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Is it Possible to Steal Virtual Goods?



According to media reports, a court in the Netherlands has recently upheld the conviction of a boy who stole another boy's 'virtual goods'. These are items used in an online computer game, that have no tangible form. This raises the question of whether or not 'virtual goods' are property. In the Australian context, I am inclined to think that they are not. I think that this highlights the limitations of our system of classification of property.

An attempt to explain online gaming

Disclaimer: I am not a gamer myself, and therefore possibly have a fairly simplistic view of what goes on...

The idea of virtual goods arises in online gaming. My understanding is this. A person writes some kind of program that allows many people to connect via the internet and play a game online. The game involves a quest of some sort, and as a result of winning one may acquire 'prizes' within the context of the game. In the online environment, these have a visual form and are used to advance in the game. It is possible also within the context of the game to earn points that take the form of game money. This money can likewise be used to acquire virtual goods, again in the context of the game.

The 'money' and 'goods' in this context have no existence outside the context of the game and are created through the author's code. So are they property?

Property vs other rights

The law distinguishes between *property* rights and *personal* rights. Property rights define the relationship between a person and a thing (even an invisible thing, such as copyright or a trademark). These rights are attached to the thing and dependent on its continuing existence. Property rights can be enforced against the whole world.

Personal rights however define the relationship between one person and another person - irrespective of a thing. A right to recover a debt is a personal right. This right exists only against the person who owes you money. This personal right does not apply against

ABOUT ME



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Property in the game

There is no doubt that the author of the program has a form of intellectual property ('IP') in the code, and possibly in the visual representations of elements of the game. For this reason, users of the game - those who sign in to play - will inevitably enter into some sort of licence agreement with the owners of that IP; agreeing not to re-sell their access, and to abide by the rules of the game. The game user therefore has a contractual right to use this IP. In my view, they do not have property in the game per se. This means they would not have property in any of the accoutrements of the game - the 'virtual goods' that one acquires through playing.

Contrast this with say a game of Monopoly. When you purchase the box set, you acquire property in the physical game - the box, the board, the component pieces - while the maker retains property in the ideas behind the game. The law regards the physical game as *tangible* property. Physical possession of this property is an aspect of ownership, and ownership can be transferred by delivery of the thing to another person.

In the same way, it can be stolen because another person can take possession of the thing. At all times though, the underlying IP remains with the maker of the game.

On the other hand, a virtual game and its component parts are not tangible: by definition, they have no physical presence. It is physicality that is embodied in the legal categorisation of tangible property. If virtual goods are to be classified as property, they cannot be *tangible* property. If they are property, then they must be legally defined as *intangible* property.

It is possible to transfer intangible property to another. This is done by a legal process known as *assignment*. However remember that all a player ever has is a *personal right* to use the IP under a licence agreement - not a *property right* in the IP: indeed not property of any sort. Therefore if the player assigns their game to another person, they would be in breach of contract. The person who acquired the original player's game will get no interest because the original player had no right to assign it.

There is, apparently, a market in virtual goods. People pay real world money for 'things' that form part of this game. I doubt however that the licence agreements in the world of virtual gaming allow this. Those who buy such 'virtual goods' will derive no legal title (no property) and those who sell these goods will be liable to be sued by the game's IP owners for breach of licence (breach of a personal right). Suits such as those brought by Capitol Records against Redigi are an example of an attempt by the property (copyright) owner to protect their property.

Can virtual goods be stolen (ie are they property)?

What is interesting about the recent court decisions is the application of the crime of stealing to these virtual goods. Stealing, in Queensland at least, presupposes that the 'thing' stolen is property.

391 Definition of stealing

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(1) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to the person's own use or to the use of any other person anything capable of being stolen, is said to steal that thing.

and later in section 391:

(6) The act of stealing is not complete until the person taking or converting the thing actually moves it or otherwise actually deals with it by some physical act.

And, under section 390 of the Queensland Criminal Code,

Anything that is the property of any person is capable of being stolen if it is:
(a) moveable; or
(b) capable of being made moveable, even if it is made moveable in order to steal it.

It would be interesting to see whether a Queensland court would find that something that exists as 'code' in the virtual world of online gaming is 'moveable'. This definition of course assumes that property is tangible, not intangible as is the case with 'virtual property'. This understanding is highlighted by section 391(6) - 'otherwise actually deals with it by some physical act.'

I suppose that it is possible that 'virtual goods' may be considered moveable. They could be deleted from one computer, and uploaded on to another. The problem with this conceptualisation is that all the while, such 'goods' existed in fact on a distant server and may not in fact have 'moved' at all.

Unlike the regular means of transferring ownership of intangible property (ie by assignment) the recent case of theft of 'virtual property' occurred through violence and duress. It is not clear whether this involved stealing a password, or downloading the victim's game or its source code but in any event, there is little doubt that the victim suffered from some kind of criminal behaviour that resulted in their loss of the 'virtual good'.

There may be other criminal offences involved such as assault, or fraud, or forgery. I just disagree that this is stealing, because I do not think that the 'goods' in question were property.

What is your view? Are virtual goods *property*? *Should* virtual goods be property?

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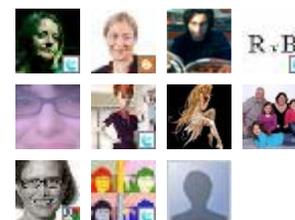
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