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z medzinárodnej študentskej vedeckej konferencie
PRO-LEGAL Deň študentov práva a doktorandov
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INTERNATIONAL LEGAL APPROACHES TO THE PROTECTION OF PERSONAL NON-PROPERTY RIGHTS IN THE CONTEXT OF AI TECHNOLOGIES	201
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Maksymiliana-Ellanta Romaniuk

EU COMPETENCE IN LABOUR LAW: THE IMPLICATIONS OF THE CJEU JUDGMENT IN CASE C-19/23	210
---	-----

Toma Bilienė

PECULIARITIES OF FULFILING OBLIGATIONS UNDER THE MARTIAL LAW...	222
---	-----

Olha Oryshchuk

SMART CONTRACTS AS AN EMERGING FORM OF AGREEMENT: LEGAL NATURE AND REGULATORY PERSPECTIVES	232
---	-----

Vlasiuk Yevhen

EXERCISE OF SHAREHOLDER'S RIGHTS DURING PROBATE PROCEEDING IN THE CZECH REPUBLIC	239
---	-----

Barbora Zemanová

CIVIL LAW CLASSIFICATION OF DIGITAL CONTENT IN THE CONTEXT OF HARMONIZATION OF UKRAINIAN LEGISLATION WITH EUROPEAN UNION ..	248
--	-----

Inna Kozma

JURISDICTIONAL CHALLENGES IN HOLDING TRANSNATIONAL CORPORATIONS ACCOUNTABLE	256
--	-----

Alina Batramieieva

CROSS-BORDER CORPORATE MOBILITY: BALANCING THE FREEDOM OF ESTABLISHMENT WITH STAKEHOLDER PROTECTION	264
--	-----

Viktorii Chernysheva

SEKCIA TRESTNÉHO PRÁVA, BEZPEČNOSTI, OBRANY A TECHNOLOGIÍ

POSTUP POLÍCIE PRI DOMÁCOM NÁSILÍ V PRÍPADE ODMIETNUTIASPOLUPRÁCE OBETE	274
--	-----

Natália Šoučíková

CIVIL LAW CLASSIFICATION OF DIGITAL CONTENT IN THE CONTEXT OF HARMONIZATION OF UKRAINIAN LEGISLATION WITH EUROPEAN UNION

INNA KOZMA*

Abstract

The digital transformation of modern society challenges traditional civil law constructs formed in the context of material circulation. Digital content and digital services, due to their intangible nature, require new approaches to their legal classification. This study analyses the civil law classification of digital content in the context of the harmonization of Ukrainian legislation with European Union law. Particular attention is paid to the provisions of Directive (EU) 2019/770 and its role in regulating digital content and digital services. The research methodology is based on a comparative legal analysis of the Civil Code of Ukraine and European Union regulatory frameworks to identify necessary legislative adaptations for the digital economy. The paper also examines the legal relationship between users and digital platforms where personal data may function as a form of contractual consideration.

Keywords: *Digital content, Digital services, civil law, EU law, Ukrainian legislation, digital economy.*

Introduction

The digital transformation of the 21st century calls into question traditional civil law constructs formed in the context of material circulation. The classic categories of “object,” “property right,” and “service” demonstrate their institutional inability to fully cover digital assets. Traditional property protection mechanisms are unable to protect users in social networks and streaming platforms, where access, rather than ownership, prevails.

Digital content, characterized by its intangibility, non-rivalrous nature, and reproducibility, does not fit into the classic model of substantive legal regulation, which causes legal uncertainty for both digital businesses and consumers. In this context, the harmonization of Ukrainian legislation with EU law within the framework of the Association Agreement and Ukraine's integration into the Single Digital Market requires the implementation of the latest standards. That is why the civil law classification of digital content should be based on Directive 2019/770, which creates a digital foundation for regulating modern digital services and ensures a balance of interests between global platforms and end consumers.

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1. Definition and Type of Digital Content under UE Law

The European Union's modern digital law is based on a clear distinction between objects according to their functional nature. The main regulatory instrument in this area is Directive 2019/770, which was implemented into Ukrainian law in August 2023. This allowed Article 177 of the Civil Code of Ukraine to be supplemented with a new type of object – “digital objects” that can exist exclusively in a digital environment.¹ According to Article 179-1 of the Civil Code of Ukraine, a digital object is a good that is created and exists exclusively in a digital environment and has property value. Digital object includes virtual assets, digital content, and other goods to which the provisions of part one of this article apply.² Such regulation provides grounds for applying a system of regulation of property rights to digital objects.

An analysis of the Directive allows these objects to be classified according to several criteria. The first is the functional nature of the object. According to Article 2 (paragraph 1) of Directive 2019/770, “digital content” is defined as data that is produced and provided in digital form. This term covers static objects: music files, e-books, videos, and software. However, for modern platforms, namely social media, the concept of “digital services” is more relevant, as it allows consumers not only to access data, but also to “create, process, store, or interact with data.”

The rapid evolution of digital technologies often outpaces formal legal definitions, creating a gray area where some objects share characteristics of both content and services. Therefore, a flexible interpretation of these categories is essential to prevent legal gaps that could leave users without adequate protection in emerging digital market

In addition, the duration of their provision plays an important role in distinguishing between digital objects. The directive distinguishes between one-off supply, which is typical for static content, such as downloading a single file, and continuous supply, during which the service is provided for a certain period of time, requiring the provider to maintain its compliance and functionality throughout the term of the contract. Thus, the clear distinction between digital content and services is not merely a theoretical exercise but a practical necessity for determining the appropriate legal regime and the specific obligations of digital providers in a rapidly evolving market.

¹ Civil Code of Ukraine 2003

² Ibid

2. Civil Law Qualification of Digital Content as an Object of Civil Rights

However, the Directive clearly states that its provisions shall in no way infringe or affect intellectual property rights. Accordingly, digital objects of civil rights should be considered taking into account their content and purpose of use in civil circulation, since current trends in the legal regulation of intangible assets in the digital environment suggest that digital objects that have or may have property value can be traded as property, even though they are intangible assets.³

The central problem of modern civil law is the distinction between digital content as a static result of intellectual activity and digital services as a dynamic technological process of its provision and use. Within the meaning of Article 2 of Directive 2019/770, digital content is data that is produced and provided in digital form.⁴ In this case, digital services are essentially a functional environment. The difference lies in the scope of user rights: in the case of content, the consumer seeks to access specific information, while in the case of digital services, the object of interest is the ability to create, process, store, or interact with data.

An important step in Ukrainian legislation was the recognition of digital objects specifically through the category of “property” This allows for the inclusion of objects that have property value but lack physical substance, which correlates with the European concept of “fair balance,” where a legal mechanism is considered effective if it takes into account the interests of both the owner and the user: a mechanism is now deemed fair if it sets a fair balance between conflicting interests.⁵

This problem is most evident in the field of social networks, as such platforms combine the creation of digital content by users with the provision of complex digital services for its placement, processing, and distribution.

Using Instagram as an example, the difference between content and service becomes apparent due to the duration and nature of the interaction. While a photo or video reel uploaded by a user is an act of content creation, the functioning of the entire account with its reach algorithms, interactive stories, and advertising tools is a continuous service. In this relationship, the provider (Meta Platforms, Inc.) is obliged to ensure the proper functioning of the service for the consumer. The integration of digital assets into the category of “property” reflects a shift

³ Zozulyak O. I., Maksymiv L. (2024, p. 44.)

⁴ Directive (EU) 2019/770 (2019)

⁵ Sganga (2024, p.13)

towards a more flexible civil law system that can adapt to technological progress without losing its foundational principles of projection and stability.

3. Classification by the Nature of Consideration: Payment vs Personal Data

According to Article 3(1) of Directive 2019/770, digital content is also classified according to the legal nature of the relationship regarding its provision. For example, the scope of the Directive covers contracts where the consumer does not pay a monetary price but provides their personal data.⁶ In other words, the “data economy” model is being legalized, where user information is the actual equivalent of the value of a digital product. A striking example of such a model is social networks and online platforms, where the user gains access to digital services without monetary payment, but instead provides the provider with personal data that is used to form advertising algorithms and monetize the platform.

At the same time, we can conditionally distinguish between “active consumers” (content creators) and “passive” ones (viewers). Regardless of their role, the account is a complex digital asset for them, access to which is paid for not with money, but with personal data. The user's personal data, including information about their behavior on the platform, interests, and history of interaction with content, is used to generate algorithmic recommendations and personalized advertising, which is the main economic model for the functioning of such services.

This approach allows us to consider the relationship between the platform and the user not only through the prism of copyright, but also through the mechanisms of civil law protection of consumer rights, which ensures stable access to digital content.

The recognition of social networks, such as Instagram, as a complex digital service raises the issue of remuneration for such relationships. A key aspect is the legalization of a model in which personal data is a legitimate consideration. This aspect is being considered as part of the implementation of the EU's Digital Single Market strategy and the EU4Digital initiative. In addition, according to Article 3 (paragraph 1) of Directive 2019/770, the scope of digital content legislation covers contracts where the consumer does not pay a monetary price but instead provides the supplier with their personal data.⁷

Thus, this approach by the European Union allows relationships arising from the use of social networks, which at first glance appear to be free, to be classified as full-fledged civil law

⁶ Directive (EU) 2019/770 (2019)

⁷ Directive (EU) 2019/770 (2019)

relationships. In other words, the actual equivalent of the value of a digital product is the provision of information about the user regarding their geolocation, preferences, interaction history, etc. This allows consumer protection tools to be activated, because if the data is recognized as payment, then the provider (e.g., Meta Platforms, Inc.) is legally responsible for the compliance and functionality of the service. Ultimately, the conceptual shift forces a reassessment of the “free” nature of digital services, highlighting that in the digital age, privacy and personal information have become significant economic assets that deserve robust legal safeguarding.

4. Legal Qualification of Click-Wrap Agreements in Digital Environment

The legal qualification of the procedure for a user to access digital content or a digital service is an important aspect of the functioning of digital platforms. Such legal relations arise through the conclusion of so-called click-wrap agreements, when the user confirms their agreement with the terms of use of the service by clicking the “Accept” or “I agree” button.

Furthermore, the standard nature of these agreements often places the consumer in a “take it or leave it”, which raises important questions about the actual equality of the parties in digital contracting. While the click-wrap format is efficient for mass-market services, the legal system must remain vigilant to ensure that such speed does not come at the expense of substantive fairness and transparency.

In legal doctrine, such contracts are defined as a form of electronic agreement used in a digital environment, in which the parties express their will through electronic action. It is important that the user's method of signifying assent or rejection should be clear and unambiguous. Examples include clicking a button or icon containing the words of assent or rejection or typing in the specified words of assent or rejection.⁸

At the same time, the problem with such agreements is related not only to the provision of consent, but also to the scope of legal consequences that arise for the user after pressing the confirmation button. The terms of use of digital services often contain provisions that determine the procedure for resolving disputes, the applicable law, and jurisdiction. In particular, the doctrine emphasizes that such provisions are relatively automatic in the structure of the contract: choice-of-forum clauses, as well as choice-of-law clauses and arbitration agreements, may be submitted to particular solutions differing from general trends. As a matter of fact, the

⁸ Sanches Lorenzo (2021, p. 281).

ancillary character of such clauses leads to their autonomy and severability, so that they must be considered as independent contracts within the main contract.⁹ The challenge remains to ensure that the speed and convenience of such digital agreements do not undermine the core requirement of informed consent, which is essential for maintaining a fair contractual balance.

5. Directions for harmonization of Ukrainian Civil Legislation with EU Law

This qualification is particularly important in the process of Ukraine's European integration. In the Ukrainian legal field, this concept was enshrined in the Resolution of the Cabinet of Ministers No. 774-r of September 5, 2023, which approved the list of indicators of the Digital Economy and Society Index (DESI), which is a key tool for monitoring Ukraine's readiness for the Single Digital Market.¹⁰ Harmonization in this area is understood as a process of purposeful convergence of legal systems by eliminating contradictions between them and forming minimum legal standards through the establishment of common legal principles, which involves bringing the legislation of member states and non-member countries into line with the requirements of international law on the basis of international treaties.¹¹

Harmonization of legislation is a process of purposeful convergence of legal systems by eliminating contradictions between them and forming minimum legal standards through the establishment of common legal principles, which involves bringing the legislation of member states and non-member countries into line with the requirements of international law on the basis of international treaties. Such convergence in the field of digital services requires not just the mechanical implementation of European norms, but a profound adaptation of national civil law institutions to the requirements of the digital era, based on the provisions of Directive (EU) 2019/770.

The central focus of the reform is to strengthen legal compatibility between the country and the EU, which should ensure consumer access to high-quality digital services and stimulate the development of the digital economy. At the current stage of the process of harmonizing Ukrainian legislation with the norms of European Union law (EU), it can be stated that the main focus is on legal relations that are regulated by EU Directives but remain unregulated under current Ukrainian legislation.¹² Although the Law of Ukraine "On Digital Content and Digital Services" already partially complies with European standards, it needs further adaptation in

⁹ Sanches Lorenzo (2021, p. 267).

¹⁰ Order of the Cabinet Ministers of Ukraine No. 774-r (2023).

¹¹ Parkhomenko (2012, p. 340-341).

¹² Valko (2024, p.86).

terms of detailing the technical obligations of providers. In particular, it is critical to regulate the obligation to provide updates to maintain the functionality and security of content, which is currently not fully reflected in national legislation. In addition, there is insufficient implementation of the “reasonable period” principle, which in EU law is assessed objectively depending on the nature of the digital product.

At the same time, general consumer protection legislation also needs to be reformed to take into account the specific nature of the digital environment. It is important to establish a liability mechanism in accordance with Directive (EU) 2019/770: any compensation that the contractor must pay to the consumer as a result of a price reduction or withdrawal from the contract must be made without undue delay and, in any case, within 14 days.¹³ This directly correlates with the concept of a “fair balance,” as a legal mechanism is considered effective only if it takes into account the interests of both parties.

A separate challenge is the adaptation of the Digital Services Act (DSA), according to which Internet platforms are also required to organize their interface in such a way that they can comply with EU legislation on consumer and product safety.¹⁴ In this context, the click-wrap procedure must ensure that the user's method of signifying assent or rejection is clear and unambiguous.¹⁵ Active work on this compliance will contribute to the creation of favorable conditions for the development of digital legal relations and accelerate Ukraine's integration into the Single Digital Market. Thus, the recognition of personal data as a form of payment and the harmonization of procedures for joining services is a guarantee of effective protection of the rights of subjects in modern civil circulation. Therefore, the success of Ukraine's integration into the Single Digital Market will depend on a balanced approach that combines strict compliance with EU standards with a nuanced understanding of national legal tradition

Conclusion. The Role of Harmonization on Establishing a Unified Legal Regime for Digital Objects

In conclusion, it should be noted that the development of the digital economy necessitates a rethinking of traditional civil law categories formed within the framework of material circulation. An analysis of the provisions of Directive (EU) 2019/770 indicates the formation

¹³ Directive (EU) 2019/770 (2019)

¹⁴ Valko (2024, p.48).

¹⁵ Sanches Lorenzo (2021, p. 281).

of digital legal relations, within which digital content and digital services are considered as independent objects of civil rights.

The practice of modern digital platforms demonstrates the need for a clear distinction between digital content as the result of the creation of digital content data and digital services as the technological environment for their processing and distribution. The example of social networks shows that such platforms combine both elements, forming complex digital legal relations between the user and the service provider.

In this context, further harmonization of Ukrainian legislation with European Union law should be aimed not only at the formal implementation of the provisions of EU Directive 2019/770, but also at adapting national civil law institutions to the specifics of the digital environment. This approach will contribute to the formation of an effective legal regime for digital objects, ensuring a balance of interests between users and providers of digital services, and the development of Ukraine's digital economy.

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