

THE THEORETICAL FOUNDATIONS FOR THE RECOGNITION OF VIRTUAL PROPERTY AS A TYPE OF OWNERSHIP

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INTRODUCTION

The concept of virtual property has emerged in the context of attempts to identify approaches to the legal regulation of relationships associated with the so-called Massively Multiplayer Online Games (MMOG), the rapid development of which no longer allowed to leave this issue aside. One of the first works to mention virtual property is a study by E. Castronova, who conducted a thorough economic analysis of MMOG Norrath. His analysis revealed striking statistics: according to 2001 data, 40,000 players were registered in the game, about 12,000 of them considered this place their permanent home; the average user of the game spent approximately 4 hours a day or more than 20 hours a week in the game; the gross domestic product of the game was estimated at US \$ 135 million; the value of the domestic currency in the exchange markets was approximately \$ 0.0107, which exceeded the value of the yen and lira¹.

One of the first researchers on virtual property, J. Fairfield back in 2005, noted that the United States is lagging behind the needs of time, not taking into account the latest trends in the recognition and protection of virtual property. To substantiate his position, he referred to the experience of China, Taiwan and Korea, which have long been committed to implementing virtual property regimes for digital property. This is not surprising, given the level of development of the online gaming industry and virtual property in the Eastern countries. According to 2004 data, there are more than 1,000 professionals in China who make a living solely by selling virtual property².

In light of the current situation in the world, as well as the degree of involvement of Ukrainian citizens in the online gaming industry, the problems of virtual property have become significant within the Ukrainian legal reality. Thus, according to analysts, in the first quarter of 2017 citizens of Ukraine

¹ Castronova E. Virtual worlds: a first-hand account of market and society on the Cyberian Frontier. CESifo Working Paper Series. 2001. № 618. Available at SSRN: <https://ssrn.com/abstract=294828>.

² Ward M. Making money from virtual lynothing, BBC News (Aug.11, 2003). URL: <http://news.bbc.co.uk/2/hi/technology/3135247.stm>

spent \$ 190 million on the purchase of computer games and payment for game content. In 2018, Ukraine is in the top 50 countries that show the highest rating of the game industry development, having risen from 47 to 45 places in this ranking for the year³.

Such impressive results suggest that the legal regulation of virtual property relationships can no longer be left aside.

1. The concept and essence of virtual property

The idea of virtual property that arose with respect to virtual items in online gaming has gradually gained a broader interpretation and extended to other types of virtual assets. Today, virtual property is understood not only by in-game objects and avatars, but also by domain names, URLs, ebooks, tickets, email accounts, social networking accounts, websites, chats, bank accounts, cryptocurrencies and more⁴.

According to J. Fairfield, virtual property is inherently a code that was designed to “act more like land or mobility than ideas”. According to a scientist, code can be considered virtual property if it meets three characteristics: rivalrousness, persistence, interconnectivity⁵. Ch. Blazer in his research proposes his own definition of virtual property. In his view, virtual property is a persistent computer code stored by a non-remote resource system, where one or more persons are empowered to control the computer code, including the removal of all other persons⁶. To the characteristics of the code that allows us to consider it as virtual property, proposed by J. Fairfield, Ch. Blazer proposes to add two more features: the presence of the secondary market and the value added by the user⁷. Gr. Lastowka and D. Hunter, describing virtual property in online games, view it as database records hosted on a server that allow a participant’s computer monitor to display images already present in the software⁸. DaKunha proposes similar to J. Fairfield’s definition of virtual property: virtual property is a software code designed to

³ Хворостяний В. Украина входит в ТОП-50 стран-производителей компьютерных игр. URL: <http://internetua.com/ukraina-vhodit-v-top-50-stran-proizvoditelei-komputernh-igr>

⁴ Fairfield, J. Virtual property. Boston University Law Review [online]. 2005. Vol. 85. P. 1055–1058. URL: <https://ssrn.com/abstract=807966>; Palka P. Virtual property: towards a general theory. PhD. Florence : European University Institute, 2017. P. 148–160.

⁵ Fairfield, J. Virtual property. Boston University Law Review [online]. 2005. Vol. 85. P. 1049. URL: <https://ssrn.com/abstract=807966>.

⁶ Blazer Ch. The five indicia of virtual property. Pierce Law Review. 2006. Vol. 5. P. 141. Available at SSRN: <https://ssrn.com/abstract=962905>.

⁷ Ibid. P. 142.

⁸ Lastowka G. and Hunter D. The laws of the virtual worlds. California Law Review. 2004. Vol. 92(1). P. 40.

behave as if it had the qualities of the physical, belonging to the material world, movable things or parts of reality⁹.

These concepts focus on defining what should be considered as virtual property. In fact, we are talking about virtual property as an object of legal relations. However, obviously, there will be a right to this kind of property, which can be defined as a virtual property right. There is a need to study the nature and characteristics of virtual property as a special kind of right.

To determine the nature of virtual property, it is necessary to dwell on the starting points of the categories of “property” and “property right”. The main point that should be paid attention to when characterizing virtual property is the possibility of the existence of a right of ownership of incorporeal things.

Without claiming to be original, let us turn to Roman private law to study this issue. In the context of this study the division of things (res) into corporeal (res corporales) and incorporeal (res incorporales), proposed by the Romans, is of particular importance. According to Guy, corporeal things are those that, by their nature, can be visible, such as earth, slave, clothing; incorporeal things are those that cannot be touched, but they exist under the law, such as inheritance, usufruct or obligations¹⁰. Modern legal systems of the world to one degree or another follow this approach. Thus, in the Anglo-American tradition, ownership is usually interpreted quite widely. It is defined as a “bunch” or a set of rights or expectations in movable and immovable things that are protected from third parties, including the state¹¹. Such rights include the right to use, own, remove third parties, and alienate things. “Things” is also interpreted quite broadly and include land rights, movable and incorporeal things¹². An important difference between the Roman-German tradition is the distinction between property as such and things. The concept of “thing” most often narrows and is limited only to bodily objects. Thus, the German Civil Code (BGB) restricts the objects of ownership only to bodily things. According to par. 90 of the Civil Code of Germany, things in terms of law are bodily objects¹³.

Despite the fact that Ukraine is a country of Romano-German legal tradition, the approach enshrined in Ukrainian legislation on things is different. Thus, the Ukrainian law accepts that some incorporeal objects, such as electricity or gas, are equal to things because of their similarity to material

⁹ Da Cunha N. Virtual property, real concerns. *Akron Intellectual Property Journal*. 2010. Vol. 4. Iss. 1. Article 2. URL: <https://ideaexchange.uakron.edu/akronintellectualproperty/vol4/iss1/2>.

¹⁰ Mousourakis G. Roman law and the origins of the civil law tradition. 2015.

¹¹ Van der Walt AJ. Constitutional Property Law. 3rd ed. 2011. P. 114-115.

¹² Erlank W. Property in virtual worlds: dissertation. 2012. P. 216.

¹³ *Ibid.* P. 222.

things. According to the Ukrainian concept of property rights, the object of property rights can be both corporeal and incorporeal. Thus, according to Art. 316 of the Civil Code of Ukraine, the object of ownership is the thing (property). And according to Art. 190 of the Civil Code of Ukraine, property as a special object are considered a separate thing, a set of things, as well as property rights and obligations. Property rights are a non-consuming thing. Thus, the concept of “thing” in Ukrainian law is widely interpreted, and includes not only objects of the material world, but also incorporeal things. Property rights and obligations are, in fact, incorporeal things, and therefore, the domestic concept of ownership does not preclude the application of property rights provisions to virtual assets.

The next step in the analysis of the legal nature of virtual property is the distinction between virtual property and intellectual property, whose objects are actually property rights, that is, incorporeal things.

There is no common opinion on the correspondence between virtual property rights and intellectual property rights. Since virtual property, as well as intellectual property, is intangible, it is often mixed with the latter¹⁴. In such case, the primary rights of the intellectual property owners and all related ones are governed by the End User License Agreement (EULA). However, the result of this approach is the limitation of the virtual property owners by the owners of intellectual property rights. This is why the concept of virtual property has appeared. Thus, the idea is to make difference between intellectual and virtual property.

There are also some assumptions that intellectual property is a component of virtual property, that is, intellectual property is a separate category within virtual property. Thus, J. Gong groups virtual property into four categories: avatars, domain names, virtual movables, and intellectual property¹⁵. However, it seems that the concept of intellectual and virtual property should not be confused, since the concept of virtual property was introduced precisely to refer to objects that do not exist in the material world but only in virtual reality.

According to J. Fairfield, online resources have nothing to do with intellectual property. On the contrary, these resources were designed to have

¹⁴ Hurter E. The international domain name classification debate: are domain names “virtual property”, intellectual property, property or no property at all? CILJSA. 2009. № 42. P. 288-289; Nelmark D. Virtual property: the challenges of regulating intangible, exclusionary property interests such as domain names. NW J Tech & Intell Prop. 2004. № 3. P. 1–7; Stephens M. Sales of in-game assets: an illustration of the continuing failure of intellectual property law to protect digital-content creators. Texas LR. 2002. Vol. 80. P. 1513–1534.

¹⁵ Gong J. Defining and addressing virtual property to international treaties. B.U.J. Sci& Tech. L. 2011. № 17. P. 101–107.

the same characteristics as real movable things. This fact makes the ownership provisions an obvious source of regulation for such resources¹⁶. J. Fairfield's position has been supported in numerous follow-up studies. Ch. Blazer notes that the only similarity between virtual and intellectual property is that both of them relate to intangible interests, but their similarity ends there¹⁷.

Ch. Blazer analyzes attributes of virtual property, proposed by J. Fairfield and by himself, in order to distinguish virtual property from intellectual property. Thus, according to Ch. Blazer, rivalrousness of virtual property objects make a fundamental difference between virtual and intellectual property (rivalrousness means the ability of an object to be controlled by only one person at a specific time – for example, by using an email address, the user excludes all other persons from access to it¹⁸). Intellectual property is not only intangible but also uncompetitive. For example, listening to a song stored in MP3 format does not in any way limit the ability of others to listen to the same song. Restrictions on the use of intellectual property arise not from the rivalrousness of such property, but from the exclusive rights guaranteed by law. Thus, the simplest and most effective way to distinguish between virtual and intellectual property is to determine whether the property is competitive in nature or only protected by exclusive rights¹⁹.

Another feature of virtual property is also the distinction between virtual and intellectual property. Persistence is an attribute of traditional property that is often lacking in intangible objects. For example, a melody is persistent (stable) only as long as it sounds. A tune is protected by intellectual property rights only after it is fixed on a tangible medium, which at the same time is the subject of traditional (private) property rights. Therefore, intellectual property is characterized as intangible and unstable. On the contrary, virtual property, despite its intangibility, is persistent (permanent). For example, a user who uses the mail service may not without reasons expect that his / her emails will be kept for months, even if he / she only uses the account for a few minutes a day²⁰.

The need to distinguish between virtual and intellectual property can be traced thanks to the analysis of *Dorel v Arel*'s case conducted by J. Moringelo. The case involved a claim by the creditors of the domain name.

¹⁶ Fairfield, J. Virtual property. *Boston University Law Review* [online]. 2005. Vol. 85. P. 1064. URL: <https://ssrn.com/abstract=807966>.

¹⁷ Blazer Ch. The five indicia of virtual property. *Pierce Law Review*. 2006. Vol. 5. P. 140. Available at SSRN: <https://ssrn.com/abstract=962905>.

¹⁸ Fairfield, J. *Virtua lproperty*. *Boston University Law Review* [online]. 2005. Vol. 85. P. 1047–1102. URL: <https://ssrn.com/abstract=807966>

¹⁹ Blazer Ch. The five indicia of virtual property. *Pierce Law Review*. 2006. Vol. 5. P. 143. Available at SSRN: <https://ssrn.com/abstract=962905>.

²⁰ *Ibid.* P. 144-145.

The problem that arose was connected to the fact that in case an approach when a domain name is protected by trademark provisions is used, the domain name is intrinsically linked to the business reputation of the company and in this form is of no interest to creditors. On the other hand, if you consider a domain name as a separate object of virtual property, it becomes valuable because it exists as a standalone property that can be alienated for a considerable amount of money²¹. Not dwelling here on the differences between Anglo-American and Ukrainian law, let us note only that in some cases it is important to qualify objects as virtual property and not to confuse the concept of virtual property with intellectual property.

Thus, the virtual property category was proposed to protect users' rights to virtual property. However, inevitably, there are some issues connected to the rights of providers / developers of virtual worlds, platforms and more. An urgent issue is the balance of interests between these two categories of subjects.

The positions of the researchers on this issue differ. Thus, J. Nelson is in favor of defending virtual world developers and against granting users virtual rights to in-game items. He points out that virtual worlds have been created by developers for years, and they put a lot of effort into their development. Granting virtual property rights to users will inevitably reduce the developer's authority over the objects they create, which is unfair²². In his turn, J. Fairfield notes that today it is no longer possible to dispense with the rights to virtual resources only for developers of virtual worlds. Recently, the number of applications for theft of virtual items has increased. In North Korea, police received more than 22,000 reports of theft of virtual assets during the year. And the problem is that the developers of the virtual worlds do not have enough tools to influence the offenders. Even if the developer of the virtual world has reason to sue the offender, he or she has little incentive to file such a claim. First, the operator of the virtual world does not lose anything, because there was only a transition of the virtual object from one user to another. Secondly, filing a lawsuit against a hacker can draw users' attention to the security flaws that could have their accounts compromised, and this will cause developer contractual liability. Thus, if users do not acknowledge their virtual

²¹ Moringiello J. More on what virtual property can do for property: the problem of analogy. Property Prof Blog. URL: <https://lawprofessors.typepad.com/property/2008/03/more-on-what-vi.html>.

²² Nelson J. W. The virtual property problem: what property rights in virtual resources might look like, how they might work, and why they are a bad idea. *Mc George Law Review*. 2010. Vol. 41. P. 34. Available at SSRN: <https://ssrn.com/abstract=1805853> or <http://dx.doi.org/10.2139/ssrn.1805853>

property rights to the items they own, they will be left without due compensation²³.

One solution to the problem of securing the rights of both virtual world developers and users is to distinguish between different levels of “ownership” within the virtual world. Thus, S. Abramovitch proposes to distinguish three levels of “property” in virtual worlds. The first level is the virtual world itself, which is essentially a computer code protected by intellectual property rights. The second level is objects within the virtual world, such as avatars, swords, clothing, buildings, etc. that are analogous to real-world property objects. The third level is the in-game items, which are both intellectual property and virtual property objects. For example, a virtual book is both a physical object and its content is an intellectual property right; the designer line of clothing in the virtual world is both a physical object, but the design of these garments is protected by intellectual property right. This example can also be used to distinguish between intellectual property rights that a developer has to the object he created, content and software for the virtual world, and other rights that players may have to in-game objects embodying physical objects²⁴.

This approach is well suited to substantiate the possibility of coexistence of virtual property of users and rights of operators of virtual worlds or other web platforms. Virtual property rights to virtual property will be related to intellectual property rights to virtual property just as property rights in the physical world are related to intellectual property rights in the physical world. That is, the existence of virtual property rights will in no way affect the intellectual property rights embodied in virtual items. Just an alienation of a virtual property object will not mean the transfer of intellectual property rights to another person (as in the case of clothing).

2. Ownership theories as the basis of virtual property right

According to many researchers of virtual property, the general property theory, with the properties of cyberspace being taken into account, may well be applied to virtual property²⁵. In support of their position, proponents of securing the virtual property regime for digital assets turn to three key theories

²³ Fairfield, J. Virtual property. Boston University Law Review [online]. 2005. Vol. 85. P.1081. URL: <https://ssrn.com/abstract=807966>

²⁴ Abramovitch S. H. Virtual property in virtual worlds. URL: <https://www.lexology.com/library/detail.aspx?g=5a3f3b03-a077-45d4-9981-36f713c92820>.

²⁵ Fairfield, J. Virtual property. Boston University Law Review [online]. 2005. Vol. 85. P.1047–1102. URL: <https://ssrn.com/abstract=807966>.

of property rights: J. Locke's labor theory²⁶, J. Bentham's utilitarian doctrine²⁷, G. Hegel's philosophy of personal freedom²⁸.

The justification for the possibility of extending the ownership of virtual property through the theory of J. Locke is that players, spending a considerable part of their time and effort, actually invest their work in creating virtual objects. A striking example is the ability of a player to extract iron ore on their own and to forge a sword that becomes the player's property through virtually independent creation. This approach, among other things, raises concerns that the work of the individual player and the creator of the virtual world is opposed here. The question arises whether such a sword creation can be considered a player's own work since the opportunity to mine the ore, forge the sword, etc. is provided to the player through the program code. Critics of this approach draw analogies to the situation where a glass of tomato juice is poured into the ocean – the ocean does not turn into tomato juice and does not become the property of the one who poured the juice. But supporters of J. Locke's theory argue that players do not claim ownership of the entire virtual world, and the requirement to give them the rights to individual small fates, such as a castle or sword, is quite legitimate, since it is the work of the player created much of the value of this virtual thing²⁹.

Taking this approach with a great deal of skepticism, we cannot fail to note that given the above figures regarding the number of people involved in online games and the amount of time they spend in the game, investing their efforts in creating virtual things, this theory is not without of rational grain. According to D. Sheldon, in order for an avatar in World of Warcraft to reach a higher level, the average participant must spend more than 350 hours in the game, which is the equivalent of nine weeks of full-time work. Thus, obtaining valuable items in online games and high-level avatars requires a significant contribution of labor³⁰.

Against the skeptical remarks that games cannot be equated to work, proponents of this theory cite examples with real-world players who earn high fees by actually playing the game (such as football, tennis, etc.). The fact that in China people make money by playing virtual games, working according to

²⁶ Локк Дж. Два трактата о правлении. URL: <http://www.reformed.org.ua/2/86/Locke>

²⁷ Бентам Дж. Введение в основания нравственности и законодательства. URL: http://www.al24.ru/wp-content/uploads/2014/12/%D0%B1%D0%B5%D1%82_1.pdf

²⁸ Гегель Г. Философия права. – URL: <http://pavroz.ru/files/HegelPhilprava.pdf>

²⁹ Lastowka G. and Hunter D. The laws of the virtual worlds. California Law Review. 2004. Vol. 92(1). P. 47.

³⁰ Sheldon D. Claiming ownership, but getting owned: contractual limitations on asserting property interests in virtual goods. UCLA Law Review. 2007. № 54. P. 761.

a work schedule like any ordinary enterprise, provides additional argument that labor theory can be applied to substantiate virtual property rights³¹.

In addition, the researchers claim that psychologically participants actually perceive virtual objects as their property. This is evidenced by the fact that the participants not only exercise their right to exclude others from using their belongings due to the mechanisms of the game, but also go to court with claims against other persons who violate their rights to virtual objects³². It should be noted that one sees a reference to one of the most fundamental theoretical characteristics of property – to treat things as one's own, while all others treat it as alien³³.

J. Bentham's theory of utilitarianism is aimed at justifying the institution of private property. The idea is that the right of private property should arise when the general effect of its origin will have as a consequence the increasing of the general utility or social welfare. With respect to virtual property, this may not be obvious since, unlike the creation of, say, a new building in the real world, the creation of a new avatar or virtual sword does not seem to be of obvious value to society. However, given the amount of time and money that is invested in virtual items, the virtual objects they create are of high value to humans. From the point of view of utilitarian theory, the public good consists of individual benefits. As millions of people invest their efforts in creating valuable assets in virtual worlds, there are reasons to recognize property rights based on transaction value for individual users. Thus, even in such a narrow view of the social usefulness of avatars and virtual assets, utilitarianism gives reason to consider these objects to be property³⁴.

The basic idea of G. Hegel's theory of property is the concept of property as an extension of personality³⁵. As the simplest example to illustrate this approach, the example of a wedding ring is given – this item is not just an object of human property, it is closely linked to the sense of self. Consequently, even in the absence of any other justification for the ownership of such objects, the theory of personality provides grounds for recognizing the ownership of them. With regard to virtual objects, this theory is quite applicable, because, first, there are no particular differences between the

³¹ Welcome to the new gold mines. URL: <https://www.theguardian.com/technology/2009/mar/05/virtual-world-china>

³² Sheldon D. Claiming ownership, but getting owned: contractual limitations on asserting property interests in virtual goods. *UCLA Law Review*. 2007. № 54. P. 761.

³³ Алексеев С.С. Право собственности: проблемы теории. Москва: Издательство НОРМА, 2007. С. 19–21.

³⁴ Lastowka G. and Hunter D. The laws of the virtual worlds. *California Law Review*. 2004. Vol. 92(1). P. 45.

³⁵ Гегель Г. Философия права. URL: <http://pavroz.ru/files/HegelPhilprava.pdf>

accumulation of real and virtual values, so if the theory of personality gives grounds for recognition of ownership of land or goods, it also gives grounds for recognition of ownership of virtual land and goods. Moreover, when it comes to an avatar, the theory of personality even more readily confirms the need to establish ownership of it. It is well known that people feel connected to their game avatar and perceive it even not as a thing, but as a continuation of themselves. Some users even associate themselves more with their avatars than with their real personalities³⁶. Therefore, if one considers that property rights should arise where one feels a continuation of things, for virtual things the justification offered by the theory of personality is even more obvious than for real ones³⁷.

Each of these theories is criticized by opponents of recognizing ownership of virtual assets. Thus, J. Nelson identifies two counterarguments against the justification of virtual property rights using the theory of J. Locke. First, he points out that Locke's theory of labor concerns the acquisition of property rights in the real world. Because virtual property does not exist in its natural state, it cannot be acquired on the basis of Locke's theory. Secondly, he, referring to the court cases, states that the US courts have refused to rely on labor theory to substantiate the grounds for ownership³⁸. However, both of these counterarguments do not seem to be sufficiently. J. Nelson states that the chain of property rights must begin somewhere, and Locke's theory states that property rights begin when humanity first mixes work with an object that exists in its natural state. However, virtual resources do not exist in the natural state, they have already been isolated from nature, processed by the developer [of the game] and offered to users for consumption, and therefore the Locke's theory is not applicable here. However, J. Nelson does not take into account the fact that since the time of Locke there have been significant changes in public life, and with the advent of virtual worlds his theory can be applied by analogy. As W. Erlank rightly points out, it is likely that Locke would adapt his theory to the virtual worlds. And it's important to remember that within the virtual world, the developer acts as God, as the creator of the entire virtual world and its resources. In the real world, God creates, for example, ore, but it

³⁶ Castronova E. Virtual worlds: a first-hand account of market and society on the Cyberian Frontier. CESifo Working Paper Series. 2001. № 618. P. 22–24. Available at SSRN: <https://ssrn.com/abstract=294828>.

³⁷ Lastowka G. and Hunter D. The laws of the virtual worlds. California Law Review. 2004. Vol. 92(1). P. 48-49.

³⁸ Nelson J. W. The virtual property problem: what property rights in virtual resources might look like, how they might work, and why they are a bad idea. Mc George Law Review. 2010. Vol. 41. P. 14. Available at SSRN: <https://ssrn.com/abstract=1805853> or <http://dx.doi.org/10.2139/ssrn.1805853>

is up to man to obtain ownership of these resources. The developer replicates the virtual world by analogy with the real world, and himself develops mechanisms that enable users to extract resources and assign them³⁹. Even taking into account the position of J. Nelson, he himself notes that the virtual world is the result of the work of the developer, and this is already a first-level virtual property. Therefore, this counterargument does not stand up to criticism. Second, the position of the US courts concerned two specific cases, which in a particular case establish the possibility or inability of ownership. However, it does not take into account all possible options for the acquisition of property rights. Therefore, we consider the above arguments to be inapplicable to deny the possibility of applying Locke's labor theory to substantiate the concept of virtual property rights.

The utilitarian concept may be objected to that the granting of ownership of certain virtual objects to certain users diminishes the well-being of other participants in the game and thus diminishes the value to society. Therefore, virtual property rights cannot be established from the standpoint of utilitarian theory. However, this objection is also easily contested: the utility function of proponents of this theory is used to justify the existence of virtual property rights, not to distribute those rights⁴⁰.

The counterarguments against personality theory are that the theory makes it difficult to justify the possibility of alienation of virtual property rights, since they are inextricably linked to the owner. However, in the real world, alienation of, say, wedding rings or even parts of the body is allowed, however, there are exceptions to the alienation of certain corporeal objects⁴¹.

D. Horton also criticizes the theory proposed by Gr. Lastowka and D. Hunter to substantiate the possibility of recognizing the ownership of virtual property⁴². The researcher notes that if ownership of virtual assets is recognized, there are many difficult questions to answer. For example, will businesses have to pay compensation to their clients every time they make changes to their rewards programs (for the number of flights, for example), do their servers break down, or do they decide to end the virtual world? Will lenders be able to claim their game avatar rights? How will the issue of separation of virtual assets in the event of divorce be resolved⁴³?

³⁹ Erlank W. Property in virtual worlds: dissertation. 2012. P. 156.

⁴⁰ Lastowka G. and Hunter D. The laws of the virtual worlds. California Law Review. 2004. Vol. 92(1). P. 46.

⁴¹ Ibid. P. 49.

⁴² Horton D. Contractual Indiscernibility (November 30, 2014). Hastings Law Journal, Vol. 66, 2015 Forthcoming. P. 1061-1062. Available at SSRN: <https://ssrn.com/abstract=2516361>

⁴³ Ibid. P. 1063.

Indeed, all of the above questions may arise, moreover, they already arise. There are already cases where users are suing the claims of virtual world developers, moreover, there is a practice of satisfying users' requirements regarding the protection of their virtual assets. Thus, in the case of *Li Hongchen v. Beijing Arctic Ice Technology Development Co*, a "resident" of the virtual world, has argued against the developer of the online environment, as his virtual property was seized by a hacker. The trial court ordered the provider to return the property to its rightful owner, and this decision was upheld by the Court of Appeal⁴⁴. We would like to emphasize that in this case the court protected the individual right of the owner – the right to control the property and protect it from all over the world, not only from the person who committed the violation⁴⁵.

Similarly, in the case of claims of creditors on virtual property – we consider it quite permissible, if such property will have a certain market value. This also applies to the division of virtual property between spouses. Therefore, the problem is not whether to recognize virtual property or not, but rather how to allocate rights between providers / companies / developers and users, but also to determine the essence of virtual property.

CONCLUSIONS

It is no longer possible to deny the existence of digital property – the "gray" markets for the sale of virtual items are growing, the number of thefts of virtual things is expanding, and new types of objects that are qualified as "virtual property" are emerging. Therefore, the issue of protecting the rights of the owners of such property should be resolved as soon as possible. One solution to the problem of protecting their rights is to extend the legal provisions on property to virtual objects.

In support of the possibility of having a virtual property right, we can give an example of Eastern countries where virtual resources are officially recognized as virtual property. Thus, since 2001, the Ministry of Justice of Taiwan has formally established that virtual objects are property, can be alienated and transferred to third parties, that actions with such objects or accounts fall under the provisions relating to property rights and that theft of such property shall be punishable under criminal law. It has been stated that accounts and game values are stored as electromagnetic records on the game server. The account holder is authorized to control the account and the electromagnetic records so that it can be freely sold or transferred. Although such accounts and values are virtual, they have real value in the real world.

⁴⁴ Knight W. Gamer wins back virtual booty in court battle (Dec 23, 2003). URL: <https://www.newscientist.com/article/dn4510-gamer-wins-back-virtual-booty-in-court-battle/>

⁴⁵ Fairfield, J. Virtual property. *Boston University Law Review* [online]. 2005. Vol. 85. P. 1086. URL: <https://ssrn.com/abstract=807966>

Players can participate in the auction or submit it online. Accounts and virtual valuables are the same as property in the real world, so there is no reason not to consider accounts and virtual values to be free from theft or fraud by criminal law⁴⁶.

Recognizing virtual property will help protect millions of users, protect them from theft, enable the alienation and inheritance of virtual resources, which eliminates shadow markets and eliminates the issue of the fate of virtual property after the death of the user and more. Ultimately, it will also help to address the issue of taxation of virtual property transactions carried out in the shadow market, which will significantly replenish the budgets of all countries in the world. All objections raised against virtual property can reasonably be rejected – private property rights in the real world are also not limitless and unconditional. According to J. Fairfield, changes in the information society once created the objective need to move from telephone to the Internet, ending this stage should be to protect buildings in virtual worlds⁴⁷.

Normative theories of ownership provide enough grounds for recognizing ownership of virtual assets. In spite of the possible critical attitude towards each of the theories of ownership, this criticism is equally possible when applying these theories to real-world objects. Therefore, we must finally acknowledge the fact that virtual property rights may exist, the more important question today is what they represent and how they should be distributed.

SUMMARY

The concept and essence of virtual property as special right for virtual (digital) property as well as the possibility of justifying the concept of virtual property rights using the main regulatory theories of property rights are analyzed in this section. Objects of the virtual property right are investigated. The conclusion is drawn that such objects in fact are incorporeal things. Such conclusion allows to speak about a possibility to extend the legal regime of property to virtual things. Differentiation of virtual and intellectual property is carried out. Peculiar features of virtual property, which allow distinguishing it from intellectual property, are revealed. This emphasizes the need of independent existence of the virtual property right.

The labor theory, the theory of utilitarianism and the theory of individual freedom as the basis for the existence of the virtual property right are considered. It is concluded that each of the theories presented can be used to justify the possibility of the existence of property rights to virtual assets. The foreign practice of normative regulation of virtual property relations is given.

⁴⁶ Fairfield, J. Virtual property. Boston University Law Review [online]. 2005. Vol. 85. P. 1086. URL: <https://ssrn.com/abstract=807966>

⁴⁷ Ibid. P. 1102.

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