

Determining “Serious Harm” in Spousal Livestream Tipping with Marital Community Property

--An Interpretation of Article 6 of the Judicial Interpretation on Marriage and Family Matters II

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Abstract

Article 6 of the Judicial Interpretation II on Marriage and Family Matters creates a specific rule for excessive livestream tipping from marital community property, but its key threshold terms remain open-textured. This article argues that “serious harm” should be understood as a contextual and relational standard rather than a fixed monetary threshold. Courts should compare the amount, frequency and duration of tipping with the family’s economic capacity and established consumption pattern, while considering the actual effect on ordinary household needs and the existence of consent by the other spouse. The article proposes a multi-factor judicial test designed to distinguish ordinary digital entertainment expenditure from material dissipation of marital community property.

Keywords

Livestream tipping; marital community property; serious harm; family consumption; household agency; matrimonial property.

1. Introduction

Livestream tipping has developed from a marginal online practice into a recognizable form of digital entertainment expenditure. Users may purchase virtual currency, send virtual gifts, participate in ranking mechanisms, or interact directly with streamers. These activities create an expenditure pattern that differs from conventional household consumption, while still serving entertainment, social, and emotional functions. The problem becomes legally significant when one spouse uses marital community property for livestream tipping without the other spouse's consent. The resulting dispute is not simply about whether money has been spent online. It concerns the boundary between individual autonomy in ordinary household consumption and unilateral dissipation of assets belonging to the marital community.

Article 6 of the Judicial Interpretation II of the Supreme People's Court on Marriage and Family Matters provides a specific rule for this problem. It states that where one spouse, without the consent of the other spouse, uses marital community property for livestream tipping, and the amount clearly exceeds the family's general level of consumption and seriously harms the interests of marital community property, the conduct may be regarded as “squandering” under Articles 1066 and 1092 of the Civil Code [1]. The provision is important because it directly recognizes livestream tipping within the matrimonial property framework. At the same time, the expressions “general level of consumption,” “seriously harms,” and “without the consent” leave substantial room for judicial interpretation.

Existing studies have discussed livestream tipping from several perspectives. Some scholars emphasize the service and consumption elements of livestreaming, while others stress its gratuitous or relational character; still others argue that the legal nature depends upon the

concrete form of the interaction between user, streamer and platform [2-5]. Recent studies focusing specifically on matrimonial disputes further distinguish internal matrimonial remedies from the external validity of the underlying transaction [6-9]. These discussions suggest that Article 6 should not be implemented through a rigid monetary threshold.

This article argues that “serious harm” should be understood as a relational and contextual standard. Courts should compare the tipping behavior with the family's economic capacity and established consumption pattern, while also considering amount, frequency, duration, and the actual effect on family interests. Consent should be analyzed separately from the question of whether the expenditure was ordinary household consumption. A structured multi-factor test is therefore preferable to a fixed monetary rule.

2. Livestream Tipping and the Concept of Household Consumption

The application of Article 6 presupposes a distinction between ordinary digital consumption and dissipation of marital property. Livestream tipping may serve several functions simultaneously. A user may tip in response to entertainment content, to support a streamer, to obtain interactive benefits, or to satisfy emotional needs. Sociological research describes livestream tipping through the combined dimensions of interaction, emotion and consumption [3]. Legal research likewise recognizes that the same payment can present different legal characteristics depending on the underlying transaction [2,4,5].

This plural character matters because the mere fact that an expenditure is made through a livestreaming platform does not make it legally abnormal. Entertainment expenditure is part of modern household consumption. Nor should the existence of an emotional preference for a streamer automatically turn a digital payment into a dissipation of community property. The first question under Article 6 is therefore not whether the spouse tipped a streamer, but whether the scale and pattern of expenditure materially departed from the family's ordinary consumption.

This understanding also avoids an unnecessary conflict between Article 6 and the general rules on household agency. The Civil Code recognizes the legal effect of a spouse's conduct within the sphere of ordinary family life. Article 6, by contrast, targets expenditures that substantially exceed normal household consumption and seriously damage the property interests of the marital community [1,12]. The provision should therefore be treated as a rule for identifying exceptional dissipation rather than as a general prohibition on unilateral digital spending.

3. The Ambiguity of “General Level of Family Consumption”

The phrase “general level of family consumption” cannot sensibly be reduced to a uniform monetary threshold. Families differ in income, assets, liabilities, geographical location, occupation, lifestyle and customary expenditure. An amount that would be insignificant for a high-income household may be highly material for a middle- or low-income household. The standard must consequently be relative rather than absolute.

First, the court should establish the family's economic baseline. Evidence may include regular household income, liquid assets, housing and education costs, debt burden, medical expenses and other predictable obligations. The purpose is not to conduct a comprehensive accounting of the family, but to determine the economic context against which the disputed expenditure should be assessed.

Second, the court should examine the family's established consumption pattern. A household that regularly spends substantial amounts on entertainment, games, online subscriptions or cultural activities presents a different baseline from a household with consistently modest

discretionary spending. The fact that livestream tipping is unusual in form is not sufficient to establish that it is unreasonable in amount.

Third, the court should consider the proportion and persistence of the expenditure. A single payment of a certain amount may be less significant than repeated payments that accumulate over several months. Accordingly, the relevant comparison should include both the absolute amount and its relation to available household resources.

This approach is consistent with research emphasizing that the internal legitimacy of livestream tipping should be examined in light of family circumstances rather than by a fixed amount alone [7,9].

4. What Constitutes “Serious Harm”?

“Serious harm” should be understood as a material impairment of the economic interests protected by the marital community property regime. The standard should not be triggered merely because the other spouse dislikes the expenditure or would have chosen a different use for the money.

The first factor is the absolute amount of tipping. Significant amounts naturally require closer scrutiny. The second factor is the proportion of tipping to household resources. The third factor is frequency and duration. A repetitive expenditure pattern can demonstrate a stronger dissipation risk than a single transaction. The fourth factor is the effect on ordinary household needs. Where tipping causes difficulty in meeting rent, debt payments, education, medical treatment or other substantial family expenses, serious harm becomes more apparent.

The fifth factor is deviation from the established consumption pattern. Courts should ask whether the disputed behavior represents an exceptional departure from the family's ordinary financial conduct. The sixth factor is the transactional context. Where the tipping is closely associated with a personal relationship and involves large transfers with little connection to ordinary livestream consumption, the court may reasonably demand stronger evidence that the transaction remained within the sphere of ordinary household consumption. The seventh factor is the existence of actual consent or a prior arrangement concerning financial autonomy. These factors should not be applied mechanically. Their function is to structure judicial reasoning and reduce inconsistent results. In particular, the amount of money should be assessed together with the family's economic capacity rather than treated as an independent dispositive threshold.

5. “Without the Other Spouse's Consent”

The expression “without the consent of the other spouse” raises a distinct issue. Explicit consent is straightforward. More difficult cases arise when the other spouse knows that livestream tipping occurs but does not expressly object.

Silence should not automatically be treated as consent. Mere knowledge may reflect indifference, lack of information about the scale of expenditure, or an assumption that the spending falls within the other spouse's ordinary autonomy. At the same time, where the non-tipping spouse has long known about substantial tipping and repeatedly accepted the practice, such conduct may be relevant evidence of implied consent or an established division of financial autonomy.

The court should therefore distinguish four situations: express consent; implied consent demonstrated by conduct; mere knowledge without sufficient evidence of consent; and complete lack of knowledge. This distinction prevents the phrase “without consent” from becoming a purely formal device that invalidates every transaction not individually discussed by the spouses.

The issue is especially important because Article 6 operates within the broader framework of marital daily-life agency. Ordinary household consumption does not normally require prior notice for every transaction. The special rule is directed at exceptional dissipation that materially threatens the community property, not at routine differences in spending preferences [1,7,9].

6. The Role of Motivation in Assessing Harm

The tipper's motivation may be relevant evidence, but it should not substitute for an objective assessment of the financial consequences. A user may tip because of entertainment, admiration, emotional attachment, social participation, or the hope of developing a private relationship with the streamer. These motivations may coexist within the same payment.

Recent scholarship has cautioned against treating motivation as the only criterion. He Wenli's study notes that the purpose of tipping may change over time as the relationship between user and streamer develops, and that courts should consider motivation carefully without making it the sole basis of characterization [8]. This is consistent with the broader distinction between objective transaction structure and subjective purpose in contract law.

For the application of Article 6, the decisive concern remains the impairment of marital property interests. Motivation may help explain why a particular expenditure occurred and may become decisive in a different legal inquiry, such as whether a transaction constitutes a gift contrary to public order and good morals under Article 7. It should not, however, be used to transform an otherwise ordinary entertainment expenditure into dissipation merely because the tipper had emotional preferences concerning a streamer.

This distinction also preserves coherence between Article 6 and Article 7. Article 6 primarily addresses internal matrimonial dissipation, whereas Article 7 addresses transactions that are independently invalid because their purpose violates public order and good morals [1,6,10,11].

7. A Multi-Factor Judicial Test

Based on the above analysis, Article 6 can be operationalized through six questions. First, what is the family's economic baseline? Second, how much, how often, and for how long did the tipping occur? Third, how does the tipping compare with the established household consumption pattern? Fourth, did the expenditure materially affect ordinary household needs or financial security? Fifth, did the other spouse expressly or implicitly consent? Sixth, is there evidence that the expenditure substantially departed from ordinary household consumption?

The test can be summarized as follows: economic capacity + expenditure pattern + amount + frequency + duration + actual financial impact + consent. No single factor is necessarily conclusive. The purpose of the framework is to require courts to explain why a particular expenditure crosses the legal threshold of "serious harm."

The model also permits differentiated outcomes. A modest but emotionally motivated payment may remain ordinary consumption. Repeated high-value tipping that consumes a substantial share of disposable household resources may constitute dissipation even if each individual transaction is not extraordinary. Conversely, a large one-time expenditure by a financially strong household may require more context before being classified as serious harm.

Such a contextual standard is more consistent with the normative purpose of Article 6: protecting marital community property without unnecessarily suppressing ordinary financial autonomy within marriage.

8. Conclusion

Article 6 of the Judicial Interpretation II on Marriage and Family Matters establishes a necessary legal response to excessive livestream tipping from marital community property. Its effectiveness, however, depends on a careful interpretation of “general level of family consumption,” “serious harm,” and “without the consent of the other spouse.”

The appropriate approach is not to establish a universal monetary threshold, but to assess the tipping behavior against the family's economic capacity, established consumption pattern, expenditure amount, frequency, duration, and actual impact on community property interests. Consent should also be distinguished from mere knowledge, while subjective motivation should remain an auxiliary rather than exclusive consideration.

A multi-factor judicial test can therefore provide a workable balance between the autonomy of spouses in ordinary household consumption and the legal protection of marital community property. It also creates a clearer doctrinal boundary between internal dissipation under Article 6 and the separate validity inquiry under Article 7.

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