

Research On the Legal Problems of Minors' Internet Consumption in The Context of Chinese Law

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Abstract. The rise of minors' online consumption disputes in China has been caused by the country's expanding internet user base, particularly within younger demographics. This paper focuses on the problems in minors' online consumption by examining two typical cases, Zheng v. Mellywood Company and Zhang v. A Digital Technology Company. It identifies three main legal canonical issues: recognition of the subject of minors, determination of the efficacy of online consuming behaviors of minors, and retroactive confirmation of the validity of minors' online consumption by the representative-in-law. This paper utilizes qualitative analysis to explore the inadequacies of current Chinese legal frameworks in protecting minors from online consumption. Through a jurisprudential review and comparative legal analysis, this paper suggests a critical gap in regulating minors' online consumption in China, emphasizing the need for legislative and regulatory reforms. Then this paper proposes a set of suggestions to appease disputes in the online consumption of minors. These include adopting the merits of international legal exception regulations, introducing effective oversight mechanisms, and providing more precise legal definitions concerning minors' online activities. It also suggests that a combination of refined legislation and improved regulatory oversight could significantly mitigate the risks associated with minors' online consumption.

Keywords: The minor; online consumption; live broadcast rewarding; game topping-up; legal validity; minor civil capacity.

1. Introduction

With the rapid development of the Internet, the number of juvenile Internet users is increasing, and this phenomenon is also widespread in China. The 52nd Statistic Report of China Internet Developmental Landscape(2023) illustrates that the number of Chinese cyber citizens has reached 107.9 million, and the popularity rate of the Internet has approached 76.4% [1]. According to The 5th Report on the Survey of Internet Usage by Minors in China, especially in 2022, the total number of minor cyber citizens has already risen to 193,000,000, and their popularity rate has reached 97.2%, which is even higher than that of adults[2].

With more and more minors taking part in watching live streams and playing video games, the phenomena of minors' online consumption have emerged increasingly. Although some regulations forbid the users to consume as a minor's identity, the defective online detection and protection towards them still cannot intercept the consumption since it is perplexing to verify if the actual users are minors. They might consume on their parent's accounts, like in the Zheng v. Mellywood Company Case. In two months, a 15-year-old girl's expenditure on rewarding the live-streamer had reached 387,700 yuan on her mother's account [3]. Some children might even remember their parents' ID numbers and sign accounts without being noticed by their parents. Furthermore, even if most paying service providers require biometric signatures, like "App Store" will scan the facial signatures (FaceID) to recognize the payer, they also provide a free password shortcut for paying small amounts of money [4]. All of these occurrences have not only implicated enormous amounts of money, while only a proportion of them can be retrieved, resulting in economic losses to the family, but also provoked many legal disputes in these problems.

In China, in August 2018, the National Industry And Information Department, Public Security Department, National Radio And Television Administration, and National Internet Information Office allied to publish the Guiding Opinions on Strengthening the Standardized Management of Webcasting, requiring each Internet service provider to enhance examination of users' actual

identity[5]. There are also some existing laws and regulations that safeguard minors' lawful rights and interests, like the Minors' Protective Law. Noticeably, from January 1, 2024, the Regulations on the Internet Protection of Minors came into force. As China's first specialized comprehensive legislation on the protection of minors on the Internet, the implementation of the Regulations marks a new stage in the construction of the rule of law for the protection of minors on the Internet in China. It is palpable that legislation endorses protecting minors by essentially stifling the irrational online consumption of minors. But actually, the current legal provisions for online consumption by minors are still inadequate; for instance, it is complicated to identify the actual user involved in the consumption, and how to determine the subject of consumption is an issue that the law needs to address. Another example is that since online consumption completely differs from ordinary offline business contracts, it seems that the current laws constrained by strict revision procedures, like contract law and civil law, are outdated in solving these disputes.

This paper first focuses on two typical online consumption disputes of minors; through the study and analysis of the cases, it found that there are three problems in the legal regulation of online consumption of minors: recognition of the subject of minors, the validity of minors' online consumption behavior, retroactive confirmation of the validity of a minor's online consuming behaviors. Then, the three problems are expected to be studied, and the corresponding suggestions are given.

2. Two judicial cases of minors' online consumption

2.1. Basic statement about cases

2.1.1 Zheng v. Mellywood Company Case[3]

From February February 2016 to April 2017, Zheng was a 15-year-old girl who studied abroad and spent her tuition fee on rewarding live streamers on the Yingke live broadcasts platform of the Mellywood Company. She signed into an account with her mother's identity and consumed 657,734 yuan in total during that time by using her mother's paying accounts without noticing. The account was recognized as Zheng's mother, but the actual user has always been Zheng. After realizing the consumption, Zheng's mother turned to negotiate with Mellywood Company and finally failed. So, she took legal proceedings against the company and required it to return the amount of money consumed by Zheng, but the account continued to conduct transactions while the case was being tried.

According to the judgment, Zheng was the actual user of the account, while the main controversy was the validity of the online consumption contract between Zheng and Mellywood Company. During the period of consumption, Zheng was under 16 years old and belonged to the people with limited civil capacity. However, faced with such a tremendous amount of money and numerous transactions recorded, Zheng's mother did not take any actions to interfere with the consumption. So, it would be reasonable to regard this attitude as a tacit consent to her daughter's consuming behaviors. Even if there was no unequivocal confirmation of this action from her guardians, the consuming contract is illogical to be denied., But the court agreed with returning partial consumption, blamed on Mellywood Company's irrational decision to conclude the contract with Zheng during the trying because by this time, Zheng's mother had already raised objections.

2.1.2 Zhang v. A Digital Technology Company Case[6]

On the night of April 19, 2022, Zhang was an 11-year-old girl who was studying in fifth grade and spent her parent's money to buy topping-up cards used in games on her parent's phone. Due to the inducement of live streamers, Zhang paid 5949.87 yuan to the topping-up store owned by A Digital Technology Company; in total, four transactions happened in 30 minutes. Besides, Zhang also consumed more than 100,000 yuan at other shops and for other live streamers. This action was obvious beyond her age and intelligence. Zhang was defined as a person with limited civil capacity, so Zhang's parent took legal proceedings against the company and required it to return the amount of money.

According to the judgment, civil law behaviors of a person with limited civil capacity need to be confirmed by the representative of the defendant in law. In this case, Zhang's parent did not confirm Zhang's irrational behavior, so the court finally decided to force A Digital Company to return the payment.

2.2. Analysis of the above two judicial cases

Firstly, online consumption, including rewarding consumption in live-stream, is supposed to be considered to be a type of civil law behavior—— concluding online consumption contract [7]. So, the validity of the contract depends on the civil capacity of the subject of the concluding contract.

Secondly, although the accounts in these cases concluded contracts with adults' identities, the court agreed to determine the contract against the actual user. And by identifying the real user, the court makes a judgment on the validity of the contract. This verdict is supported by the evidence submitted by both sides since the court endorsed providing convincing proof to advocate a particular opinion[8]. In terms of the Zheng v. Mellywood Company Case, the IP address of the consuming account had always proved to be in Canada, where Zheng stayed for studying, while Zheng's mother--the user of the account--had never been to Canada during that period. Therefore, the actual user, namely the subject of concluding contracts, is Zheng instead of her mother[3]. According to the Civil Code of the People's Republic of China, minors under eight years old are recorded as having no civil capacity, and minors above eight years old are regarded as having limited civil capacity[9]. This means that they can only implement civil behaviors that match their age and intelligence independently, while other behaviors need to be confirmed by their representative-in-law. In these cases, the amounts and frequencies of consumption are applied beyond their limited capacity, so confirmations are required.

Lastly, The court judges parental ratification on a case-by-case basis. In Zheng v. Mellywood Company Case, though Zheng's parent had never confirmed Zheng's behaviors, it was confirmed implicitly. Since Zheng's parent, as her representative-in-law, was expected to notice the immense expense and inculcate in her daughter a sense of rational consumption, she did not fulfill her obligations [3]. However, in Zhang v. A Digital Technology Company Case, Zhang's parent took action at once after perceiving the consumption, so it is sensible to judge that Zhang's representative-in-law denied confirming Zhang's civil behaviors of Zhang [6].

3. Problems in minors' online consumption

As can be seen from the cases above, there are currently three issues that should be focused on in the area of online consumption by minors:

3.1. Recognition of the subject of minors

Through searching on China Judgment Online, there are 39 judgments of civil cases in total matched with the keywords“minors,” “online consumption,” “rewarding,” and “topping-up.” Here are the cases related to the topic of this research as shown in Table 1.

Table 1: Table of Minors' Online Consumption Case [10]

Case	Date	Judgement	explanation of verdict
Liu v. Yiyou Company	11/25/2022	Plaintiff prevailed	The subject of the consumption can basically be identified as a minor.
Zhang v. Kuaishou Company	08/11/2022	Plaintiff failed	The subject of the consumption can be identified as a adult with full civil capacity.
Sun v. Youka Company	05/18/2021	Plaintiff prevailed	The subject of the consumption can be identified as a minor.
Wen v. Sixiangshiguang Company	05/13/2021	Plaintiff failed	The subject of the consumption can be identified as a minor with full civil capacity.
Dai v. Kugou Company	12/23/2020	Plaintiff failed	The subject of the consumption cannot be identified as a minor.
Song v. Huolieniao Company	12/14/2020	Plaintiff partially prevailed	The subject of the consumption can be basically identified as a minor, the guardian exists at fault.
Yu v. Huya Company	12/04/2019	Plaintiff partially prevailed	The subject of the consumption can be identified as a minor, the guardian exists at fault.
Wu v. Huya Company	09/21/2019	Plaintiff partially prevailed	The subject of the consumption can be basically identified as a minor, the guardian exists at fault.
Wu v. Kuaishou Company	09/18/2018	Plaintiff prevailed	The subject of the consumption can be identified as a minor.
Yuan v. Kuaishou Company	08/22/2018	Plaintiff failed	The subject of the consumption cannot be identified as a minor.
Qi v. Kuaishou Company	05/04/2018	Plaintiff failed	The subject of the consumption cannot be identified as a minor.
Chen v. Huya Company	03/01/2018	Plaintiff failed	The subject of the consumption cannot be identified as a minor.
Li v. Huaduo Company	10/20/2017	Plaintiff failed	The subject of the consumption cannot be identified as a minor.

As shown in the chart, most defeat cases have a common explanation:the subject of consumption cannot be recognized.The reason why it is problematic to recognize the subject of online consumption can be referred to the characteristics of online contracts. Firstly, the identity of the actual user is concealed so that both sides of the contract cannot verify whether the other side has the qualification to conclude a contract. Secondly, the online contract is virtual to some extent since the information relies on the Internet to store and transfer, resulting in high volatility and the possibility of misrepresentation of transaction data [11]. So, it is urgent to form authoritative regulations to decide which means of providing proof is legally acceptable.

3.2. Determination of the efficacy of online consuming behaviors of minors

According to the Civil Code of the People's Republic of China, China adopts a three-level civil behavioral capacity system:

1. A natural person over 18 years of age, namely an adult, is considered to be a person of full

civil capacity, and a minor over 16 years of age is also considered to be a person of full civil capacity if he or she earns his or her own income as his or her primary source of livelihood.

2. Minors over eight years of age are persons with restricted civil capacity.

3. Minors under eight years of age and adults who are unable to recognize their own actions are persons without civil capacity [9].

As for persons with restricted civil capacity, the Civil Code of the People's Republic of China stipulates the three pre-conditions separately for the validity of a contract concluded independently:

1. A contract is considered valid after the legal representative of the person with limited capacity for civil behavior has recognized it.

2. A contract concluded independently by a person with the limited civil capacity for the sole purpose of obtaining a benefit is valid.

3. A contract independently concluded by a person with limited capacity for civil conduct in accordance with the person's age and intellect is valid [9].

However, it is ambiguous how to define the term "accordance with the person's age and intellect" since the accordance may vary from region to region and may have dissimilar economic developments. For instance, the irrational consumption of minors in rural areas might be reasonable for minors living in a metropolis. Also, the judges are likely to bring in a verdict depending on their views, as the vague principle gives them large discretionary power contingent on their comprehension.

Besides, according to Article 148 of the Civil Code of the People's Republic of China [9], if the subject deceived the other side and then concluded a contract with it, the concluded contract could be required to be canceled. After canceling the contract, the acquired property should be returned or compensated. However, considering the specialty of minors and the features of the Internet, there is no specific doctrine about how to judge the validity of minors' contracts by deceiving the online service provider so far.

3.3. Retroactive confirmation of the validity of minors' online consumption by the representative-in-law

In the Zheng v. Mellywood Company Case [3], Zheng's parents did not confirm Zheng's behaviors throughout the dispute. However, the court regarded the behaviors of Zheng as valid. It used three reasons to argue: Zheng's parent failed to fulfill his legal obligation to provide care and education, failed to exercise the requisite degree of care in verification transactions, and had a permissive attitude toward Zheng's unrestricted online consumption outside the home. While such a reason for judgment is reasonable, there is no explicit, quantifiable standard for what constitutes acquiescence in a minor's civil behavior. After all, the reason why Zheng's parent constituted acquiescence with respect to Zheng is that she knew but did not inspect Zheng's unreasonably large purchases on her account and because Zheng had previously used her mother's cell phone number to register. Her bank card was used to make the purchases, and the purchase records and the notification text messages should have been on Zheng's parent's cell phone. They could not have been deleted by Zheng, who was still overseas at the time. But the problem is that the boundaries for determining whether or not this constitutes acquiescence are too porous, e.g., What constitutes fulfillment of legal obligations of support and education? Within what period will retrospective recognition not constitute acquiescence?

4. Proposals for addressing the problems

4.1. Recognition of the subject of minors

During the litigation, the minor (plaintiff) claimed that the person who recharged the consumption was a minor, not the nominal registrant of the account. In accordance with the rule of burden of proof (Article 64(1) of the Civil Procedure Law), the party making the claim is responsible for providing evidence to support it [12]. According to Article 90 of the Interpretation of the Supreme People's

Court on the Application of the Civil Procedure Law, the burden of proof for the facts presented falls on the concerned party [8]. Therefore, parents of minors need to provide evidence that the Internet service provider can determine that the contract counterparty is a minor.

In order to convince, the behaviors of consumption should be matched with the characteristics of minors' online consumption. Here is a conclusion of common ones:

- Happening in a short period of time
- Short intervals between consumption
- Spending much more than their pocket money or daily household entertainment expenses
- Small expenditures at the beginning and increasing thereafter

Meeting the above or more commonalities of minors' online consumption is supposed to help a judge make a reasonable presumption when there is insufficient evidence.

However, online consumption perpetrated by minors tends to have another characteristic in common. Minors constantly quickly delete all records that can prove the consumption after the purchase, such as payment information and bank card text messages, resulting it difficult for the plaintiff to offer evidence. According to the current rules of evidence, if the legal representative cannot provide evidence that a minor carried out the consumption, the judiciary cannot support their claim to recover the consumption.

In contrast, the live broadcasting platform has more technical advantages and convenience, making it easier to provide more substantial evidence. For minors with weaker evidential capacity, after providing a certain amount of specific evidence, the rule of reversal of the burden of proof should be adopted, imposing providers more obligations [13]. In this case, this method of proof can also enhance the surveillance and censorship of providers' consuming services in turn, directly mitigating the recurrence of such problems.

4.2. Determination of the efficacy of online consuming behaviors of minors

Firstly, it is about improving the existing regulations to make them more precise, minimizing the possibility of different verdicts in similar types of cases. As for defining the term "accordance with the person's age and intellect," because the economic conditions of different regions and families are completely different, it is difficult for each minor to define a clear consumption-age boundary to judge what kind of consumption is reasonable. So, it would be more reasonable to consider a rational percentage consumption for minors' online consumption of household entertainment expenditure or total expenditure as the civil behavior compatible with the intellect, and the threshold rational percentage should also increase with age growth.

Secondly, appropriate references could be made to the special articles on limited civil capacity minors and civil behavioral capacity systems in other countries because the realities of the case are more complex than the established provisions of the rule, and some exception clauses with the prevailing situation should be allowed to exist.

In other civil law countries, for example, the German Civil Code contains an exception to civil capacity, the "pocket money" clause in Section 110[14], which stipulates that a minor may conclude a contract with the prior permission of the legal representative or a third person with the consent of the legal representative, to the extent of the money paid by the legal representative. In Germany, most of the pocket money given to minors by their legal representatives is used to pay for the minor's studies and transportation. Sections 112 and 113 provide for the "deemed fully competent person" clause [14]. Compared with the general and broad provisions on the civil acts that minors with limited civil capacity can independently perform, this clear and explicit interpretation of a single article protects the legitimate rights and interests of minors with limited civil capacity to perform the corresponding civil acts, and at the same time increases the flexibility of the provisions regulating the capacity to act on the basis of age.

As for common law countries, a number of exceptions to the validity of contracts concluded by minors are provided for in the interests of the security of the transaction and balancing the protection of the rights and interests of both parties to the transaction. The law recognizes valid contracts of

necessaries concluded by minors, which are called "contracts for necessities [15]." English jurisprudence suggests that necessities are determined in three ways:

- whether it corresponds to the minor's living conditions
- whether it is necessary for the minor
- whether the minor is in a situation where necessities are not met

With the development of the times, the scope of necessities contracts that minors can conclude has gradually been expanded to include a broader range of contracts, such as education contracts, apprenticeship contracts, and other beneficial contracts [16]. At the same time, the judge will also take into account the minor's economic background, living environment, and other factors to determine whether the contract concluded by the minor belongs to the nature of the necessities. The reference to the "contract of necessities" in the common law system can help China to largely resolve the ambiguity of the definition of "accordance with the person's age and intellect" by analyzing the content of the contract in conjunction with the individual situation of the minor, and still retains a certain degree of discretion for the judiciary on this basis, which not only avoids the current situation of different judgments for the same kind of cases, but also makes it possible to make the judgments more flexible and closer to the particular case's situation.

Besides, in terms of minors concluding contracts by deceiving online service providers, it is informative to turn to article 83 of the civil law of Taiwan: "Others believe that the limited capacity to act as a person with the capacity to act, or has obtained the permission of the legal agent, is due to the use of fraud by the person with the limited capacity to act, shall be considered to be valid for their legal acts." Therefore, if the minor based on fraud intentionally conceals the fact that he or she is a person with limited capacity for civil behavior from the online service provider in order to achieve the effect of entering into a reward contract so that he or she generates a wrong understanding and therefore conclude a consuming contract with the minor, the service provider can remedy his or her loss of rights and interests according to the law by requesting the court or arbitration institution to revoke the reward contract with the minor.

4.3. Retroactive confirmation of the validity of minors' online consumption by the representative-in-law

Firstly, it is critical to clarify the occasion of the retroactive confirmation. Retroactive confirmation of a specific consumption can only be made by the legal representative if the legal representative has no previous consensus on the consumption with the minor and it is incompatible with the age and intelligence of the minor [17]. Unlike the previous agreement, retroactive confirmation occurs after a minor has consumed online and is essentially an expression of intent that should be made explicitly or implicitly in writing or verbally.

Secondly, this kind of confirmation should take place immediately after the representative-in-law acknowledges the consumption, accompanied by the representation-in-law's criticism and education towards the minor since the retroactive confirmation should be predicated on the representation-in-law's denial of underage consumer behavior.

Thirdly, the representation-in-law's formal, validated retroactive confirmation is supposed to inform the online service provider or function the effect of letting them know, not just reflect on the criticism and education in the chat logs between the representation-in-law and the minor. Thus, online service providers can help alleviate the problem of minors' consumption on the Internet, helping establish a sound mechanism and also helping solve such problems in a very short time, possibly through negotiation, which will probably significantly reduce the negative impact of the problem on the service providers' operation, as under such circumstances can part of the pressure of intercepting minors' consumption be shifted to the online service providers to the greatest extent possible.

5. Summary

This paper delves into the problems of minors' online consumption in China by analyzing the typical disputes, Zheng v. Mellywood Company Case [3] and Zhang v. A Digital Technology Company Case [5]. It identified the fatal legal problems in minors' online consumption: recognition of the subject of minors, determination of the efficacy of online consuming behaviors of minors, and retroactive confirmation of the validity of minors' online consumption by the representative-in-law. The paper draws the following conclusions: for the identification of minors as the subject of online consumption, the principle of reversal of the burden of proof should be adopted in judicial trials and the judgment should be made in the context of the characteristics of the consumption of minors; as for the validity of the online consumption of minors, reference should be made to the exceptions of other countries and the "contract of necessities"; for the recognition of the online consumption of minors, the method of recognition should be standardized to make it more in line with practical needs. As for the effectiveness of underage online consumption, reference should be made to the exception clauses and "contract of necessities" of other countries, so that the judgment is more flexible and closer to the situation of specific cases; in the retroactive confirmation of underage online consumption, the method of retroactive confirmation should be standardized, so as to make it more in line with the practical needs. These suggestions aim to address the current legal framework's inadequacies in determining the validity of online consumption by minors. The study also contributes to the broader understanding of online consumer behavior among minors and the efficacy of existing legal protections. It offers proposals for stakeholders, including policymakers and platform operators, underscoring the need for updated legislation that keeps pace with technological advancements and changing online behaviors.

Regarding the shortcomings of this study, the focus on specific cases, while providing detailed insights, may not fully encompass the diverse scenarios of online consumption by minors, as the dynamic nature of the Internet and digital platforms means that the issues and the effectiveness of the proposed recommendations may evolve. Therefore, future research could broaden the scope by examining a more comprehensive range of dissimilar cases across platforms and services to provide a more comprehensive picture of minors' online consumption patterns. Quantitative studies could also be beneficial in understanding the scale of the issue and in evaluating the impact of new regulations and policies. In addition, research into the effectiveness of other countries' regulatory frameworks in real-world applications could be valuable in providing a more appropriate protection mechanism for minors and maintaining the economic order of the network services market.

Overall, this study reveals the key issues and legal challenges of online consumption by minors in China. However, continuous research and adaptive legislative responses, government mechanisms to supervise and regulate the market, technological measures and identity verification for the protection of minors, as well as co-management aspects such as parental and guardian education and management, are all essential to reasonably and effectively protect minors in the ever-evolving digital world.

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