

Study on the Law of Network Broadcast Reward Behavior

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Keywords: Network broadcast; Reward behavior; Legal regulation

Abstract: Network broadcast is a new thing formed by the rapid development of Internet technology. In the information age of the 21st century, network broadcast has the advantages of convenience, strong entertainment and high interactivity. Compared with other activities, it is a popular form of entertainment. While bringing huge traffic and economic benefits, legal disputes in the network broadcast industry are also on the rise. Due to the different opinions on the identification of online broadcast reward behavior, the result of the trial of such disputes is different. Therefore, the study of this phenomenon is conducive to standardizing live broadcast behavior and creating a clean and pleasant network space.

1. Introduction

According to Goffman, "person" is originally a mask, which demonstrates the value of using symbolic interaction to build a good image. However, people now rely more on images than words, which makes people gradually lose their rationality. Under the influence of visual impact and gift special effects, people, especially minors, can easily become avid consumers of electronic emotional products.

According to the core data shown in CNNIC's 50th report, the scale of my country's webcasting is increasing year by year. In the article *Live Streaming: Gifts Exchange for Pleasure, Symbols Come into Reality*^[1], Yang Hao observed that the market size of webcasting has grown year by year, and stated that webcasting rewards have become the mainstay of the overall income of the webcasting industry. From the first year of webcasting in 2016 to the present, the crazy growth of tipping behaviors on the Internet has infinitely magnified the main contradiction facing our country at the current stage of socialism. The enjoyment of spiritual pleasure has made people flock to it after abandoning their rationality. The emergence of the Internet has made entertainment excessive. It has penetrated into the minutiae of politics, economy, cultural life and other fields, and traditional culture has gradually declined, and it has increasingly become a "vassal" of entertainment. Some jaw-dropping cases continue to emerge without diminishing momentum, such as "The 60-year-old aunt spent 600,000 yuan for the male anchor", "The guy sold his wedding house to reward the anchor", "Civil servants embezzled public funds just to reward the female anchor" ""Father sells his daughter as a reward for the anchor" and other incredible incidents emerge one after another^[2], what's more, he does not hesitate to obtain property through illegal activities such as embezzlement of public funds and theft for rewards. The identification of the nature of reward behavior and how to formulate laws to fill the gaps in this field need to be resolved urgently. Based on the response to

the real social situation, the author intends to study the subject of "legal regulation of online live reward behavior", in order to serve the scientific supervision of cyberspace in the future.

2. General situation and nature identification of online live streaming rewards

2.1 The origin of live streaming rewards and gift economy

In China, tipping has a long history. For example, traditional street performances such as acrobatics, opera, storytelling, and Pingtan all rely on tipping to make a living^[3]. In ancient times, a tip was a reward between superiors and subordinates, also known as a tip. With the development of Internet and mobile payment technology, the traditional way of tipping has migrated to the screen. In the digital age, tipping through webcast platforms has become common. Some platforms and brokerage companies stimulate willingness to tip through publicity and marketing. Some brokerage companies play the role of fans and give a lot of rewards during the live broadcast of the anchor to induce more rewarding behaviors. This phenomenon is called the "broken window effect".

The study of gift economy originated from anthropology, which believes that people satisfy their nature by creating surplus wealth and exchanging it. The Internet has changed the traditional way of transactions, allowing people to conduct transactions online. The notion that the gift economy replaces monetary relationships with tenderness resonates. However, the reality is that in many regions, commerce still exists as a gift economy, built on a network of favors. As a result, deep down, people still believe that gift exchanges are for deeper soul-communication. Driven by Internet technology, "live streaming reward" has become an emerging economic model.

2.2 The development context of my country's online live streaming rewards

The first stage (2005~2016): It is the initial stage of live broadcasting on the Internet. Simple live broadcasting activities can be carried out through computers and network cables. The original live chat was dominated by gags, but people were open to its boisterous vibe.

The second stage (2017~2022) is the stage when "live broadcast + small video + live delivery with goods" has become a trend. Before 2016, it mainly focused on entertainment live broadcasts such as games, and then multiple live broadcast platforms emerged. However, the earliest rise is not the best. The 1,000-broadcast war in 2016 led to excessive investment in many platforms. The live broadcast industry has gradually undergone a reshuffle, and short videos have become the new favorite. The threshold for individual anchors is low, and almost anyone can become a "certified anchor" only by completing basic verification and following the rules. Big data shows that "short video + live broadcast" has become a powerful force.

2.3 Identification of the nature of tipping behavior

The legal nature of online streaming rewards has not yet been clarified, and it is impossible to determine whether it is a gift contract or a network service contract. The analysis needs to comprehensively compare multiple aspects, determine the nature of the behavior and refer to the applicable norms. The basic principle is to seek truth from facts, and specific problems should be judged and analyzed according to specific standards^[4]. The typical contracts stipulated in the *Civil Code* cannot cover all situations, and need to be judged according to specific standards and refer to the provisions of similar contracts. It is inappropriate to judge the behavior of online live streaming rewards only with a purely certain legal nature. Neither a simple gift contract nor a single network service contract can fully explain this phenomenon. We can interpret the rewards reached by the two parties as service-type rewards, and those beyond the agreed range are called additional gifts.

Perhaps this is a good path to explain.

Professor Cheng Xiao and Scholars Fan Jinghe identified it as a gift contract^[5], but it is biased to understand it purely as a gift: the webcast reward does not reflect the reciprocal payment consideration, but is actually a voluntary and free gift. Tipping is an appreciation and reward for the anchor, but both parties still have rights and obligations. It is not purely for profit, but based on the premise of satisfying the spiritual needs of the audience. In the context of "live broadcast +" society, online live broadcast rewards have become industrialized and large-scale, and involve third-party platforms, making legal relations complicated. Treating it as a gift contract or a pure network consumer service contract does not meet the needs of judicial practice^[6]. Large consecutive rewards may lead to legal disputes involving compensation for property damage or unjust enrichment. The relationship of rights and obligations in tipping behavior is unequal and does not meet the requirements of consumer service contracts. Therefore, it is necessary to analyze the facts of the case in detail and make comparisons in accordance with specific legal provisions in order to draw qualitative results, and cannot simply draw conclusions.

2.4 Highlight cases and judges' views

In the article *Theatrical Performance and Emotional Involvement: Research on the Phenomenon of Online Live Gift Rewarding—Analysis Based on 30 Typical Cases*^[7], Yu Tieshan analyzed on the basis of empirical research on several cases of online live broadcast rewarding disputes. From the perspective of sociological theory, the rewarding psychology of the audience of the webcast is analyzed. In practice, the causes of action involved are mainly summarized as "gift contract disputes", "unjust enrichment disputes", "network consumption contract disputes" and "network service contract disputes", and even serious cases have risen to criminal fraud cases. The specific referees are as follows.

What is identified as a gift: In the case of Zhao Jing v. Zhang and Beijing Baidu Netcom Technology Co., Ltd. gift contract dispute^[8], the court held that the gift contract is a typical one-office and gratuitous contract, and the donor is responsible for giving property. Obligation, the donee does not need to pay consideration for the gift received. The act of rewarding in this case should be characterized as a gift. In the gift contract dispute case between Zeng Liangping and Wang Huan^[9], the court considered the relationship history of the two, the consultation opinions on refund matters, Zeng Liangping's own financial ability, and the time, amount and background of the specific reward, and followed the In accordance with the principles of good faith and fairness, Wang Huan was sentenced to refund part of the amount to Zeng Liangping as appropriate. The relationship between the two parties is a service contract, which is not the same legal relationship as the gift contract in this case. In the case of Yu Binhua v. Guangzhou Huaduo Network Technology Co., Ltd., Wang Zirong, Harbin Xingrong Culture Media Co., Ltd., and Liu Qiqi's network service contract dispute^[10], the Supreme People's Court held that the relationship between the user and the live broadcast publisher A gift contract is generally established, unless there is evidence to prove that the live broadcast publisher must perform specific and clear contractual obligations before and after accepting the 'reward'. In the Beijing ByteDance Technology Co., Ltd. v. Jiang Zhenhui and Zhong Shengtao gift contract dispute case^[11], the court held that Jiang Zhenhui did not provide evidence to prove that the network service contract between Zhong Shengtao and ByteDance Company was invalid, according to law, they shall bear the legal consequences of failing to provide evidence. In the case of Chen Chao v. Song Qianyu and Li Qingyu's gift contract dispute^[12], the court held that the payment made by Chen Lu out of his love for Song Qianyu was a voluntary gift, but the invalid part of the gift should be returned.

It is not considered as a gift contract: In Gan Beiqiong v. Wuhan Douyu Network Technology

Co., Ltd., Shen Guokai, etc. in the gift contract dispute case^[13], the court held that Shen Guokai's recharge and reward behaviors did not constitute a gift. In the case of Qiu Wei v. Guangzhou Kugou Computer Technology Co., Ltd. network service contract dispute^[14], Qiu Wei demanded that Kugou Company refund the recharge fee, but the reason was not sufficient, and the court did not support it. In the gift contract dispute case between Weng Jieping and Beijing Weibo Vision Technology Co., Ltd., Zhao Minxiong, etc., the court held that the contract involved was a network service contract, which had come into effect and was actually performed, and there was no such thing as invalid contract, so it requested the plaintiff to confirm that the contract was invalid. All claims to be returned are not supported. In the unjust enrichment dispute case between Chen Weiyu and Wang Xiaoping^[15], the court held that the parties did not enjoy the right of revocation, and there was no legal basis for requiring the other party to return the donated money. In the dispute between Jin Chaoyang and Guangzhou Huaduo Network Technology Co., Ltd.^[16], the court held that Huaduo Company did not constitute an infringement of Jin Chaoyang's property rights. In the dispute over unjust enrichment between Hu Kun and Zou Shijiao^[17], the court held that the case was unique. Hu Kun and Zou Shijiao met through a live webcast platform and had a relatively short time with each other. Based on the principle of fairness, Zou Shijiao determined that Zou Shijiao should return it to Hu Kun. 10,000 yuan. In Yu Feimei, Cheng Caiying, and Beijing Momo Technology Co., Ltd.'s unjust enrichment dispute case^[18], the court held that (withdrawing the first-instance judgment and amending the judgment), the parties' rewards were not without income, and did not have the unilateral nature of gift contracts. It should be an act of online consumption, not a gift.

The Supreme Court tends to regard the webcast reward contract as a gift contract, but it does not clearly stipulate the specific obligations of the live broadcast publisher before and after accepting the reward. Different courts have different views on this. Some think it is a gift contract, and the return of the reward amount is related to the specific circumstances of the case; while some think it is an online service contract, and the reward amount is regarded as consideration and will not be returned. On the whole, judicial decisions have not yet been unified, and judges have more room for discretion in making decisions.

3. The Reasons and Legal Regulations of Online Live Streaming Rewards

3.1 Cause analysis

3.1.1 The continuous development of network technology

The Internet has profoundly affected society and triggered the need for legal reform^[19]. The Internet has profoundly affected society and triggered the need for legal reform. Emerging technologies have changed production, lifestyles, and traditional values, and big data and cloud computing have played a role in economics, culture, and other fields. The deep integration of the Internet and other industries has promoted innovation and change in various fields. Live webcasting has flourished in recent years, replacing short videos and ushering in the era of "live streaming +".

3.1.2 Changes in social concepts

Young people in the 21st century seem to be busy, but they actually live in their own "islands" and lack in-depth communication. The Internet has become the main channel of expression and entertainment, in stark contrast to real life. There is a deep personal desire for human connection, but a deepening sense of emptiness.

3.1.3 Psychological emotional shackles

In an environment of rapid economic development and information overload, youth groups have become the main force of loneliness. Loneliness brings with it negative emotions that leave a person feeling empty, anxious, and disconnected from the world. "When a person has become an independent whole, he feels completely isolated and faces a world full of dangers^[20]" Some young people find comfort in the Internet, but gradually distance themselves from real life. The increased pressure of test-oriented education makes them more vulnerable to the negative impact of webcasting.

3.2 Regulate the law

Pound believes that the law should keep pace with the times. Legislation needs to establish a strict review mechanism, including measures such as a cooling-off period for tipping. Studying the nature and effectiveness of online live streaming rewards will help to clarify the rights and obligations of all parties and provide a correct way to resolve disputes. The State Administration of Radio, Film and Television requires the implementation of a real-name system, restricting the authority of users who do not have a real name to tip, including measures such as identity verification and face recognition. Setting a tipping cooling-off period and a delayed arrival period can avoid passionate tipping and irrational behavior. It is recommended to give consumers a cooling-off period of 24-48 hours. The introduction of a cooling-off period and a withdrawal system can prevent irrational consumption and cognitive bias, and it is necessary to carefully consider protecting the user's withdrawal right.

The chaos of rewarding online live broadcasts should be dealt with hard. The government's guidelines have adopted strict regulatory measures, such as restricting minors from working as anchors, prohibiting ranking and recommending anchors based on rewards, and improving the real-name authentication system. These measures help regulate the webcasting industry and ensure that each user has a unique real-name account.

At the same time, it is necessary to deal with it comprehensively to control the chaotic phenomenon of online live streaming. Important principled measures and key ties are indispensable. The problem of minors' addiction to the Internet and unrestrained tipping involves inadequate supervision and family education. Therefore, we need to establish a comprehensive protection mechanism, increase policy strength, increase the cost of violations of laws and regulations, and at the same time cultivate citizens, especially young people, awareness of self-protection on the Internet, so as to comprehensively protect minors and build a solid Internet security defense line.

Among the judgment documents of relevant judicial practice cases searched online in China's judgment documents, the number of judgment documents involving webcast rewards has increased year by year, reflecting the rapid development of this industry and the seriousness of legal problems. In recent years, tipping disputes have occurred frequently, and the cases involved are complex and difficult to handle. The judiciary should expedite the development of authoritative adjudication standards to help resolve these issues.

4. Conclusion

Since the first year of webcasting in 2016, tipping for webcasting has sparked widespread debate. It provides a convenient and effective way of expression for the interaction between fans and anchors, and promotes the development of the live broadcast economy. However, frequent chaos, especially the negative impact on minors cannot be ignored. Minors are immature in mental development, and their values of huge rewards and getting something for nothing are easily affected.

This leads to competition and the spread of bad ideas, which have a corrosive effect on young hearts.

The logic of online live streaming rewards is not complicated: viewers pay digital currency to buy virtual currency or props, and then give it to the anchor, and the platform finally converts it into economic value. The anchor can only get the share of the agreed ratio. However, this model benefits the anchor and the platform, but the audience may consume without knowing it. In addition, compared with other forms of live broadcasting, the cost of relying on audience swiping gifts and special effects for entertainment live broadcasting is lower. Some illegal anchors will even use soft pornography to lure viewers to empty their wallets. With the passage of time, the cyberspace has become chaotic, and the live broadcast ecology has problems. This kind of live broadcast behavior that misleads young people is dangerous.

Minors are high-spirited and the undercurrent of the live broadcast economy is surging. Only with more complete normative guidance can the two complement each other and create a clear and clear cyberspace.

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