

# China Law Update

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## Online Games and Virtual Property

Online games are big business in China and they're only getting bigger. The *China Annual Game Industry Report 2007* underlines the explosive growth in this industry. As of 2007, the online game user population reached 40,170,000 and has rapidly expanded since then. As the market for online games has increased, so too has the market for virtual property trading. According to *The Seventh China Online Game Survey 2007*, 83.7% of the users traded items for cash, 46.8% of the users hired third parties to obtain virtual properties on their behalf. These activities amounted to an estimated 4 billion in RMB in 2007.

Virtual property encompasses the wide assortment of intangible assets that may be acquired inside a video game (e.g. a powerful sword, a high level avatar, or in game currency) as well as the account itself. Often the rarity and time required to obtain certain items prompts purchasers and players to dole out real world cash to forego the effort required to obtain the items. These transactions are typically prohibited by the terms of use or end user license agreement; however, enforcement is time consuming, costly, and often difficult to target effectively.

The line between virtual and real world property is blurring as a legal and a conceptual matter. The time and money required to acquire these objects engenders a sense of ownership in the virtual world's users that is at odds with their rights as a licensee under the end user license agreement. Further, the existence of real world markets for these virtual goods complicates the distinction between real world and virtual properties.

Recent decisions by Chinese courts show an increasing trend toward treating digital property as real world property. The value of virtual property, whether accounts or in game items themselves, is the subject of repeated interpretation in Chinese courts. The central issue is whether the items can be attributed a "value" that would permit a party to recover damages or serve as a basis for theft.

**Case 1 [Li Hong Chen, Feb 2003 Chaoyang District Court]**: Li Hong Chen ("Li"), a user of the online game Red Moon, lost all of his virtual equipment due to a digital theft. In order to recover his property, Li sued Red Moon's operator, Arctic Ice Science and Technology, Inc. ("Arctic Ice") and claimed damages for the stolen property and mental harm. Using Contract Law and Consumer Protection Law, the court found that as a service provider, Arctic Ice should be responsible for players' property in the game. In rendering its determination that the items qualified as property, the court noted that it was the value of the property, not the fact that the

property was virtual, that was relevant. Since the players had paid for the property, the players were entitled to certain rights in that property. However, given the difficulty in valuing the property, the court elected to require Artic Ice to restore the in game goods in lieu of awarding damages.

**Case 2 [Qi Jian, Jinhua Wucheng District Court]**: In December 2004, Qi Jian (“Qi”) developed a program designed to steal players’ accounts and passwords in the online game The World of Legend. By inserting the program into the Jinhua Public Security net bar administrative website, Qi and his associates successfully stole a large number of accounts. Qi then sold the virtual equipment in these accounts, totally approximately one million RMB in transactions. The defendants faced criminal prosecution in Jinhua Wucheng District Court. Because the court couldn’t assess the value of the virtual property involved, the court determined that theft was not an appropriate charge. The court did charge the defendants with the crime of destructing computer information system because their behavior seriously disrupted the operation of net bars in Jinhua. The defendants were sentenced to one and a half year in prison.

**Case 3 [Chen Xiao Fan, Aug 2006 Guangzhou Tianhe District Court]**: Chen Xiao Fan (“Chen”) was an employee of Guangzhou Net Ease Interactive Entertainment, Inc. and worked on the game Westward Journey Online II. Taking advantage of his job position, Chen accessed several Net Ease accounts and stole virtual equipment in those accounts. He sold the stolen equipment to other players and made a profit of 3750 RMB. In August 2006, Chen was prosecuted for theft in Guangzhou Tianhe District Court. The court determined that the goods stolen were valuable and equated them to tangible goods. The court specifically noted that the equipment could be transferred between players and that players accorded value to the goods. In light of this find, the court found Chen guilty of theft, though he was released without serving a jail term.

**Case 4 [Zeng, Shenzhen Nanshan District Court]**: QQ is an instant communication software owned by Shenzhen Tencent Computer System, Inc. (“Tencent”). As an employee of Tencent, Zeng, the defendant, had access to various QQ accounts. Zeng used this access to acquire numerous QQ account and send them to another defendant, Yang. Yang then sold these accounts online and made a profit of 61,650 RMB. Zeng and Yang were prosecuted in Shenzhen Nanshan District Court in January 2006. The court did not find that the defendants committed a crime of theft because QQ accounts are free to users. Given the free nature of the accounts, the court determined that their value could not be assessed and theft was therefore not an appropriate charge. However, because QQ is a type of communication tool, the court found the two defendants committed the crime of violating freedom of correspondence. They were sentenced to a six month criminal detention and all their illegal gains were confiscated.

**Case 5 [Zhang Bin, Ningbo Haishu District Court]**: The defendant, Zhang Bin (“Zhang”), sold accounts for the online game Paradise. After selling the accounts, Zhang would then steal them back. The court found that Zhang was guilty of the crime of theft. The court reasoned that virtual property had value and was controllable despite its intangible nature, so it could be the objective of the crime of theft. Zhang was sentenced to a year imprisonment with two year suspension of sentence and a fine of 5,000 RMB.

The Chinese court's focus on the "value" of the online goods appears to assume the fundamental question: whether these items are property at all. Of particular note is the absence of any discussion of the end user license agreements, which typically contain provisions explicitly disavowing any property interest a user may have in the items he or she acquires in the game. Given the conflicting opinions and developing nature of this area of law, it is unclear what property rights, if any, the users have to their accounts and the items held on their characters.

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