



Virtual property in the digital age: legal nature and regulatory approaches

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Abstract: What should be the legal mechanisms for the protection of user rights in relation to virtual property, there is no uniform approach to the question of which direction countries should take. Currently, there is no uniform approach to the protection of the user's rights to virtual game property in world jurisprudence. In vertical relations, that is, when considering disputes arising from the relationship between the developer and the user, the courts in most cases prefer to apply the theory of natural obligations and the theory of service provision. In many countries, the transaction of virtual property is not legally regulated. The transfer of virtual game property is considered the transfer of rights of claim to the virtual property by the developer of the game to the participant. The author analyzed the legal description of virtual property, which is considered one of the objects of the digital world, based on national and foreign experience, and analyzed the need to find them as a separate independent object in civil legislation.

Keywords: Virtual property, digital objects, cryptocurrency, blockchain technology, digitalization, information technology.

Introduction: At the current stage of social development, along with the introduction of new technologies in all spheres of life, there is a need to solve the legal problems that arise in connection with them. In the process of digitalization of the economy, it is possible to encounter objects of civil legal relations of property that has economic value but is not sufficiently regulated legally.

Views that virtual property can be regarded as an object of trade relations in the market due to its economic value, and that the foundations for commercialization of virtual property take different forms depending on the

type of particular object, are growing stronger year by year. If the formation of demand for domain names is related to the uniqueness and irreplaceability of the object (the impossibility of having two sites with one domain), then the value of virtual property in games is considered significant because users-game participants spend real money to purchase it, that is, it is formed by purchasing it in exchange for real money [9; 45-59].

Virtual world events lead to real consequences even for persons who do not participate as participants – players or users. Examples of this can be found in issues related to property hidden by individuals in the virtual world when dividing common property with spouses, distributing inheritance, or including property in the share mass in bankruptcy. There is no need to go far in this regard, a number of cases considered in arbitration courts of CIS countries confirm this opinion [8].

The lack of legal regulation of virtual property circulation results in the inability of persons who are not game participants to adequately protect their rights in mutual relations with the creators and developers of these games, and the absence of legal guarantees for this leads to violations of the principle of fairness in protecting property rights.

The question of which form of governance is preferable in this area is also one of the open issues today. State governance and self-regulation forms of virtual space differ from each other according to the characteristics of governance and the degree of legal regulation.

Until recently, the virtual game world and the virtual world space encompassing the Internet appeared as a system free from the state's coercive function and aimed at complete self-regulation. In practice, similar to «lex mercatoria», a set of Internet self-governance rules «lex informatica» has been formed, and it is no secret that its normative force is ensured by technical means [7; 93 – 107]. At the same time, some states or companies began to use the Internet and its capabilities contrary to Jon Barlow's ideas, without adhering to the golden rule «treat others as you would like to be treated» [1; 7].

It is no secret that the following thoughts expressed by E.A. Voinikanis have become reality in recent years: «Lex informatica» embodies the interests of a small circle of people or «digital elite» and it lacks the necessary transparency and began to show characteristics of «democratic deficit» as a result of unilaterally imposing excessive obligations on other users [6; 9]. With these thoughts, this scientist showed that there is definitely a need for state intervention in

regulating virtual space.

Electronic commerce, intellectual property, protection of honor, dignity and business reputation have emerged as the main relations requiring civil-legal regulation in the Internet network. The world of virtual games has remained outside the field of legal regulation, and the main arguments for this are, first of all, the prevailing assessment that virtual games are entertainment events – a process of spending leisure time consisting of games and fun [9; 45-59].

In scientific research and arbitration practice, the need for legal regulation of the virtual world by the state is determined by three main approaches. Representatives of the first approach, which denies the influence of law on the virtual world, believe that all property issues related to virtual games should be entirely within the discretion of IT engineers who are the creators of these games.

The second approach is expressed through B. Duranske's «magic circle» rule. According to this approach, it is proposed that law supporters should resort to real-world legal norms to regulate these processes only when events in the virtual world produce legal consequences for the real world [2; 55-56].

Based on this rule, the idea emerges that relations in the virtual world today need to be fully legally regulated. The reason for this is that the impact of relations in the virtual world on the real world can always be encountered. For example, property usually used in the virtual world, namely games, represents monetary value and can be included in civil circulation, particularly sold, in digital markets such as e-Bay or Avito. In this case, virtual property can be purchased for money or created as a result of the player-participant's labor in compliance with game rules.

Representatives of the third approach believe that the virtual world should be within the scope of legal protection. In their opinion, state intervention in these relations is necessary due to the need to protect users' interests. State regulation of this area is of great importance from the point of view of protecting the weak party (the user) in relations with game creators in the sphere of relations within virtual games involving multiple players and collecting taxes from income obtained as a result of virtual property operations.

Because the Internet community is dissatisfied with the means used by the state to solve problems arising from the application of the «lex informatica» principle, in recent years special attention has been paid to developing other mechanisms for protecting users on the Internet, including blockchain technology.

«Lex cryptographica» stands out as a set of self-

governance rules of the blockchain community by reflecting democratic principles. As M.V. Majorina notes, «This new technology is considered advantageous due to its independence from the state, transparency, and making final decisions based on mutual agreement of users» [7; 93 - 107].

The application of such new technologies in the virtual gaming industry serves to eliminate existing legal gaps in more fully protecting the interests of virtual world participants – users. Cryptographic encryption provides the ability to protect users' virtual property in games from attacks, particularly from virtual theft.

The existence of the right to «own» game attributes means their independence from the game creator. The reason for this is that the virtual property of a virtual game participant appears as a token in the user's crypto wallet, and the user can use this property outside the scope of this game. Virtual game property circulation is carried out through smart contracts, which leads to their automatic execution and does not require any additional guarantees between contracting parties. These mentioned advantages are characteristic only of new decentralized blockchain games, and today it is impossible to apply these rules to traditional virtual games that stand out for their graphics level, plot depth, and most importantly, the large number of participants [9; 45-59]. In this regard, problems related to property issues in traditional games and the search for their legal solutions remain relevant.

It should be noted that there is no unified concept regarding the legal nature of virtual property and property rights related to it.

There is no definition of the term «virtual property» in legislation. In addition, the concepts of «digital rights (digital assets),» «digital object,» «virtual property» and «virtual game property» should be distinguished from each other.

Digital rights, reflected as a new object of civil rights in modern doctrine of civil law, are assessed as identical concepts with utility tokens that give their owner the right to demand anything, absolute rights to intellectual activity results related to performing work or providing services, or their licenses.

We believe that digital rights should be included by the legislator in property rights, namely in the «other property» category of the Civil Code, in the system of civil rights objects. We have conducted analyses on this within other paragraphs.

We propose to introduce the following definition into civil legislation: «Digital rights are a set of rights whose content and implementation conditions correspond to

criteria established by an information system in accordance with legal documents.»

Understanding the concept of digital object is also of great importance. In our opinion, virtual property should be included in the category of «digital objects» that is, objects presented in digital form. Any virtual property is considered a digital object, but not every digital object can be virtual property. The reason for this is the existence of specific features that distinguish virtual property from other digital objects.

As M.A. Rozhkova emphasizes, virtual property can exist only in digital form, but traditional results of intellectual activity can exist in digital and other forms, including on paper. Traditional results of intellectual activity expressed in digital form are protected by civil legislation as intellectual property objects [10; 21].

Virtual property includes utility tokens, cryptocurrencies, domain names, stickers, social network accounts, and property in virtual games as material values [10; 21]. Some authors also include email addresses and virtual accounts in virtual property [3; 1055-1058].

Currently, legal norms regarding digital rights are specified to apply only to tokens in some states, including values representing virtual game property in decentralized blockchain games. There is no clear set of rules in either national or foreign legislation regarding other mentioned objects.

There are also various views and approaches regarding understanding virtual property and its characteristics. As M.A. Rozhkova notes, virtual property includes «intangible objects that have economic value but are useful or can only be used in virtual space» [10; 22].

In multiplayer virtual games, game property has characteristics and special features inherent to any virtual property. The following can be indicated as general features characteristic of any virtual property:

First, virtual property has an intangible character. Virtual property, unlike things, does not have the characteristics of depreciation and consumption.

Second, unlike traditional intellectual property objects, virtual property appears only in digital form and technically represents code.

Third, based on the characteristics of applied technologies, the possibility of copying virtual property is limited. Copying a film work leads to the emergence of two material means having two identical film works. However, there is no possibility of copying virtual property; it appears in a single form and copy as code. Nevertheless, representatives of Anglo-American doctrine emphasize the similarity of virtual property with real things [3; 1055-1058].

For example, when transferring a game object in virtual games, it is not copied but transferred to another user's inventory. When transferring login and password, the account remains in its state, only both users have the right to access it until one of them changes the password. At the same time, it is difficult to call these conditions perfect, because in practice there can be a game scenario according to which when transferring a game attribute, it does not disappear from the user's gaming equipment but is copied to the second person's arsenal.

Fourth, the boundary of the user's ownership right to virtual property resembles «quasi-ownership» in civil law. The reason for this is as follows. Logins and passwords of user accounts in games and social networks, public and private keys in crypto wallets, site administrator and domain name owner's login and password create the possibility of controlled access to virtual property [3; 1055-1058]. The sole owner of this information retains absolute right to the virtual object belonging to the virtual game participant. Of course, it would be wrong to say that these conditions apply to all modern virtual games.

Fifth, game developers, domain name registrars, and social network administrators have technical capabilities to determine the fate of users' virtual property. P. Palka calls the capabilities of these subjects «digital force» because the use of accounts and game attributes is carried out only when the developer ensures the operation of the server (platform) [4; 49-53]. Despite the absence of a central subject in blockchain technology, this technology can be subject to «50 + 1» attacks. Although this situation differs from managing a central server, it means the existence of secondary control over user power.

Based on the above, the following can be concluded:

First, virtual property is an intangible object in digital form, which is part of the game, and the player uses it only when they have access to the account for which the mentioned object is designated. The user's control over their account resembles ownership rights because the existence of a password gives the user the ability to make decisions about allowing third parties to access their account and independently make decisions about transferring game attributes available in the account.

Second, all types of virtual property have common characteristics: intangible character, existence within virtual space, economic value, and control of access to accounts (websites, personal rooms).

There are two main problems that prevent virtual game property from being subject to a unified regime of virtual property: protection of game developers as

copyright objects and issues of applying obligation rules to multiplayer games.

Third, protection of users' rights in virtual space is based on one of the following theories: property rights theory, service provision theory, intellectual rights theory, and obligations theory.

Fourth, the use of blockchain technology in the virtual gaming industry serves to solve the problem of legality of virtual game property circulation and gives users the ability to use and dispose of virtual game property presented as tokens in their crypto wallets.

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