtual property from three aspects: dependence and independence property and interest, replicability and non-replicability; Some scholars believe that the property is evaluated as the object of property crime must have the following three characteristics: management possibility, transfer possibility and value; Some scholars demonstrate the necessity of qualifying the behavior of infringing virtual property as property crime from four aspects: the behavior of infringing virtual property is more in line with the constitutive requirements of property crime, more conducive to protecting the property rights and interests of the victim, and property crime can cover various forms of acquisition crime.

These studies are significant to the protection of virtual property, pointing out the necessity of virtual property as the object of property crime, but failing to distinguish the classification of virtual property and clarify the specific protection path of virtual property. Therefore, combined with judicial cases and judicial interpretation, it is necessary to determine the criminal law attributes of virtual property, carry out restrictive interpretation and classification of virtual property, and study the specific path of criminal law protection of virtual property.

1. Judicial Chaos of the Protection of Virtual Property in Criminal Law

The Supreme People's Court and the Supreme People's Procuratorate have differences in the conviction of the illegal acquisition of virtual property. The Supreme People's Court believes that the interpretation of virtual property as property in the sense of criminal law is beyond the scope of judicial interpretation. The use of computer to steal other's game coins for illegal sale and profit should be punished as the crime of illegally acquiring computer information system data. The Supreme People's Procuratorate believes that virtual property such as network domain name has property attributes, and the theft of network domain name is punished as the crime of theft.¹ There are still different opinions on how to convict the illegal acquisition of virtual property between the Supreme People's Court and the Supreme People's Procuratorate.

Furthermore, there are different opinions in the theoretical and practical circles. Through the analysis of existing judicial documents, it can be seen that for the illegal acquisition of virtual property, most of the courts determine the crime of theft, duty encroachment, fraud, illegally acquiring computer information system data and other crimes. There are still differences in the conviction of the illegal acquisition of virtual property in practice. There are mainly two theoretical views: the crime of invasion of property and the crime of illegally acquiring computer information system data.

The first view is to treat it as a crime of property invasion. Scholars holding this view believe that: first of all, virtual property conforms to the characteristics of property and can be used as the object of property invasion. If the behavior of illegally obtaining virtual property conforms to the criminal constitutive elements of property invasion, it should be treated as a crime of property invasion. Secondly, the legal interests protected by property invasion are property rights and possession. The behavior of illegally obtaining virtual property will cause property losses to the victim. It is more conducive to protecting the property rights of the victim to treat it as a property crime. Finally, the penalty range of property invasion is higher than that of illegally obtaining data of computer information system. The behavior of illegally obtaining virtual property is highly harmful to society.

¹ The essence of the Ninth Batch of the 37th Guiding Case of the Supreme People's Procuratorate Zhang Si-mao Theft Case lies in recognizing network domain names as possessing legal property attributes, thereby classifying theft of network domain names as a form of theft.

It is more conducive to reflecting the pervasiveness of legal interest protection to treat it as a crime of property invasion.

The second view is to treat the crime of illegally obtaining computer information system data. After the crime of illegally obtaining computer information system data was added in the Amendment to the Criminal Law (VII) in 2009, the courts were more inclined to regulate the illegal acquisition of virtual property with this crime.

Scholars who recognize the illegal acquisition of virtual property as the crime of illegally obtaining computer information system data believe that: on the one hand, the legal attribute of virtual property is computer system data, and there is no legal basis for interpreting virtual property as the object of property invasion crime; on the other hand, there is still a dispute over whether virtual property has property value, and it is difficult to accurately identify the property value of virtual property, so treating it as a property invasion crime will cause the problem of unclear identification of the amount of crime.

There are differences in the classification of the illegal acquisition of virtual property, which is because virtual property² has both data attributes and property attributes. Which attribute is dominant? The key is whether virtual property is protected as data or property. For the illegal acquisition of virtual property, the data theory holds that virtual property belongs to computer information system data physically and should be punished as computer crimes; the property theory holds that although virtual property is crowned with the word virtual, it still belongs to property in essence, and the property attribute is the core characteristic of virtual property, which should be punished as property crimes.

2. Classification protection of virtual property

At present, there is still a dispute between the theoretical and practical circles on whether virtual property can be used as property protection. Virtual property has both data and property attributes, and only virtual items that fit specific characteristics belong to property in the sense of criminal law. «Virtual property» should be explained in a restrictive interpretation, and only virtual property with management possibility, transfer possibility, property value and relatively non-replicability can be used as property protection. By virtue of the restrictive interpretation of virtual property, the classification of virtual property and the nature of «property», the rationality of virtual property as property protection can be demonstrated.

2.1. The restrictive interpretation of virtual property

Restrictive interpretation of virtual property is required, and virtual property that fits the following four characteristics can be used as property protection:

(1) Possessing the possibility of management. Possessing the possibility of management means that the victim can realize the domination and control of its virtual property through the account. The account is equivalent to the personal space in the digital society, different software has different accounts, all the virtual property in the account belongs to individuals, individuals have the possibility of management of the virtual property in the account, enjoying the right of possession, right of use, right of income and right of disposal. For example, in King of Glory, players have the possibility of management of game equipment, skin, point coupon, inscription and other virtual property in their accounts, which can be given to friends or sold for profit.

Property crimes protect both the possession and property rights of the victim. The premise of the perpetrator transferring the possession or property rights of virtual property is that the victim has the possibility to manage the virtual property. For example, if A steals game equipment in B's account, the premise of the crime of theft is that B has the possession or property rights of the equipment in the account, that is, the victim has the possibility to manage the virtual property. At this time, A steals B's virtual property, and B loses the control and domination of the virtual property, and A only constitutes the crime of theft.

(2) Possessing the possibility of transfer. Property in the sense of criminal law must have the possibility of transfer. Virtual property without the possibility of transfer cannot be the object of property crime. The possibility of transfer here is from the perspective of the crime actor. If the crime actor cannot transfer the victim's virtual property, it is impossible to infringe upon the victim's virtual property, and it cannot constitute a property crime.

The crimes that may involve virtual property in property crimes are mainly acquired crimes. Acquiring crimes include delivery and seizure. Delivery refers to the victim's delivery of property based on the flaw of intention, such as being cheated into sending gifts to the anchor; seizure refers to the acquisition of virtual property against the victim's will, such as stealing others' Tiktok accounts and using the accounts to brush gifts to themselves. It is precisely because virtual property has the possibility of transfer, the criminals can transfer the possession or property right of virtual property.

² Virtual property can be categorized into broad and narrow senses: the former encompasses all electromagnetic records with inherent property rights within a specific online space, while the latter refers to network virtual properties that hold tangible transactional value. For the purpose of this article, we refer to virtual property in its broader sense.

(3) With property value. Virtual property without value does not belong to property in the sense of criminal law. There are still disputes in the theoretical circle about the value of property. There are three opinions as follows³: the first opinion and the third opinion both believe that the value of property includes objective value and subjective value,⁴ but the first opinion believes that only when the subjective value can be evaluated in money is property, which excludes love letters, photos and other items without monetary value from the scope of property, beyond the possibility of national prediction. The second opinion believes that as long as an item has objective value or one of the subjective values, it can be evaluated as property. Virtual property needs to have both objective value and subjective value to be evaluated as property.

Virtual property has a certain subjective value. Network operators spend costs to develop virtual property, adding a certain subjective value to virtual property. Network users can not only use different equipment and skins in the game to meet their spiritual needs, but also some rare equipment and skins have high property value, such as the souvenir dragon spear in CSGO, which is worth more than 100,000 yuan. Tiktok users can use Tiktok coins in their accounts to buy virtual gifts for anchors, such as users can use 30,000 Tiktok coins to buy a «carnival», worth 3,000 yuan.

The property attribute of virtual property comes from the exchange and transaction with real property, namely objective value.⁵ Only after the network user pays the consideration or spends time and energy to buy virtual property, the network user's virtual property will have the property attribute. At this time, the crime actor steals the user's virtual property, and the user loses the control and domination of the virtual property, which will cause property loss. After the exchange or transaction with real property, the virtual property will have value and property attribute.

The transfer of virtual property has become a common phenomenon. Virtual property and real money can be converted into each other through certain

ways. The players buy game points sold by network operators, which transform real property into virtual property. The players use the points to win a prize to sell rare skins for profit, realizing the transformation of virtual property into real property. Therefore, virtual property is just a special form of property, and still has the property attributes and characteristics.⁶

(4) With relatively non-replicability. The replicability of virtual property is the main basis for some scholars to deny virtual property as the object of property crime, such as the German criminal law circles claim virtual property is difficult to become the object of property crime. German scholars point out that: in criminal law, due to the easy replicability of data and information, the theft of data or information lacks the possession element. The special characteristics of information also explain why the protection of trade secrets is separately provided in many legal systems, rather than classified under the name of theft. There is also controversy in Taiwan Province about the qualification of theft of electromagnetic data behavior. Professor Lin Shan-tian believes that the theft of electromagnetic data should not be regulated by theft. For example, if A copies the electromagnetic data in B's computer, A's copying behavior will not cause the disappearance or reduction of the electromagnetic data in B's computer, which is precisely because the electromagnetic data has replicability. Theft in criminal law refers to the destruction of others' control and domination of things and the establishment of new possession. In the theft of electromagnetic data behavior, the actor does not need to destroy others' domination relationship (possession), but establishes a new possession of the electromagnetic data still occupied by others, which is not in line with the concept of theft in criminal law⁷ and cannot be punished as theft.

However, as a species concept of data, virtual property can be divided into relatively reproducible virtual property and relatively non-reproducible virtual property according to the different holders of virtual property. From the perspective of network operators, virtual property is reproducible, but from the

³ Regarding the definition of property value, three perspectives exist. The first perspective asserts that objective and subjective values constitute elements for evaluating whether something qualifies as property; only when subjective value can be monetarily assessed does it meet this criterion. The second perspective posits that any item possessing either objective or subjective value can be considered as property. Lastly, according to the third viewpoint, use value and exchange value are integral components defining an item's worth.

⁴ Objective value pertains to substantial economic worth associated with an object; examples include cars, food items, money, etc., which possess objective values. On the other hand, subjective value denotes an individual owner's emotional attachment towards an object without requiring monetary evaluation—examples encompass love letters and photographs holding sentimental significance.

⁵ See: *Zhang Yi-ran*. On Concept Limitation of Virtual Property and Reconstruction of Criminal Law Protection Path: From the Perspective of the Data's Triple Right System [J] // *Journal of Hunan University of Science and Technology (Social Science Edition)*. 2021 (2). P. 107.

⁶ See: *Chen Xing-liang*. The Criminal Attribute of Virtual Property and Its Protection Method [J] // *China Legal Science*. 2017 (2). P. 147.

⁷ See: *Lin Shan-tian*. On Criminal Law (Part 1). Beijing : Peking University Press, 2012. P. 212.

perspective of network users, network operators set limitation rules, virtual property is non-reproducible. Game skins and equipment that network operators can infinite copy belong to ordinary virtual property with replicability; game skins and equipment that players spend money, time and energy to obtain belong to non-reproducible virtual property. The reason why game developers and players have different virtual property such as game equipment and skins is that network operators can continuously obtain virtual property through technical means, while players can only obtain virtual property through purchase or lottery. Non-reproducible virtual property, that is, virtual property with exclusive dominance and property value, can become the object of property invasion crime. For example, stealing a player's game equipment can certainly constitute property invasion crime. Reproducible virtual property can become the object of intellectual property crime. In the case of copyright infringement by Yu Tao, the Jiangyin Court ruled that Yu Tao committed copyright infringement by copying and distributing computer game software through the Internet without authorization of the copyright owner of the online game «Fairylend Legend».

In summary, as a kind of data, virtual property has the unique duplication of data. The duplication of virtual property affects the qualification of illegal acquisition of virtual property. Relatively replicability virtual property usually has no property value and cannot be used as property protection, while relatively non-replicability virtual property can be used as property protection.

2.2. The classification of virtual property

At present, Chinese scholars divide virtual property into the following three categories: account type virtual property, including online game accounts, WeChat accounts, etc.; item type virtual property, including online game equipment, online game character decorations (skins), etc.; currency type virtual property, including Bitcoin, ether, etc.⁸ Not all virtual property belongs to property in the sense of criminal law, «virtual property» should be limited and shrinkable interpretation, only with management possibility, transfer possibility, property value and relatively non-replicable virtual property can be protected as property. Account type virtual property and item type virtual property without property value can be protected as data; currency type virtual property and item type virtual property with property value can be protected as property.

(1) Virtual property of account types is essentially personal information. «*Information security technology personal information security specification*» regard system account and account password as «personal

information», personal information is recorded in electronic or other ways can be alone or combined with other information to identify specific natural persons of all kinds of information, visible QQ account, mail account, WeChat account, game account and other virtual property of account types is essentially personal information.

The main feature of personal information is «identifiable», virtual property of account types is identifiable, QQ account, WeChat account, game account all need to use ID card for real-name authentication, network service providers through the account to distinguish service objects. WeChat account binding bank card involves large amounts of funds, high safety factor, the perpetrator of theft of WeChat account is less likely; theft of QQ account is highly likely, even if the QQ account is lost or stolen, it can still be recovered by binding mobile phone number to obtain verification code, friend assisted verification or answer secret protection questions.

Although the common QQ account, game account has the possibility of management and transfer, but does not have the property value, can not be used as property in the sense of criminal law.⁹ But individual «number» has a higher property value, should be identified as property. Account can be transferred or sold to others, which does not mean that the account type of virtual property has the property attribute and property attribute. Selling QQ accounts in large quantities is similar to selling telephone numbers, which belong to personal information. Although the perpetrator can obtain property interests by illegally selling personal information, the personal information of telephone numbers can not be regulated as the object of property crime, and the account type of virtual property can not be the object of property crime. «*Interpretation on Several Issues of the Application of Law in Handling Criminal Cases Endangering the Security of Computer Information Systems*» stipulates that the account type of virtual property is «identity authentication information», and the account type of virtual property is the data of computer information systems, which should be protected as the object of the crime of illegally obtaining the data of computer information systems. The illegal acquisition of the account type of virtual property is punished as the crime of illegally obtaining the data of computer information systems.

(2) Currency-type virtual property should be included in the category of «virtual property». Currency-type virtual property is not essentially different from property stored in bank accounts, and has property attributes. Currency-type virtual property includes Bitcoin, game coin, ether, etc. At present, Chinese law has not made specific provisions on the legal attributes of Bitcoin, but Bitcoin has the possi-

⁸ See: Jiang Bo. A Study on Judicial Protection of Virtual Property. Beijing : Peking University Press, 2015. P. 33.

⁹ See: Zhang Ming-kai. The Nature of Illegal Acquisition of Virtual Property [J] // Law Science. 2015 (3). P. 23.

bility of control and domination, economic value and property attributes, which can certainly be protected as «virtual property».

The Notice of the Ministry of Culture and the Ministry of Commerce on Strengthening the Management of Virtual Currency in Online Games stipulates that: in addition to the use of legal tender to purchase virtual currency in online games, network operators shall not provide virtual currency to users in other ways. Thus, network users can only obtain virtual currency by paying consideration, and virtual currency has correspondence with real currency and property value. In summary, currency-type virtual property has the possibility of management, transfer possibility and value, and can be evaluated as property in the sense of criminal law, which of course belongs to the category of «virtual property».

(3) Virtual property of objects should be distinguished. Virtual property of objects includes two categories, namely virtual objects with property value and virtual objects without property value. This «property value» mainly refers to the correspondence with real property, such as game skins purchased by players with a certain amount of money. Virtual objects with property value can be used as the object of property crimes, while virtual objects without property value do not fall into the category of «virtual property of objects» and cannot be used as the object of property crimes.

Virtual goods with property value. Virtual goods with property value are corresponding to real currency, that is, they can be exchanged and traded with real currency, which belong to the category of «virtual property» and can be evaluated as property in the sense of criminal law. Virtual goods purchased by network users with legal tender, virtual currency or exchanged in accordance with a certain proportion can be regarded as virtual currency.

Not only the virtual goods obtained by paying consideration have property value, as long as they have correspondence with real money, they can be evaluated as «virtual property». For example, in *Dungeons and Warriors*, the advanced game equipment can be obtained in the following ways: by «fighting monsters»; by combining many small equipment; by purchasing with legal tender; by gifts from friends. Ouyang Ben-qi believes that virtual property in online games is the code written by game developers. The virtual property dropped by players fighting monsters is not «created» by players. Players do not have property rights to virtual property, and virtual property certainly does not have property value.¹⁰

Zhang Ming-kai believes that online users can not only use different equipment and skins in the game to meet their spiritual needs, but also improve their experience and level and upgrade their game equip-

ment by «fighting monsters».¹¹ The author believes that players obtain advanced game equipment by «fighting monsters». Although they do not pay consideration, they spend a lot of time and energy. The virtual goods can be transferred in the trading market, have correspondence with real money, and still have property value.

Virtual objects without property value. Such virtual objects are virtual objects designed and generated by game developers and not yet sold, as well as ordinary virtual objects that can be obtained by network users without investing money through specific game mechanisms. First, virtual objects designed and generated by network operators can be continuously obtained through technical means. The virtual objects are just a kind of code, which have no property value and can only be protected as data.

When a crime actor takes advantage of the loopholes of the network game platform to steal the virtual objects designed and generated by the network game platform, he should be punished as a computer crime. Second, ordinary virtual objects given free by network operators or obtained by network users through special mechanisms such as «fighting monsters» and passing levels, have no property value. For example, the gun that can be obtained without recharged points in the «Peace Elite» and the Maserati skin that can be obtained only after recharged a large number of points through a lottery, the former belongs to virtual objects without property value, while the latter belongs to virtual objects with property value. Virtual objects set by network operators to be obtainable or deliberately destroyed each other mean that the virtual objects have no property attributes and should not be included in the category of «virtual property of goods». For example, the stealing of vegetables in QQ farm. Virtual goods without property value should not be identified as «virtual property of goods», but can be protected as data.

3. Criminal Protection Paths for Virtual Property

Virtual property has both data attributes and property attributes. The illegal acquisition of virtual property should be recognized as a property crime according to the property attributes of virtual property; according to the data attributes of virtual property, it should be recognized as a crime of illegal acquisition of computer information system data. It is limited to adopt a data protection path for virtual property according to the physical attributes of virtual property, and a property protection path should be adopted according to the essential attributes of virtual property.

¹⁰ See: Ouyang Ben-qi. The Protection of Virtual Property in Criminal Law [J] // Political Science and Law. 2019 [9]. P. 43.

¹¹ See: Zhang Ming-kai. Criminal Law (Part 2). Beijing : Law Press, 2021. P. 1218.

3.1. Limitations of the data protection path

The Research Opinions of the Supreme People's Court on the Question of How to Qualify the Profits from Illegal Sales of Game Coins Stolen by Using Computers Clearly point out that the legal attribute of virtual property is data of computer information system, virtual property is essentially electromagnetic record data, not property in the sense of criminal law, and only the data attribute of virtual property is recognized. As the property stored in the form of electronic data on computer hardware media such as hard disk, the data attribute of virtual property is physical attribute. However, there are certain limitations in identifying the illegal acquisition of virtual property as the crime of illegal acquisition of computer information system data according to the physical attribute of virtual property.

After the crime of illegally obtaining data of computer information system was added in the *Amendment to the Criminal Law (VII)* in 2009, the court tended to regulate the behavior of illegally obtaining virtual property by the crime of illegally obtaining data of computer information system, but the procuratorate and the defense had different opinions on the qualitative determination of the behavior of illegally obtaining virtual property. First, in the case of Yang Guo-hui's illegally obtaining data of computer information system, Yang Guo-hui used the loopholes in the recharge system of the Apple client mobile games «Big Master» and «Renjiang» developed and operated by Beijing Play Crab Technology Co, and recharged the above two game accounts of others repeatedly without actually paying money.¹²

The prosecution filed a public prosecution for the crime of destroying computer information system; the defense denied the charges on the grounds that the defendant only invaded the computer system operated by the victim unit and did not destroy the data of computer information system; the plaintiff in the incidental civil action believed that the defendant's behavior belonged to the theft of secretly stealing other people's property, and should be investigated for criminal responsibility for the crime of theft. The court adopted the defense's view that the data of computer information system illegally obtained by the defendant was only a virtual service, not real property and its market value could not be calculated, and then denied that the defendant's behavior constituted the crime of theft, which had certain limitations.

Second, in the case of Hong Wei-feng's illegal access to computer information system data, Hong Wei-feng used the «platinum remote control software» purchased online to steal the account and password

registered by Gong in the game center of Cixi City, and steal the «silver» of more than 980 million in Gong's account.¹³ The prosecution prosecuted the case for theft, and the defense denied the case on the grounds that the virtual property was a debt rather than a property right, and the value of the virtual property could not be determined. The court believed that players could obtain virtual property by purchasing or investing time and energy in online upgrading, and the value of the latter property could not be determined. The evidence on file in this case could not prove that Gong's virtual property was obtained by purchasing, and convict Gong of illegal acquisition of computer information system data. In judicial adjudication, the illegal access to virtual property is usually regulated by the property crime because of the unclear attributes of virtual property and the difficulty in determining its value.

By analyzing the above judgment, the following limitations exist in the judicial adjudication of regulating the illegal acquisition of virtual property with computer crimes: first, the attributes of virtual property are multiple, and the property attribute cannot be denied by the data attribute of virtual property. There is still controversy between the theoretical and practical circles on the legal attributes of virtual property. Virtual property belongs to the property right, creditor's right, intellectual property or new property right in the sense of civil law, which does not affect the evaluation of virtual property as property in the sense of criminal law; second, from the perspective of legal interest protection, the criminal law stipulates that the crime of illegally acquiring computer information system data in the chapter of disturbing public order, and the illegal acquisition of virtual property will cause losses to the victim's property, infringing on private legal interests, so it is more reasonable to treat it as a crime of property infringement; third, there are limitations in opposing the illegal acquisition of virtual property with property crimes on the grounds that the value of virtual property is difficult to determine.

With the increasing types of virtual property, the value of virtual property urgently needs to determine the value determination standard of virtual property combined with the specific situation in judicial practice, so as to solve the problem of determining the amount of illegal acquisition of virtual property. Fourth, obtaining virtual property through a computer is only one of the means, and the case of illegally obtaining virtual property without using a computer cannot be handled by computer crime. Fifth, the crime actor's illegal obtaining of virtual property will not cause harm to the computer system or even make it unable to operate.¹⁴ For example, if the first party

¹² See: (2016) *Jin Xing Chu*No. 1084 // URL: <https://wenshu.court.gov.cn/> [accessed: 20 April 2023].

¹³ See: (2010) *Yongci Xing Chu* No. 1544 // URL: <https://wenshu.court.gov.cn/> [accessed: 20 April 2023].

¹⁴ See: Yao Wan-qin. Doctrinal Analysis of the Qualitative Behavior of Theft of Network Virtual Property [J] // *Contemporary Law Review*. 2017 (4). P. 80.

steals the second party's Tiktok account and brushes gifts for himself, the number of Tiktok coins in the second party's account decreases, but the second party can reset the password by the bound mobile phone number to find the account, which will not affect the normal operation of Tiktok.

In conclusion, the illegal acquisition of virtual property is limited to be defined as the crime of illegal acquisition of computer information system data according to data attributes. It is more appropriate to treat the illegal acquisition of virtual property as the crime of stealing, fraud and other property invasion crimes according to the means of the actor.

3.2. Rationality of the property protection path

Although virtual property is named with the word virtual, it is still a property in nature, and the property attribute is the essential attribute of virtual property. Therefore, it is more reasonable to identify the illegal acquisition of virtual property as a property crime according to the essential attribute of virtual property. In practice, the illegal acquisition of virtual property is regarded as a property crime in many cases: in the Ye Mian fraud case, Ye Mian pretended to be an intermediary and forged false transfer records to obtain Zhao Yang-jun's trust and cheated her into a street basketball game account. The People's Court of Fengman District, Jilin City, Jilin Province, ruled that the case constituted a fraud.¹⁵ In the Liu Bao-lei theft case, Liu Bao-lei used the anchor account obtained during the broadcasting, and sent the yellow diamond brush from Wang 1, Song and other accounts to his account in the form of live broadcasting when the anchor was not ready. The People's Court of Lanshan District, Linyi City, Shandong Province, ruled that the case constituted a theft.¹⁶ In the Liu and Gu theft case, Liu privately logged into the Kuaishou accounts of Chen, Wang 1, Wang 2, and Wang 3, and stole the Kuaibi in the Kuaishou accounts of Liu, Chen, Wang 1, Wang 2, and Wang 3, by sending gifts to his own Kuaishou account and the defendant Gu's Kuaishou account live, the People's Court of Zhenxing District, Dandong City, Liaoning Province, ruled that the case constituted a theft.¹⁷

The behavior of illegally obtaining virtual property is more reasonable to be treated as property crime:

First, before the issuance of the Amendment to the Criminal Law (VII), in the case of Zeng Zhi-feng and Yang Yi-nan, known as the first case of virtual property, Zeng Zhifeng and Yang Yinan stole QQ accounts and sold them for profit by breaking the password protection information of others' QQ accounts. Nansha District Procuratorate prosecuted the crime

of theft, and Nansha District Court considered QQ accounts as a code of communication tools, similar to email, so it denied that virtual property had property attributes, and judged Zeng Zhifeng and Yang Yinan to constitute the crime of infringing upon the freedom of communication.¹⁸ There are two opinions on whether QQ accounts have property attributes:

(1) one positive view thinks that QQ accounts have property attributes and can be the object of property crimes. QQ users have the possibility of managing, transferring and property value of QQ accounts, which conform to the general characteristics of property. QQ accounts are the product of the development of digital society, and property in the sense of criminal law cannot be limited to the enumeration provisions of the provisions, but should conform to social development and be expanded to explain within the scope of reasonable and legal;

(2) the other negative view thinks that QQ accounts are property in the sense of civil law, not property in the sense of criminal law, and cannot be the object of property crimes. There is a great controversy on whether QQ account has value and how to calculate its value, and explaining QQ account as the object of property crime is analogical explanation. The author thinks that, from the perspective of adhering to the consistency of criminal law and civil law, the property attribute of virtual property cannot be completely denied because of the existence or non-existence of virtual property value and the calculation standard, and there is a great controversy on whether QQ account has value and how to calculate its value, and explaining QQ account as the object of property crime is analogical explanation. The author thinks that, from the perspective of adhering to the consistency of criminal law and civil law, the property attribute of virtual property cannot be completely denied because of the existence or non-existence of virtual property value and the calculation standard, and it is necessary to explain virtual property according to the essence of criminal doctrine. As account type virtual property, ordinary QQ account is essentially personal information and does not have property value. After the crime of illegally obtaining data of computer information system is added in the Amendment to the Criminal Law (VII), it is more reasonable to take ordinary QQ account as data protection.

Second, in Meng Dong's theft case, Meng Dong used hacking technology to steal the account and password of Maoli Company to log in the online recharge system of Tencent and Netease, and He Likang broke into the online recharge system to steal Q coins and game point cards, and Meng Dong sold the stolen

¹⁵ See: (2021) Ji Xing Chu No. 278 // URL: <https://wenshu.court.gov.cn/> [accessed: 20 April 2023].

¹⁶ See: (2021) Lu Xing Chu No. 1132 // URL: <https://wenshu.court.gov.cn/> [accessed: 20 April 2023].

¹⁷ See: (2021) Liao Xing Chu No. 272 // URL: <https://wenshu.court.gov.cn/> [accessed: 20 April 2023].

¹⁸ See: Chen Xing-liang and Zhang Jun. The People's Court Criminal Guidance Case Judgment Digest (Vol. 2). Beijing: Peking University Press, 2013. P. 730.

virtual property at a low price. The People's Court of Huangpu District, Shanghai considered that Q coins and game point cards were virtual currencies and tickets issued by Tencent and Netease online, and were virtual property in the network environment. Q coins and game point cards were virtual property obtained by Maoli Company with consideration payment, and had property value. Maoli Company had property rights over virtual property, which should be protected by criminal law. This case punished the illegal acquisition of virtual property as theft, provided guidance for similar cases in judicial practice, and had guiding significance for regulating the illegal acquisition of virtual property as property infringement crime.

Third, in the case of Shen Xiaohang's duty encroachment, the People's Court of Shanghai Pudong New Area considered that the essence of «Yuanbao» was the electromagnetic record in the computer game program. Shen Xiaohang took advantage of his position to increase the number of game coins for others, and was identified as the crime of illegally obtaining data of the computer information system. The Shanghai No. 1 Intermediate People's Court changed the sentence to the crime of duty encroachment. The reasons are as follows:

(1) the property stipulated in Chinese law is not limited to physical objects. The game coins exist in the game system in the form of electromagnetism, although they are incorporeal, they can still be included in the concept of property mentioned above;

(2) the game operator has the possibility of managing game coins;

(3) the game coins have the possibility of transfer, each game coin system exists independently, and the actor can exclude the possession of others and establish a new possession relationship;

(4) the game coins condense the human, material and financial resources invested by the operator, and have value;

(5) it is not appropriate to deny the property attribute of the game coins controlled by the operator on the grounds of replicability.¹⁹ In this case, the first instance court judged that it constituted the crime

of illegally obtaining data of computer information system. The second instance court changed the judgment to the crime of theft on the grounds that game coins, which are virtual property, conform to the characteristics of property and can be used as the object of property infringement crime. It is reasonable to convict and punish the behavior of illegally obtaining virtual property according to the essential attributes of virtual property.

In conclusion, virtual property is not essentially different from property in the traditional sense of criminal law. The behavior of the actor obtaining the password of others' account by illegal means and transferring or selling the virtual property in others' account is in line with the criminal constitution of property crime and should be punished as property crime.

Conclusion

Virtual property is the product of digital society. With the popularity of concepts such as Bitcoin, blockchain, and metaverse in social life, the importance of virtual property is further highlighted, and it has become the object of criminal profit. The criminal law protection of virtual property should be paid attention to by the academic and practical circles. The data attribute of virtual property is the core difference between virtual property and property in the traditional sense, but virtual property with management possibility, transfer possibility, and property value is still property in essence.

The interpretation of virtual property as property does not exceed the national prediction possibility, and is in line with the principle of legality of crime and punishment. The act of illegally obtaining virtual property damages the property interests of the victim, and infringes upon the private legal interests of citizens to a certain extent. It is limited to define it as computer crime, and it is more appropriate to treat it as property crime such as theft and fraud according to the means of the actor.

REFERENCE

1. *Zhang Yi-ran*. On Concept Limitation of Virtual Property and Reconstruction of Criminal Law Protection Path: From the Perspective of the Data's Triple Right System [J] // *Journal of Hunan University of Science and Technology* (Social Science Edition). — 2021 [2].
2. *Chen Xing-liang*. The Criminal Attribute of Virtual Property and Its Protection Method [J] // *China Legal Science*. — 2017 [2].
3. *Lin Shan-tian*. On Criminal Law [Part 1]. — Beijing : Peking University Press, 2012.
4. *Jiang Bo*. A Study on Judicial Protection of Virtual Property. — Beijing : Peking University Press, 2015.
5. *Zhang Ming-kai*. The Nature of Illegal Acquisition of Virtual Property [J] // *Law Science*. — 2015 [3].

¹⁹ See: (2020) *Hu Xing Zhong No. 519* // URL: <https://wenshu.court.gov.cn/> [accessed: 20 April 2023].

6. Yao Wan-qin. Doctrinal Analysis of the Qualitative Behavior of Theft of Network Virtual Property [J] // Contemporary Law Review. — 2017 (4).
7. Chen Xing-liang and Zhang Jun. The People's Court Criminal Guidance Case Judgment Digest (Vol. 2). — Beijing : Peking University Press, 2013.
8. Ye Liang-fang. Data or Property: Qualitative Analysis of illegally Acquiring Virtual Currencies Cases [J] // China Journal of Applied Jurisprudence. — 2023 (3).
9. Gao Yan-dong, He Zi-han. Resolutions to the Dilemma of Criminal Law Protection of Virtual Property in the Perspective of Digital Assets [J] // Journal of Zhejiang University (Humanities and Social Sciences). — 2022 (12).
10. Gao Yandong, Li Shihan. On the Extended Interpretation of Property in Property Crimes in the Digital Age: Taking Data Services as an Example [J] // Jilin University Journal Social Sciences Edition. — 2020 (9).
11. Meng Lu. On The Criminal Protection of the Network Virtual Property: from the Perspective of the Modesty of Criminal Law [J] // Law Science Magazine. — 2017 (11).
12. Zhang Chun-li. Criminal Law Attribute and Protection Path of Virtual Currency [J] // Zhejiang Social Sciences. — 2022 (11).
13. Yang Dong. The Criminal Law Protection on Metaverse Crypto Assets [J] // Journal of National Prosecutors College. — 2022 (6).
14. Xu Ling-bo. A Critique of the Dominant Paradigm in Discussion of Protected Legal Interests in Crimes against Property [J] // Peking University Law Journal. — 2018 (1).
15. Hi Hong, Chen shao-qing. On the Property Interests of Property Crimes [J] // SJTU Law Review. — 2022 (6).
16. Guo Zhi-long. On the Three-Tiered Order in the Criminal Determination of Virtual Currency Infringement — From Judicial Order, Legal Order to Digital Economy Order [J] // Political Science and Law. — 2023 (5).