PAYING WITH DATA: THE PROTECTION OF PERSONAL DATA IN CONSUMER CONTRACTS IN THE DIGITAL AGE

PLATBA DATY: OCHRANA OSOBNÍCH ÚDAJŮ VE SPOTŘEBITELSKÝCH SMLOUVÁCH V DIGITÁLNÍM VĚKU

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https://doi.org/10.33542/SIC2026-1-05

ABSTRACT

The contractual regulation of civil (consumer) relations in the digital economy is still in its infancy. In this connection, the use of a natural person's personal data as a "payment" or counter-performance in a consumer contract is of great importance. The author suggests that the personal data of a natural person may be a special object of obligation, as well as a type of "payment" under a contract, other than money, given that they are inherent in the information, value, and property nature, as well as the ability to be as a means of exchange. A consumer contract in which personal data is a "payment" for content or services contains certain elements inherent in barter agreements and transactions for the disposal of intellectual property rights. The possibility of turnover of personal data requires special legal regulation and proper supervision of the state regarding contractual relations with personal data. Also, it is important to note that the issue of determining the limits of exercising the rights of participants in consumer contractual relations regarding personal data is open since, for a natural person, his/her data has not only property but also non-property value.

ABSTRAKT

Smluvní úprava občanskoprávních (spotřebitelských) vztahů v digitální ekonomice je stále v plenkách. V této souvislosti má velký význam použití osobních údajů fyzické osoby jako „platby" nebo protiplnění ve spotřebitelské smlouvě. Autor naznačuje, že osobní údaje fyzické osoby mohou být zvláštním předmětem závazku, stejně jako druhem „platby" ze smlouvy, jiným než peněžní, vzhledem k tomu, že jim inherentně patří informační, hodnotová a majetková povaha, jakož i schopnost sloužit jako prostředek směny. Spotřebitelská smlouva, v níž jsou osobní údaje „platbou" za obsah nebo služby, obsahuje určité prvky inherentní směnným smlouvám a transakcím o nakládání s právy duševního vlastnictví. Možnost obratu osobních údajů vyžaduje zvláštní právní regulaci a řádný dohled státu nad smluvními vztahy s osobními údaji. Důležité je také poznamenat, že otázka stanovení mezí výkonu práv účastníků spotřebitelských smluvních vztahů ohledně osobních údajů je otevřená, protože pro fyzickou osobu mají její údaje nejen majetkovou, ale i nemajetkovou hodnotu.

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I. INTRODUCTION

In the digital era, consumers are frequently provided with certain benefits in exchange for their data. The essence of these relations is that the consumer is provided with a service or access to an intellectual property object free of charge in exchange for personal data. Later, such personal data may be used by a business entity or other entities for a specific purpose, in particular, to obtain profit. Such legal relations in terms of free provision are conditionally free, as the consumer provides data to the business entity. These relations are contractual, but their legal regulation is ambiguous, and there are lively discussions about this in science. The significant aspect of such talks is the possibility of considering personal data as a circulated object that can be commercialized.

The dual nature of personal data as a fundamental right and a possible good, and the changes in the EU legal environment governing this conflict in the context of consumer contracts, serve as two basic foundations of the theoretical framework. Although Article 8 of the European Convention on Human Rights[3] and Articles 7 to 8 of the EU Charter of Fundamental Rights[4] protect personal data as a fundamental right, EU contract law increasingly recognises that data can serve as counter-execution in digital contracts. This raises the question of how personal information can be transferred in contracts with clients without prejudice to their fundamental rights.

In addition, the increasing reliance of consumers on digital channels leads to a decline in the protection of personal data, as greater usage results in more personal information being shared and stored through these platforms[5].

The opinions of researchers who do not support and support the commercialization of personal data are also being considered. For example, in their research, Custers and Malgieri[6] examine business models considering personal data a commodity and point out that such business models are problematic under the EU data protection law, which disqualifies personal data as a commodity. They argue that the right to data protection is an inalienable right, and that “paying” with data is not a transfer of ownership of personal data but a transfer of rights to personal data, the granting of the right to collect and process data. Therefore, they do not recognize ownership of personal data and allow the transfer of personal data only within the scope of personal data protection law. Instead, Mak[7], in her paper, studies data use in contractual relations, questioning how data use influences the autonomy of contracting parties and the transparency of contractual relations, determining the balance of contractual fairness, and examining payment by data. Therefore, the author allows for “payment” with data in the contract and analyzes the problems that should be solved for this purpose.

The second pillar addresses the implications of this duality for consumer contracts. Specifically, it examines the legal feasibility of recognizing personal data as a form of “payment” or counter-performance under contractual obligations. This includes the

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3 COUNCIL OF THE EUROPEAN UNION. (1950): Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Available online: https://www.echr.coe.int/documents/convention_eng.pdf (accessed on 27 July 2025).

4 EUROPEAN UNION. (2012): Charter of Fundamental Rights of the European Union, 2012/C 326/02. Available online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT (accessed on 27 July 2025).

5 ROBUL, Y., LYTVYNENKO, K., LYTVYNENKO, O., BOKSHAN, H., POPOVYCH, I. (2023): Marketing in the digital age: Cultural values as agents of socially responsible marketing in the digital economy. Amazonia Investiga 12(62), pp. 45–55.

6 CUSTERS, B., MALGIERI, G. (2022): Priceless data: Why the EU fundamental right to data protection is at odds with trade in personal data. Computers, Law & Security Review 45, 105683.

7 MAK, V. (2018): Contract and consumer law. In: Mak, V., Tjong Tjin Tai, E., Berlee, A. (eds.): Research handbook in data science and law. Cheltenham, Northampton: Edward Elgar, pp. 17–38.

implications of Directive (EU) 2019/770[8], which acknowledges the exchange of digital content or services for personal data, and the necessity of balancing such arrangements with stringent data protection regulations like the GDPR[9]. The theoretical construct also incorporates comparative analyses with intellectual property rights, emphasizing the necessity for specialized legal regimes that account for the unique characteristics of personal data.

Today, there are some attempts to commercialize personal data in consumer contracts. For example, Durovic and Lech[10] argue that widespread algorithm-driven decision-making disrupts the individual-centered consent and autonomy principles, which are foundational in the EU consumer law. In addition, it poses risks of discriminatory outcomes and compromises consumer privacy. They believe that it is necessary to focus on creating a contractual environment in which the consumer can be properly informed about material issues. By building on the fundamental rights provided for consumers (as data subjects) in the GDPR, EU consumer law, in their view, can provide more effective remedies and extend traditional consumer protection to the supply of digital services and content. Therefore, they explore the possibility of creating a contractual landscape where consumers can be adequately informed about material matters and de facto support the commercialization of personal data.

Moreover, the conceptualization of personal data is strictly connected with the right to information. In this context, it is important to realize that "the legal regulation of the right to information and other informational rights is not limited to the norms of constitutional law, but is an interdisciplinary institution and includes the norms of administrative, civil, financial, environmental, criminal and other legislation"[11]. Thus, looking at the right to information from the perspective of civil law, it can be concluded that information may be the subject of a consumer contract.

By integrating these pillars, the framework provides a basis to address critical questions: Can personal data, as information with economic value, be treated as a legitimate object of civil turnover? What safeguards are required to protect fundamental rights while enabling its contractual use? This dual perspective—rooted in human rights and commercial law—offers a comprehensive lens to analyze and propose solutions for emerging challenges in the digital economy.

Our goal is to distinguish between personal data protection as a fundamental right and personal data as a civil (consumer) right. We will also substantiate the conceptualization of personal data within consumer contracts, enabling the development of legal regulations for scenarios where consumers 'pay' with their data in exchange for access to content or services. Therefore, we will explore the right to personal data protection, examine the objectification of personal data, and argue for its commercialization and transferability within the context of consumer contracts. The overall aim of this study is to explore how these concepts can be applied to the legal system of Ukraine, even if its main focus is on EU legal instruments and practice. In addition to the theoretical approach, the comparison of EU and US methods aims to help guide future changes in Ukraine, in particular regarding digitalization and compliance with EU legislation within the framework of European integration.

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[8] EUROPEAN PARLIAMENT, COUNCIL OF THE EUROPEAN UNION. (2019): Directive (EU) 2019/770 "On certain aspects concerning contracts for the supply of digital content and digital services". Available online: http://data.europa.eu/eli/dir/2019/770/oj (accessed on 27 July 2025).

[9] EUROPEAN PARLIAMENT, COUNCIL OF THE EUROPEAN UNION. (2016): Regulation (EU) 2016/679 "On the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC" (General Data Protection Regulation). Available online: http://data.europa.eu/eli/reg/2016/679/2016-05-04 (accessed on 27 July 2025).

[10] DUROVIC, M., LECH, F. (2021): A consumer law perspective on the commercialization of data. European Review of Private Law 29(5), pp. 701–732.

[11] FEDOROV, V., FEDOROVA, T., DRONOV, V. (2023): The right to information from the point of view of legal theory, international law and international relations. Amazonia Investiga 12(68), pp. 324–332.

II. METODOLOGY

The study is based on the judicial practice of the Court of Justice of the EU and the ECtHR, the acquis communautaire and the doctrinal analysis of the legislation of Ukraine and the EU. The dual nature of personal data is clarified, legal models of their circulation are determined, and discrepancies between data protection legislation and consumer law in the field of contracts are revealed using dialectical, analytical, comparative and system-structural methodology. Its complex regulatory system and Ukraine's path to harmonization of legislation as a candidate state for joining the EU justify the emphasis on EU legislation. Alternative concepts of data as an economic asset are also illustrated by giving specific US efforts.

We based our research forum on geographical considerations, using Europe as the foundation for examining the legal regulation of personal data commercialization in consumer contracts. This choice was made because the EU was the first to establish laws on this topic. As a result, we studied the works of European scholars extensively. Additionally, we recognized that there were some legislative initiatives in the United States addressing these issues. Therefore, to provide a comprehensive perspective, we also consulted studies by American scholars.

Sources were selected using precise criteria to guarantee repeatability and transparency. Normative acts were included on the basis of their legal force, application to the legal environment of the EU, Ukraine or the USA, as well as relevance for personal data regulation in consumer contracts. Peer-reviewed legal journals and reputable academic resources (such as HeinOnline, SSRN, and JSTOR) were used to select doctrinal articles. Preference was given to works relating in particular to the commercialisation of data, digital contracts and fundamental rights. The choice of case law was based on its doctrinal effect and precedent value. Clarification of the dual nature of personal data, analysis of legal models of their circulation, identification of conceptual inconsistencies and development of solutions for legal harmonization were carried out with the help of dialectical, comparative, analytical, system-structural, inductive and deductive methodologies.

Furthermore, a critical analysis was conducted to investigate the admissibility of transferring personal data. This examination highlighted the necessity of defining specific limits on such transferability, particularly when it comes to commercial purposes. Consequently, we have also proposed effective regulations to govern the commercialization of personal data.

In addition to references to current Ukrainian legal norms regarding personal data and civil obligations, the study also identifies any gaps or discrepancies that can be corrected by adapting relevant EU standards, especially those contained in the GDPR and Directive 2019/770. This makes it possible to develop useful legislative proposals for Ukraine, as well as to gain theological understanding.

III. RESULTS AND DISCUSSION

1. Right to the protection of 'personal data'

Article 8(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms stipulates, “every person is entitled to respect for their private and family life”[12]. This article was historically formed as one that obliges to respect the private and family life of a natural person, however, in 1950, when the mentioned Convention was adopted, widespread digitization of the economy and corresponding contractual relations did not exist, and therefore, the detailing of this right was not required. Nevertheless, the ECHR considers that the personal data safeguarding is essential for natural persons, exercising their right to respect for private

[12] THE COUNCIL OF THE EUROPEAN UNION (n 1).

and family life as per Article 8[13]. Thus, we can state that the right of the protection of personal data is the fundamental right.

A more modernized approach is contained in the Treaty on the Functioning of the European Union, Article 16 of which, in particular, defines that “every person is entitled to the protection of their personal data”[14]. Therefore, the act of the primary source of law of the European Union (EU) defines the 'right to the protection of personal data' as a separate right and establishes the basis of its legal regime. Article 8(1) of the Charter of Fundamental Rights envisages that “every person is entitled to the protection of their personal data.” Any information relating to an identified or identifiable natural person shall be considered personal data under Article 4 (1) of the GDPR. According to preambular paragraph 26, a natural person is considered to be identified if he can be identified “directly or indirectly”, taking into account all the methods likely to be used[15].

However, following Article 8(1), “personal data shall be handled duly as and when required, subject to prior consent from the person concerned or some other legitimate grounds laid down by law”[16]. Consent is a legitimate basis for the processing of personal data in accordance with Article 6(1)(a) of the GDPR, if it is given voluntarily, clearly, precisely and consciously[17]. In preambular paragraph 32, it is emphasized that silence, pre-flagged or omission cannot be invoked to conclude authorization; instead, a clear affirmative act is required. In addition, consent must be able to be withdrawn at any time without consequence, in accordance with Article 7.

The need for permission to be “voluntarily granted” is particularly difficult in contracts where personal data serves as counter-execution. Clients often face information asymmetries and a lack of real alternatives, which can compromise voluntariness. Sellers must provide clear, detailed options and refrain from combining non-essential processing (such as profiling or targeted advertising) with access to essential services in order to comply with GDPR rules.

Clear, transparent messages are needed to obtain “informed” and “specific” permission, which describe what data is collected, for what reasons, during what time and with whom it is transmitted. In practice, this requires direct and prior disclosure at the time of contract formation, in addition to comprehensive policies. “unambiguous” consent requires separate subscriptions for various reasons and the same simple revocation procedure.

In the EU case law, the decision in Erich Stauder v City of Ulm – Sozialamt (C-29/69)[18] is important, as it is one of the first to recognize de facto the right of a person to personal data, albeit in an exploratory manner. Dynamic IP addresses were considered to be personal data in the Breyer case (C-582/14)[19] when it was reasonably possible to obtain additional information that would allow identification of the individual. The examination script and observations were

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13 EUROPEAN COURT OF HUMAN RIGHTS. (1997): Z v. Finland, Application no. 22009/93. Available online: https://hudoc.echr.coe.int/eng?i=001-58002 (accessed on 27 July 2025).

14 EUROPEAN UNION. (2016): Consolidated version of the Treaty on the Functioning of the European Union. Available online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016ME%2FTXT-20200301 (accessed on 27 July 2025).

15 EUROPEAN PARLIAMENT and COUNCIL OF THE EUROPEAN UNION (n 7).

16 EUROPEAN UNION (n 2).

17 EUROPEAN DATA PROTECTION BOARD. (2019): Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) GDPR in the context of the provision of online services to data subjects. Available online: https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-22019-processing-personal-data-under-article-61b_en (accessed on 27 July 2025).

18 COURT OF JUSTICE OF THE EUROPEAN UNION. (1969): Case C-29/69, Erich Stauder v. City of Ulm – Sozialamt. Available online: https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A61969CJ0029 (accessed on 27 July 2025).

19 COURT OF JUSTICE OF THE EUROPEAN UNION. (2016): Case C-582/14, Patrick Breyer v Bundesrepublik Deutschland. Available online: https://curia.europa.eu/juris/document/document.jsf?docid=184668&doclang=en (accessed on 25 November 2025).

considered personal data in Nowak case (C-434/16)[20] because they documented the candidate's performance. In Jehovan todistajat case (C-25/17)[21], the Court found that religious communities could act as joint controllers and that notes taken during door-to-door preaching could constitute personal data. This case law demonstrates how EU law treats personal data as a legally protected category related to identification and not as property or goods. However, the GDPR does not prohibit people from consenting to the processing of their personal information under contractual terms. Instead, it sets strict limits on this type of processing. As long as the processing is limited, targeted and revocable, it allows the use of personal data as counter-execution in consumer contracts.

The Constitutional Court of Ukraine[22] also recognizes the right to personal data as a fundamental right. The Court defines a person's information about their private and family life as any information or data about a person and their family members related to non-property and property relations, events, circumstances, etc. The Civil Code of Ukraine (CCU) does not specifically define the right to personal data or the right to protection of personal data, but in Article 301(1)(2)(3) provides for the following:

"1. A natural person is entitled to a private life.
2. A natural person independently determines what is defined as their personal life and what can be disclosed to other persons.
3. A natural person is entitled to the confidentiality of the circumstances of their personal life"[23].

Paragraph two of part one of Article 302 of the CCU prohibits other persons from collecting, storing, using, and disseminating information about a natural person's life without the prior consent. An exception is made only in cases prescribed by law and solely in the interest of national security, economic welfare, and human rights[24]. These provisions of the articles are interrelated, as personal life and information about personal life intersect, but they are contained in different articles that define different rights of a natural person. This approach shows that it is impossible to single out a certain right in its pure form and protect it under uniform norms. If we take the situation of storing information about a person's personal life without his consent, then two rights of a natural person - to information and to personal life - will be violated. Therefore, in general, the distribution of rights is appropriate if it helps the effectiveness of their protection. We want to note that these articles are mostly concerned with the entire private life and all information about it. The right to personal data is individualized and related to the rights mentioned in Articles 301 and 302 of the CCU, but it requires separation and special legal regulation.

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[20] COURT OF JUSTICE OF THE EUROPEAN UNION. (2017): C-434/16, Peter Nowak v Data Protection Commissioner. Available online: https://curia.europa.eu/juris/document/document.jsf?text=&docid= 198059&pageIndex =0&doclang= en& mode=lst&dir=&occ=first&part=1&cid=11458816 (accessed on 25 November 2025).

[21] COURT OF JUSTICE OF THE EUROPEAN UNION. (2018): Case C-25/17, Tietosuojavaltuutettu v. Jehovan todistajat. Available online: https://curia.europa.eu/juris/document/document.jsf?text=&docid=203822&pageIndex= 0&doclang =en&mode=lst&dir=&occ=first&part=1&cid=11453806 (accessed on 25 November 2025).

[22] CONSTITUTIONAL COURT OF UKRAINE. (2012): Decision No. 2-рп/2012 of 20.01.2012: In the case of the constitutional application of the Zhashkiv District Council of Cherkasy region regarding the official interpretation of the provisions of parts one and two of Article 32, parts two and three of Article 34 of the Constitution of Ukraine. Available online: https://zakon.rada.gov.ua/rada/show/v002p710-12#Text (accessed on 27 July 2025).

[23] VERKHOVNA RADA OF UKRAINE. (2003): Law of Ukraine "On the Civil Code of Ukraine" No. 435-IV (as amended). Available online: https://zakon.rada.gov.ua/laws/show/435-15 (accessed on 27 July 2025).

[24] Ibid.

In particular, about such a separation and its justification, we should cite the views of Romaniuk[25], who defines “the right of a person to his/her own personal data' as personal non-property information right of a natural person, which is a complex formation in the system of personal non-property rights of a natural person ensuring his/her social existence, and currently combines the informational component of the right to personal life - the right to privacy, the right to other types of secrets, the right to name, the right to own image, informational components of the right to individuality and the right to personal papers, as well as the right to secrecy of correspondence”. This approach of the author reflects the complex nature of the right to privacy and distinguishes its type through the prism of information, which allows us to talk about different objects of civil (consumer) rights, and hence the expediency of special legal regulation of relations relating to each of them.

In turn, Belova[26] rightly noted that “the right to personal data is a personal non-property right, the specificity of which lies in its: object - personal data; purpose - protection of the right to privacy and other personal non-property rights in connection with the processing of personal data; content - active and passive powers, as well as the power of protection, which can be exercised in both absolute and relative legal relations”. Therefore, the author has provided a fairly accessible justification for the expediency of distinguishing a separate personal non-property right. We support the authors' positions, as they meet the requirements of the times, and mostly, the separation of such a right is compliant with the acquis communautaire.

In civil law, the right to personal data is revealed through the ability of a person to possess such data and to allow or prohibit their use, which is consistent with the right to privacy. In other words, it is more about the special disposal of personal data by a party of private law relations. If personal data is de facto information, it may be a distinct object of civil rights, in particular in the economic aspect. In this context, it is a rather complicated issue to determine the turnover of such an object and the possibility of determining its property nature [27].

2. Legal nature of “personal data” as object of civil (consumer) rights

The exercise of the right to personal data within contractual relations largely depends on how personal data is defined, as a particular sectoral legal regulation should have boundaries and not overlap with another.

Belova[28] defines “the concept of personal data as information or a set of information that directly or indirectly relates to a natural person, regardless of his/her citizenship, permanent place of residence, or other legal relationship with the state, who is their carrier and allows to “directly” or “indirectly” identify him, provided that such information has been processed by collection, registration, accumulation, storage, adaptation, changes, renewal, use, dissemination of depersonalization, destruction, including with the use of information (automated) systems”. At the same time, Apetyk [29] considers personal data “as a special type of information about a natural person with a special legal regime, the necessity of which is due to a serious potential danger of harming the rights and freedoms of a person in case of violation of processing rules”. This special legal regime, in our opinion, is also due to the intersectoral nature of personal data.

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[25] ROMANIUK, I.I. (2015): Protection of right to personal data in Ukraine (civil aspect). Kyiv: Kyiv National University named after Taras Shevchenko.

[26] BELOVA, YU.D. (2021): Civil and law relationships on personal data. Khmelnytskyi: Khmelnytskyi University of Management and Law named after Leonid Yuzkov of the Khmelnytskyi Regional Council.

[27] POZHODZHUK, R. (2025): Civil law support for the development of consumer relations: A monograph. Kyiv: Yurinkom Inter.

[28] BELOVA (n 24).

[29] APETYK, A.M. (2021): The legal nature of personal data. In: Havryltsiv, M.T. (ed.): Modern constitutionalism: Problems of theory and practice: Materials of the scientific seminar. Lviv: Lviv State University of Internal Affairs, pp. 6–10.

Thus, personal data in the framework of the protection of rights to them may be the subject of various legal relations and it is essential to distinguish between the legal regulations underlying them. Logically, responsibility for the violation of this right should correspond to the essence of the legal relationship and branch affiliation. When discussing civil law, personal data can be seen as an object of non-property and property relations.

If we talk about the observance of the absolute rights of an individual, we can talk about the prohibition of infringement of the right to personal data as a result of interference with the private life of a natural person. In this aspect, personal data will be attributed to personal non-property benefits, which Malyuga30 defined "as certain essential qualitative features or conditions of a person and other socially valuable features of a person that determine the autonomy, individuality, value of a person and ensure his or her physical, spiritual, social self-sufficiency and fulfillment as such".

In the context of an individual's disposal of their own personal data as information (for example, granting permission to use their data for commercial purposes to third parties), this will be related to property relations. Therefore, personal data will have a turnover capacity. This allows us to assume that personal data can be the subject of a contract, without prejudice to the protection of personal data under legislation other than civil or consumer law.

According to Romaniuk[31] "the personal data of an individual, as information about a person, is endowed with all the necessary features for their ability to be an object of civil turnover: objectivity, separateness, severability, and the ability to be monetized. She believes that the possibility of commercial use of a person's personal data does not change the essential features of a person's right to his or her own personal data: his or her identity, inextricable link with the person who is the subject of personal data, and non-property status". This opinion is interesting and progressive, as it allows for a certain distinction between the objects of legal relations in the context of the exercise and protection of the right to personal data.

Karetnyk[32] noted that "it is impossible to explain the nature of the personal data of a natural person using only public legal instruments. Public law cannot ignore the fact that the personal data of a natural person is a legal means of his or her individualization in a wide range of private legal relations. The prerequisite for the formation of a legal institute of personal data is the need for legal individualization of a natural person as a subject of civil law. … The informational personification of a natural person also becomes a prerequisite for the realization of his legal personality, as it is a necessary component of entering into the relevant civil legal relations". Consequently, a participant in a civil legal relationship not only individualizes himself or herself but, in modern conditions, may also use personal data as a means of establishing such a relationship.

Bedir[33] rightly notes that the grounds for collecting and processing consumer data are contractual relations and their economic value, where consumers get free digital goods and services from businesses in exchange for their data. Meantime, Durovic and Lech[34] argue that the growing commercialization of consumer data calls into question the traditional consumer approach. Kotsios[35] believes that viewing personal data as a form of commodity, asset, or

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30 MALYUGA, L.V. (2004): Personal non-property rights of natural persons in the civil law: theoretical grounds and problems of legal provision. Kyiv: V.M. Koretsky Institute of State and Law of National Academy of Sciences of Ukraine.

31 ROMANIUK (n 23).

32 KARETNYK, O. (2014): On the legal nature of individual's personal data: Civilistic aspects. Law of Ukraine: A Legal Journal 9, pp. 192–200.

33 BEDIR, C. (2020): Contract law in the age of big data. European Review of Contract Law 16(3), pp. 347–365.

34 DUROVIC and LECH (n 8).

35 KOTSIOS, A. (2023): Some new nuances of fairness in consumer law: The case of protecting consumers' personal data. In: Mascarenhas de Ataíde, R., Barroso Rodrigues, A., De Araujo Meirelles Magalhães, F., et al. (eds.): Consumer

currency exchanged by the consumer in dealings with a trader creates a foundation for addressing such exchanges within the framework of consumer protection law. However, there is no consensus among scholars on the turnover of personal data. There is a rather intense academic discussion about the possibility of using data as a “payment”.

Langhanke and Schmidt-Kessel[36] quite rightly point out that there is a need to develop rules on the definition of 'personal data' as an object of contractual obligations. At the same time, they talk about the commercialization of personal data. This vision, in our opinion, is progressive and can be enshrined in legislation.

By defining “personal data” as an object of civil rights, which will be an intangible good but will have a property nature in certain cases, it is quite possible to make it the subject of contractual obligations and commercialize it. This requires looking at “personal data” from different perspectives. If we talk about 'personal data' as a non-property good that has no economic content and the infringement of rights in respect of which may occur through the use of personal data to the detriment of a person, then this object of civil rights cannot be the ovject of a contractual obligation.

If we consider “personal data” as an information about an individual who can consent to the processing of such information by another person, then we should talk about an intangible good that has economic value. Accordingly, such an object of civil rights can be the object of an obligation. Moreover, this object must be commercialized, as it is a source of profit for the business entity.

As noted by Mak[37], while data holds significant value, applying contract law to data-related transactions presents two key challenges. The first is the difficulty in assigning an exact value to the data of a single consumer, as its real worth emerges only when aggregated with the data of hundreds or even thousands of others. At the same time, she notes that consumer data is valuable to the company. Therefore, Mak[38] allows the extension of contract law to contractual relations where there is a counter-performance of obligations to receive goods or services by 'paying' with data. Secondly, Mak[39] argues that when applied to personal data, the contract law raises concerns, as such data is governed by data protection laws in numerous jurisdictions, which impose stringent requirements. These regulations are often viewed as an extension of fundamental rights protection, making the contractual approach more complex. Therefore, the turnover of personal data depends on their qualification within specific legal relations. To solve the problems identified by the author, it is necessary to distinguish between the objectivity of personal data within specific legal relations.

However, not everyone agrees that personal data can be circulated and commercialised. Buttarelli[40] attributes the right to data protection to a fundamental one that cannot be monetized and subjected to a simple commercial transaction, even when the data subject is personally involved in the transaction. His position certainly deserves attention since the fundamental right is inalienable. Custers and Malgieri[41] argue that data protection as a fundamental right implies its inalienability, and therefore individuals cannot waive or transfer this right. In their view,

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protection in the European Union – Challenges and opportunities. Luxembourg: Publications Office of the European Union, pp. 117–134.

[36] LANGHANKE, C., SCHMIDT-KESSEL, M. (2015): Consumer data as consideration. Journal of European Consumer and Market Law 4(6), pp. 218–223.

[37] MAK (n 5).

[38] Ibid.

[39] Ibid.

[40] BUTTARELLI, G. (2017): Address to socialists and democrats group workshop on the proposed digital content directive. Available online: https://www.edps.europa.eu/sites/default/files/publication/17-01-12_digital_content_directive_sden. pdf (accessed on 27 July 2025).

[41] CUSTERS and MALGIERI (n 4).

fundamental rights are not commodities, so from a fundamental rights perspective, it makes sense not to allow trade in personal data or any right to data protection.

However, allowing for the possibility of commercialization of personal data, it is not necessary to refer the fundamental right itself to contractual relations. The most important issue here is the distinction between the fundamental right and the context of contractual relations. This can be achieved by distinguishing between the objects of legal relations: consumer and personal data protection. At the same time, if the actual contractual relationship has led to an infringement of the rights of a personal data subject, then not only contractual liability but also other types of liability should be imposed.

A negative attitude to the turnover of personal data can be seen in paragraph 54 of the Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) GDPR in the context of the provision of online services to data subjects, which provides that data protection is recognized as a fundamental right under Article 8 of the Charter of Fundamental Rights of the European Union, and considering that a core objective of the GDPR is to entitle individuals to control their personal information, such data cannot be regarded as a tradable commodity. Although data subjects may consent to personal data processing, this consent does not equate to the ability to waive or transfer their fundamental rights[42].

This rather strict position nevertheless does not deny the fact that the subject of personal data may give permission for their processing and to some extent dispose of them. And if we take the actual relationship, for example, between social networks or other services and consumers, the latter provide their data for processing. And these actual relationships should also be subject to appropriate legal regulation. In addition, the Guidelines use the word 'commodity' rather than the broader term 'goods', which indicates that the focus is on the commodity rather than any object of civil rights.

The CCU also does not allow the commercialization of personal non-property rights to a certain extent (including the right to personal data). Thus, according to part two of Article 269 of the CCU, the personal non-property rights of a natural person have no economic content[43]. So, if we consider personal data only in terms of personal non-property rights, then it really does not seem possible to make them value with an economic meaning or to determine their value at the moment. However, if we consider personal data as the totality of information, we can talk about the object of civil rights, which is intangible and may have a property nature, i.e., give it economic content[44].

3. Ukrainian legal framework and prospects for implementation

The Law “On the Protection of Personal Data” [45], which defines the general principles of processing, the rights of data subjects and the obligations of the controller, as well as the Civil Code of Ukraine, which protects privacy as a personal non-property right, are the main ways in which Ukrainian legislation recognizes the right to personal data. However, Ukrainian law does not yet recognize personal data as an object of civil circulation and does not regulate consumer transactions in which personal data is offered instead of money. Because of this, it mainly focuses on privacy protection and ignores the transactional and economic aspects of personal data in online markets.

However, Ukrainian legislation currently lacks a clearly defined legal framework for consumer contracts in which personal data is used as a form of counter-performance rather than monetary payment, unlike Directive 2019/770 on some aspects of contracts for the supply of

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42 EUROPEAN DATA PROTECTION BOARD (n 15).
43 VERKHOVNA RADA OF UKRAINE (n 21).
44 POZHODZHUK (n 25).
45 VERKHOVNA RADA OF UKRAINE. (2010): Law of Ukraine “On Personal Data Protection” No. 2297-VI (as amended). Available online: https://zakon.rada.gov.ua/laws/show/2297-17 (accessed on 27 July 2025).

digital content and digital services. The law considers personal data mainly through the prism of information protection and privacy, ignoring the economic and transactional dimension of data circulation in digital markets. It does not recognize personal data as a separate object of civil law, as well as a product, service or legally recognized means of exchange.

Although article 715 of the Civil Code recognizes the idea of barter and permits the exchange of goods or services, it does not apply to the unique legal status of intangible digital assets, such as personal data, which have both non-property and property-like characteristics.

There is an obvious need to bring Ukrainian legislation closer to EU norms, taking into account Ukraine's status as a candidate for EU membership and its declared path to harmonizing legislation with the acquis communautaire. This includes the creation of sectoral legal provisions under Regulation 2016/679 (GDPR) and Directive 2019/770 that regulate digital transactions based on the exchange of data for access to content or services; the introduction of legal recognition of the use of personal data as counter-performance in consumer contracts; and the establishment of precise criteria and safeguards for lawful processing, valid consent and consumer remedies in such contracts.

Customers who often use “free” digital platforms such as social networks, cloud storage or streaming services to provide their personal data will have better rights thanks to this amendment, which will eliminate the regulatory vacuum in Ukrainian civil and consumer law. Ukraine will be better prepared to reach a compromise between respecting fundamental rights and encouraging innovation in a data-driven economy if a unique legal framework is created for these contractual relationships. In turn, this will contribute to the modernization and Europeanization of national private law in the digital age and bring Ukrainian legislation closer to the legal framework of the EU Digital Single Market.

4. Legal nature of personal data: terminological framework and multidisciplinary approach

From the point of view of civil law, personal data function simultaneously in three ways: as a component of the fundamental right to privacy, as an object of contractual obligations and as an economically valuable intangible asset. Personal data serves as non-property benefits protected from interference within the framework of privacy; but, when a person agrees to certain processing, it also serves as information that can be exchanged to access services. Personal data is economically important in digital markets because it often supports business strategies based on profiling and personalized advertising. Thanks to its multifaceted structure, it is possible to create a legal basis where the inalienability of the fundamental right to data protection coexists with limited and purposeful contractual use of personal data.

The right to privacy, which is guaranteed by European law as a separate basic protection, manifests itself in several ways, particularly in the field of personal data. Both the right to the protection of personal data and the right to respect for private life are separate, albeit related, rights protected by Article 8 of the European Convention on Human Rights and Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. In the context of digitalisation, where the volume and methods of processing personal data are growing rapidly, this separation is particularly important. Recent jurisprudence emphasizes that the protection of personal data is a key component of privacy protection, in particular the decisions in Z v. Finland[46] and S. and Marper v. Great Britain[47]. In this respect, personal information is not a commodity and

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[46] EUROPEAN COURT OF HUMAN RIGHTS (n 11).

[47] EUROPEAN COURT OF HUMAN RIGHTS. (2008): S. and Marper v. the United Kingdom, Applications nos. 30562/04 and 30566/04. Available online: https://hudoc.echr.coe.int/eng?i=001-90051 (accessed on 27 July 2025).

cannot be alienated; any intervention in this area requires a justified purpose, proportionality and legal basis[48].

At the same time, personal information can be the subject of obligations under civil circulation law and contractual legislation. This allows the subject to voluntarily and knowingly waive his position of personal non-property rights, for example by agreeing to the processing or use of his data in exchange for a certain service or content. This strategy is similar to the legal licensing process in that it authorizes limited use of information for specific, well-defined purposes rather than transferring ownership[49].

Article 1107 of the Civil Code of Ukraine directly concerns the transferability of the right to use intellectual property objects, which can be compared with the legal framework that regulates personal data as information that can be used temporarily with permission. At the same time, transactions involving the transfer of personal data under a contract require a certain legal framework, which must take into account both civil and public legal restrictions, in particular the requirements of Articles 5–6 of the GDPR regarding the legality, proportionality, purpose and minimization of processing.

Consequently, it is not possible to limit the legal nature of personal data to just one plane, such as the right to privacy, the purpose of the contract or an economic asset. An interdisciplinary approach that takes into account institutional (public-law), private-law, as well as legal and economic aspects is necessary for their regulation. Such a strategy is necessary for the creation of new contractual models in the digital sphere, as well as an effective legal framework for the protection of the rights of persons who provide personal data.

5. Conceptualization of “personal data” in a consumer contract

A considerable number of business entities, especially those engaged in digital content or digital services, provide these to consumer in exchange for data. Assuming that such content or services are provided in exchange for money, the relevant consumer law provisions apply. The problem arises when the “payment” is de facto “personal data”.

Directive 2019/770 is the pioneer act of the acquis communautaire, providing for content and services to be received in exchange for personal data. Article 3(1) of Directive 2019/770 stipulates that this Directive shall be applicable where the trader supplies or is obliged to supply digital content or service, and the consumer, in turn, provides or commits to provide personal data to the trader; however, an exception is made when the trader processes the consumer’s personal data solely for the purpose of delivering the digital content or service as stipulated in the Directive, or for fulfilling legal obligations imposed on the trader. In such cases, the Directive does not apply, provided that the data are not processed for any additional purposes beyond those specified[50]. These provisions allow consumers to exchange their personal data for digital content or services.

The wording of Article 3(1) at the stage of the legislative proposal stated that this Directive shall be in use for any contract where the digital content is or shall be provided by the supplier to the consumer and, in return, the consumer either pays a monetary price or offers another form of counter-performance, such as the active provision of personal data or other types of

[48] DRECHSLER, L. (2018): Data as counter-performance: A new way forward or a step back for the fundamental right of data protection? Jusletter IT 22, pp. 35–43.

[49] RITTER, J., MAYER, A. (2018): Regulating data as property: A new construct for moving forward. Duke Law & Technology Review 16(1), pp. 220–277.

[50] EUROPEAN PARLIAMENT and THE COUNCIL OF THE EUROPEAN UNION (n 6).

data[51]. Thus, in the said version, the phrase "provides counter-performance" was used on a par with payment of the "price", which caused some discussion.

The European Data Protection Supervisor[52] (EDPS) commented on this version, stating that the Proposal still raises some concerns due to its applicability for two cases: digital content is provided in exchange for monetary payment or granted in return for a non-monetary counter-performance (personal data or other forms of data). The EDPS cautions against any legislative provision that would equate the payment made by personal data with a monetary transaction. Such an approach risks undermining the fundamental nature of the right to personal data protection. Personal data should not be treated as a tradable commodity, nor should fundamental rights be reframed merely as consumer interests.

These comments were taken into account and Article 3(1) was redrafted to its current wording However, Recital 24 of Directive 2019/770 reveals the essence of counter-performance and its functioning within the contractual relationship. Thus, the European Parliament and the Council of the European Union[53] state that in many cases, digital content or services are provided to consumers in return for the provision of personal data. These business models, which are widespread across various sectors of the digital market, reflect a significant shift in the nature of consumer-trader exchanges. Although personal data cannot be regarded as a tradable commodity due to its status as a fundamental right, the Directive seeks to ensure that consumers participating in such arrangements are still entitled to appropriate contractual remedies.

The above Recital 24 clearly defines the protection of personal data as a fundamental right. However, it recognizes that there are business models where the consumer does not pay a price for the service provided, but rather provides personal data to the business entity. In our opinion, this is exactly what is meant by personal data as information, but the limit of its circulation is maintained. This limit is maintained, in particular, by emphasizing that personal data is not a commodity in the sense of a consumer item (Directive 2019/770 also uses the word "commodity" rather than the broader meaning of "goods"). Such an approach preserves the significance of the protection of personal data without denying the possibility of their circulation. At the same time, in the best traditions of the acquis communautaire, as an exception, Member States are allowed to decide on the validity of contracts in such situations.

Nekit[54] quite rightly pointed out that if a certain phenomenon is recognized as valuable and exchangeable for other goods (exchange value), this is nothing more than the implementation of this phenomenon in civil circulation. In her opinion, the provisions of Directive 2019/770 are the first step towards revising the concept of personal data and possibly even extending the legal regime of property to it. We support the author's position, as Directive 2019/770 has to some extent legalized the turnover of personal data and recognised the possibility of its commercialization.

The turnover of personal data as information must have its limits. These limits are set to some extent by the provisions of the Regulation (EU) 2016/679. Thus, Article 6 of the GDPR defines the cases when data processing is lawful, and one of these cases is when the data subject

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[51] EUROPEAN COMMISSION. (2015): Proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content COM/2015/0634 final - 2015/0287 (COD). Available online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015PC0634 (accessed on 27 July 2025).

[52] EUROPEAN DATA PROTECTION SUPERVISOR. (2017): Summary of the Opinion on the Proposal for a Directive on certain aspects concerning contracts for the supply of digital content. Available online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52017XX0623(01) (accessed on 27 July 2025).

[53] EUROPEAN PARLIAMENT and THE COUNCIL OF THE EUROPEAN UNION (n 6).

[54] NEKIT, K. (2020): Personal data and industrial data as objects of ownership: Evaluation of perspectives. Journal of Civilistics: Scientific and Practical Journal (36), pp. 57–64.

has given consent to the processing of his or her personal data for one or more specific purposes[55]. At the same time, Recital 32 of the GDPR preamble clarifies that the "consent must be expressed through a clear, affirmative action that demonstrates the data subject's voluntary, specific, informed, and unequivocal agreement to the processing of their personal data. This can be conveyed through a written declaration, including verbal or electronic form. … Accordingly, consent cannot be implied through silence, pre-selected options, or lack of action"[56].

In the case IAB Europe v Gegevensbeschermingsautoriteit (C-604/22), Court of Justice of the European Union[57] confirmed that the objective pursued by the GDPR consists, among other things, in safeguarding that human fundamental rights and freedoms are protected at a high level; this primarily concerns their right to privacy in personal data processing, as per in EU Primary Law. Thus, Directive 2019/770 and the GDPR distinguish between the legal regulation of relations involving personal data, and in certain cases, the latter complements the former.

In view of this, counter-performance by providing the personal data of the consumer in exchange for goods and services is possible. In addition, we believe that in the case of a kind of 'payment' with personal data for goods or services, we should talk about the compliance of such a transaction with the Latin expression "quid pro quo", which means "something for something". In other words, it is an exchange in general, but in these legal relations, it is a special exchange.

Scholars have also expressed opinions on the admissibility of "payment" with data in a contract. Thus, Mak[58] believes that there are compelling reasons to support the permission of payment with personal data under contract law. First, the personal data possesses market value for traders, which entails the need to provide consumers with corresponding monetary rights. Second, the permission of payment with personal data under contract law has the potential to strengthen consumer autonomy by allowing individuals to make informed choices about the use of their data in exchange-based transactions. Agreeing with the author's argument, we note that the ability to use one's personal data de facto is an integral part of the fundamental right that was objected to as to its turnover.

In this context, it is worth citing a rather similar essence reasoning of Bobryk[59], who believes that "the right to privacy is a separate, absolute personal non-property right that belongs to every natural person from birth, regardless of the extent of legal capacity, and consists of the following powers: to have a private life; to determine one's private life and the regime of access to information about it; to require other (obliged) persons to refrain from interfering in this area of life (not to violate its inviolability, secrecy and confidentiality)".

The determination of the regime of access to information on personal life can be considered not only in the context of a purely non-property right but also in the context of information that can be disposed of. In accordance with Article 8(1) of the Law of Ukraine "On Protection of Information in Information and Communication Systems", the terms of processing information in the system are determined by the system owner in accordance with the agreement with the

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[55] EUROPEAN PARLIAMENT and COUNCIL OF THE EUROPEAN UNION (n 7).

[56] Ibid.

[57] COURT OF JUSTICE OF THE EUROPEAN UNION. (2024): Case C-604/22, IAB Europev.Gegevensbesche rmingsautoriteit. Available online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri= CELEX%3A 62022CJ0604 (accessed on 27 July 2025).

[58] MAK (n 5).

[59] BOBRYK, V.I. (2008): Personal life as an object of civil law protection. Kyiv–Ternopil: Scientific Research Institute of Private Law and Entrepreneurship of the Academy of Law Sciences of Ukraine; Textbooks and Manuals.

information owner, unless otherwise provided by law[60]. This means that the information actually becomes the object of the contract.

In this context, Drechsler's[61] argument is also quite interesting, as she believes that “fundamental rights protection and the status of personal data as an economic asset therefore seem to at least not exclude each other per se” and she also notes that “accepting that personal data can be an economic asset without undermining its fundamental rights nature also implies the legitimacy of the business model”. In their turn, Ritter and Mayer[62] noted that “economic models are advancing to monetize data as property that would benefit from greater clarity of ownership”. The legal regulation of these models can be seen in the example of Directive 2019/770, which has been implemented in Ukrainian law.

In addition, it should be noted that a contract between a consumer and a business entity regarding the provision of services for the use of social networks, digital content, or digital services in exchange for the consumer's personal data should be considered a consumer contract. This type of consumer contract has a certain similarity with a mining contract. Pursuant to Article 715(1) and (5) of the CCU “under an exchange (barter) contract, each party undertakes to transfer ownership of one good to the other party in exchange for another good" and "the contract may provide for the exchange of property for works (services)”[63].

Lysenko[64] identified “the following features of an exchange contract, which include the following: a) an exchange contract is aimed at transferring property; b) an exchange contract is bilateral, and the obligations arising from it are mutual; c) an exchange contract is compensatory, but the nature of the counterpart under the contract is special: each party undertakes to provide goods (in some cases, the results of works or services); d) an exchange contract may be both consensual and real if performed at the time of conclusion”. Therefore, it is the exchange of goods that is similar to the use of personal data as a “payment”. However, the peculiarities of the exchange agreement identified by the author allow us to speak only of certain similarities, not identicalities.

Exchange (barter) in this legislative version cannot comply with the legal regulation of new business models, in particular those where digital content and services are exchanged for personal data. If we talk about the exchange of personal data for digital content or services, such data is information that is not considered a commodity. At the same time, when it comes to the exchange of personal data for services, the provisions of Article 715 of the CCU are theoretically applicable. However, we believe that personal data as information that is de facto 'payment' under a contract for the supply of digital content or digital services should have a special legal regime and not be considered a commodity. Personal data should be considered a special type of sensitive information, consent to the processing and use of which may be granted by a consumer to a business entity for a certain period of time and for specifically defined purposes. This is logical because information is a complex concept. As some authors rightly argue, “in today's conditions of information activity, the search, acquisition, and dissemination of information continue to … contribute to the formation of new views, approaches, and concepts' legislation”[65].

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60 VERKHOVNA RADA OF UKRAINE. (1994): Law of Ukraine “On Protection of Information in Automated Systems” No. 80/94-BP (as amended). Available online: https://zakon.rada.gov.ua/rada/show/80/94-%D0%B2%D1%80#Text (accessed on 27 July 2025).

61 DRECHSLER (n 46).

62 RITTER and MAYER (n 47).

63 VERKHOVNA RADA OF UKRAINE (n 21).

64 LYSENKO, V.V. (2012): Civil law regulation of relations under the contract of exchange (barter). Kyiv: Academician F.H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of National Academy of Legal Sciences of Ukraine.

65 FEDOROV and others (n 9).

In addition, if we consider a consumer contract from the perspective of the classical understanding of an exchange (barter) contract, it is somewhat difficult to determine the degree of separation between information as a “payment” and information as a means of exchange, the same as other assets. It seems to us that in this case information is both a kind of “payment” and a means of exchange.

In order for 'personal data' to be considered 'payment', the consent of the data subject is also required, which reflects the nature of contractual relations regarding the disposal of intellectual property rights. In particular, we can trace similarities with a license to use an intellectual property object or a license agreement (Article 1107(1) and (2) of the CCU).

Karetnyk[66] has already drawn attention to a certain identity between the rights to the results of intellectual activity and the rights related to the circulation of personal data of a natural person. In particular, she noted that given that information about a natural person (personal data) may be valued in monetary terms, the rights to it, in addition to non-property rights, have a property nature. This feature is also characteristic of the objects of intellectual property rights. Therefore, in the author's opinion, this indicates that the circulation of personal data of a natural person, as well as relations to the rights to the results of intellectual activity, may be regulated by the legal mechanism of exclusive rights.

In the United States, Senator D. Kennedy introduced the “Own Your Own Data Act”, which provided that “each individual owns and has an exclusive property right in the data that an individual generates on the internet under section 5 of the Federal Trade Commission Act (15 U.S.C. 45)”[67]. The draft law required social media to obtain licenses to use data of an individual. At the same time, the draft law did not receive any votes, but it is valuable for scholars.

Relations regarding the granting of consent to the processing of personal data and relations regarding the granting of a license to use objects of intellectual property rights are indeed similar. However, in our opinion, these relations are not identical, since the nature of personal data and objects of intellectual property rights are different. Personal data is quite strongly intertwined with the fundamental right of a natural person, and the object of the intellectual property right does not have such a degree of connection. Moreover, it is difficult to consider personal data as the result of intellectual, creative activity, since it is not about creating something unique, but about identifying a human as a unique being.

We believe that a consumer contract where personal data is a “payment” for digital content or service contains certain elements inherent in exchange (barter) contracts and transactions involving the disposal of intellectual property rights, including the granting of a license. In this case, personal data, as special information, will be exchanged for goods or services as a result of granting a license to use it (scope, purposes, etc.). This exchange on the part of the personal data subject will be considered as granting temporary access to third parties to use their personal data. Therefore, we do not reduce personal data to a commodity but only allow for the possibility of their limited use by a third party in exchange for another benefit.

We hope our perspective leads to practical implications for personal data ownership. Custers and Malgieri[68] argue that data can be owned in the EU legal framework, but there is no legal recognition of ownership of personal data. At the same time, they point out that data ownership exists in the field of intellectual property rights, and there are even sui generis property rights to databases that are not subject to other copyright. However, we think that it is possible to create special regulations on transferring personal data in consumer contracts. The establishment of a specific legal framework aimed at permitting the commercialization of

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[66] KARETNYK (n 30).

[67] UNITED STATES CONGRESS. (2019): Own Your Own Data Act, S. 806, 116th Cong. Available online: https://www.congress.gov/bill/116th-congress/senate-bill/806/text (accessed on 27 July 2025).

[68] CUSTERS and MALGIERI (n 4).

personal data is a response to the increasing prevalence of situations where consumers receive digital content or services in exchange for their personal information. Consequently, the regulation of these relationships will align with civil and consumer laws. This will result in business entities having certain civil obligations toward consumers, while consumers will gain additional rights. As a result, the level of consumer protection will be enhanced.

This is a serious problem to determine the limits of exercising the rights of participants in consumer contractual relations, since, for an individual, his or her personal data has not only property but also non-property value. Although we admit the possibility of personal data turnover and commercialization, we believe that contractual relations with personal data require special legal regulation and proper state supervision[69]. We agree with Kerry and Morris[70] who have noted that "privacy legislation should empower individuals through more layered and meaningful transparency and individual rights to know, correct, and delete personal information in databases held by others". It should also take into account that "owning" personal data could encourage economically disadvantaged and vulnerable individuals to monetize their data, potentially deepening existing social and economic inequalities[71]. At that point, we share the views of certain scholars who argue that enhancing personal data protection necessitates a systemic approach by establishing clear regulations governing access to such data and reinforcing safeguards against unauthorized access and misuse[72].

In connection with our study, it should be noted that while it contains valuable recommendations, it recognizes certain limitations. These limitations include the lack of empirical research on the impact of data commercialization in consumer contracts on consumer protection. This gap primarily arises from the relatively short period since the European Union established minimum legislative regulations in 2019 that govern contractual relationships involving consumers who provide personal data in exchange for digital content or services. Consequently, there is also a lack of established case law on these issues.

IV. CONCLUSION

Personal data of an individual, in our opinion, may be a special object of obligation, as well as a kind of "payment" under the contract, other than money, given that they have an inherent information nature; value nature; property nature; and means of exchange. A consumer contract in which personal data is a "payment" for content or services contains certain elements inherent in barter agreements and transactions for the disposal of intellectual property rights. Personal data, as special information, will be exchanged for content or services as a result of granting a license to use it (scope, purposes, etc.).

Such an exchange by the data subject will be considered as granting temporary access to third parties to use their personal data. Therefore, we allow for the possibility of a limited use of personal data of a natural person by a third party in exchange for another benefit. The correct definition of the legal nature of personal data as "payment" or "counter-performance" in a consumer contract will improve consumer protection. Separately, we note that the issue of determining the limits of exercising the rights of participants in consumer contractual relations regarding personal data is open, since for a natural person, his/her personal data has not only property, but also non-property value. Therefore, the possibility of turnover and

[69] POZHODZHUK (n 25).

[70] KERRY, C.F., MORRIS, J.B. (2019): Why data ownership is the wrong approach to protecting privacy. Available online: https://www.brookings.edu/articles/why-data-ownership-is-the-wrong-approach-to-protecting-privacy/ (accessed on 27 July 2025).

[71] WORLD BANK. (2021): World Development Report 2021. Available online: https://wdr2021. worldbank. org/spotlights/who-owns-personal-data/ (accessed on 27 July 2025).

[72] ROBUL and others (n 3)

commercialization of personal data requires special legal regulation and proper supervision of the state regarding contractual relations with personal data.

A special legal framework should be established for the transferability of personal data within consumer contracts. This requires updating legislation in the Ukrainian environment so that it reflects the values and protection contained in EU rules. Determining the legal status of personal data as a potential topic of contractual exchange requires special consideration in order to ensure the fundamental right to data protection. Although Directive 2019/770 has been implemented in Ukraine through the Law "On Digital Content and Digital Services", some of its provisions, in particular regarding the legal status of personal data and the definition of consumer contracts using them, have not yet been fully reflected in the Civil Code of Ukraine. In order to improve the regulation of consumer relations in this area, draft law No. 12021 of 06.09.2024 "On Amendments to the Civil Code of Ukraine" has been developed, which proposes to supplement and clarify contractual norms. Therefore, legislators should pay attention to this draft law for the further harmonized development of legal regulation. The relevant legislative provisions will stipulate that consumer protection laws apply to contractual relationships where the consumer provides data in exchange for digital content or digital services instead of using money.

This research may be beneficial for future studies on the legal regulation of payment relationships involving personal data in consumer contracts. It could encompass investigations into assessing the value (including the cost) of personal data for both consumers and businesses. Additionally, since the concept of using personal data as a form of 'payment' in consumer contracts is relatively new, conducting further empirical studies on the effects of personal data regulation on these contracts would be valuable.

KLÚČOVÉ SLOVÁ

Spotřebitelská smlouva; Ochrana osobních údajů; Fyzická osoba; Předmět občanských (spotřebitelských) práv; Osobní údaje; Zboží a služby; Ekonomická hodnota

KEY WORDS

Consumer Contract; Data Protection; Natural Person; Object of Civil (Consumer) Rights; Personal Data; Goods and Services; Economic Value

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