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Problems of legal regulation of virtual property in games

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In recent decades, the video game industry has grown significantly. In the course of the game, users carry out the circulation of virtual property. Currently, there is no unified approach to the legal regulation of virtual property, and the law enforcement practice on this issue is ambiguous.

Today, the Civil Code of the Russian Federation (hereinafter referred to as the Civil Code) [1] does not contain the concept of «virtual property». This term is also absent in other regulatory legal acts. In the doctrine, virtual property includes domain names, virtual tokens, cryptocurrency, and game property.

Consequently, virtual property is an intangible object that has economic value, but is useful or can be used exclusively in virtual space.

The civilistic literature does not give a clear definition of the concept of «game property», but at the same time its features can be distinguished: game property has a direct connection with massive multiplayer online roleplaying games (hereinafter - MMORPG or computer games); cannot exist apart from them; game property is an intangible object about which relationships arise in a computer game.

Judicial practice concerning the legal regulation of virtual property in games is not unambiguous. Today, there are three approaches to resolving disputes arising in the field of computer games: relations regarding virtual objects are considered on the basis of norms for the provision of services; virtual property in games is part of a computer program; these relationships are considered on the basis of gambling legislation.

The first position cannot be a solution to the problem of legal regulation of game objects, because it cannot be applied to relations arising between users, as well as between a player and an organizer of a computer game, if the service was provided free of charge.

The second approach makes it more difficult to determine the legal nature of the game property, since in this case the question arises about the taxation of the organizers (rightholders) of the game.

Application by the courts of clause 1 of Art. 1062 of the Civil Code of the Russian Federation to relations arising in the field of computer games is a common practice.

An example is the lawsuit filed by a user against the organizer of the computer online game «World of Thanks» - Wargaming Group Limited [4]. The stumbling block in this dispute was the fact that the player's account was blocked, as a result of which access to the use of the game objects purchased by him was closed. An individual filed a lawsuit to recover from the defendant unjust enrichment in the amount of the cost of the game functionality, compensation for moral damage, as well as a fine for refusing to satisfy the user's requirements on a voluntary basis. The court did not satisfy the claim of the plaintiff, finding that his account was blocked due to his violation of the rules of the online game. The court argued its decision by the fact that the resolution of disputes over the acquisition of rights, property, etc. in a computer game is carried out on the basis of the legislation on the conduct of games. This clarification suggests that the rules on sale and purchase, or legislation on obligations due to unjust enrichment,

cannot be applied to regulate material relations arising between the organizer and the user of the game.

From a formal point of view, these rules establish the same consequences for all types of games, regardless of whether they are gambling or not. However, courts should identify the objectives of the regulation before applying the in-kind rules to any type of game.

According to Federal Law No. 244-FZ of December 29, 2006, gambling is an agreement on winning that can be entered into by the participants in the game between themselves or with the organizer himself [3]. It should be noted that for users of the virtual world, the very process of the game is of particular value. Despite the possibility of using the gaming process to make money, the obligations regarding the virtual property of multiplayer online games are not risky in nature, since the achievement of the result always depends on the efforts made by the user.

Such regulation of relations in this area entails an increase in the number of unresolved court cases, as well as the vulnerability of players associated with the acquisition of virtual property in the game for a certain fee.

The civilistic doctrine proposes an approach according to which the game functionality should be regulated by the rules of property law.

Virtual property is recognized in many countries. For example, in Japan (Japanese Civil Code), Korea, Taiwan, partly in the USA. «Virtual property», although not tangible under US law, has potential or actual commercial value because people pay in real currency to use it.

Undoubtedly, users can acquire and dispose of virtual property of real value in an online multiplayer game. But at the same time, at present, the use of the real-legal theory to determine the legal nature of game objects is impossible for the reason that the objects of property rights in the Russian Federation must have a material attribute. This situation follows from the dualism of property and liability rights existing in Russian law.

Many jurists, including A.I. Saveliev [2], refer to virtual property in the game as «other property» in the context of Art. 128 of the Civil Code of the Russian Federation. The purpose of this position is to complicate the legal regulation of game objects, which will subsequently become the reason for the creation of special rules.

Thus, the relationship between users of the virtual world cannot be regulated by the rules of the real world. In this regard, it is necessary to introduce the concept of «game property» into the list of objects of civil rights, namely in Art. 128 of the Civil Code of the Russian Federation, placing this object after the list of things, and consider creating special rules governing relations in multiplayer online games.

In-game property should be understood as non-material objects that players, through their characters, can own, use and dispose of, and about which relationships arise in an online game and relationships interconnected with them. In-game property includes game accounts, characters, and other objects that were purchased or otherwise acquired in the MMORPG.

It is also advisable to establish that the regulation of virtual objects in the game should not be carried out by Art. 1062 of the Civil Code of the Russian Federation in the case when the player foresaw or should have foreseen that such a relationship would have certain consequences in the real world. When real-world consequences occur, the norms of the «real» world should be applied.

So, taking into account the rapid development of the video game industry, it is inevitable to determine the legal status of virtual objects in multiplayer online games at the stage of forming relations concerning their turnover.

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