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"WHO OWNS DATA? A COMMERCIAL LAW VIEW ON THE NEW DIGITAL ECONOMY"

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Abstract:

This article examines the pivotal question of data ownership within the context of the new digital economy from a commercial law perspective. It discusses the evolution of data as an asset and its treatment in legal frameworks, the complexity and ambiguity surrounding the concept of ownership versus control, and the impact of data commodification on private and public interests. Key issues addressed include contractual controls, the role of intellectual property laws, personal data regulation, the need for new legal constructs, and the cross-border challenges of data localization and transfer. By dissecting the blurred boundaries in both theory and practice and considering the global regulatory landscape, the article aims to clarify the current legal position, highlight unresolved problems, and propose pathways for more coherent legal approaches to data ownership in the rapidly changing digital marketplace.

Keywords: Data ownership, commercial law, digital economy, data commodification, intellectual property, personal data, privacy, contract law, data regulation, cross-border data, data stewardship, data protection, data localization, legal frameworks.

INTRODUCTION

The emergence of the digital economy has brought a fundamental shift in the way assets are valued, owned, and transacted. In this evolving landscape, data has become the cornerstone of value creation and economic activity. Tech giants, startups, governments, and even individuals participate in an ongoing exchange of data, the reach and impact of which now surpass traditional commodities, intellectual property, and capital. Amid this profound transformation, a pressing question arises: who owns data? While "ownership" serves as a convenient shorthand for rights over tangible objects, applying the same logic to data proves extremely complex. Unlike physical assets, data is elusive, replicable, and often shared or co-generated, defying simple classification under existing property law doctrines. The commercial law perspective is especially relevant, as it frames data not just as information or knowledge, but as a valuable, tradable asset integral to the business models of the new digital economy.

MATERIALS AND METHODS

The concept of data as an asset is relatively new. Traditionally, law distinguished between tangible and intangible property, with the latter category encompassing patents, copyrights, and trademarks. Data, however, does not fit comfortably into this scheme. Commercial law, which has long facilitated the movement of goods and payment across borders, finds itself at a crossroads: The intangibility, non-rivalrous nature, and ease of duplication render data simultaneously ubiquitous and hard to restrain. The commercial value of data is clear—data-driven businesses leverage personal information, sensor outputs, transaction records, behavioral analytics, and even metadata to drive decision-making, innovation, and competitive advantage. Major companies accumulate vast troves of user data, which they treat as proprietary, yet the legal grounds for asserting "ownership" over these troves remain contentious. In the early days of digitalization, data was viewed more as a public resource or component of communal knowledge, not as a privately owned commodity. However, the rise of information technology, big data analytics, machine learning, and platform-based business models has transformed this view. Today, data is bought, sold, licensed, and traded like any other economic good. Commercial contracts frequently delineate what rights one party may or may not have with respect to specific data sets. Such arrangements underline the commercial importance of control over data, but they do not neatly resolve the deeper legal question: can data, as such, be "owned" in a property law sense?

Property law typically revolves around excludability and transferability. Ownership usually entails the right to use, enjoy, exclude others, and transfer the asset at will. With data, these traditional hallmarks of property become muddled. Data's capacity for infinite reproduction, combined with the fact that multiple parties often have legitimate claims to it (such as the

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subject, the collector, and third-party processors), frustrates attempts to ascribe classic property rights [1]. Legal systems worldwide have been slow to define whether and how data can be subject to ownership. In most common law jurisdictions, there is no general "property in information." For example, courts have found that factual information as such is not protectable by copyright, which guards only original expressions, not mere facts or data points. Database rights, created in some jurisdictions like the European Union, offer a sui generis layer of protection for databases compiled with substantial investment, but not for the underlying data itself. Furthermore, questions often arise if data constitutes a trade secret or a confidential business asset, conferring certain proprietary rights, but here too the protection is contextual and not absolute [2].

RESULTS AND DISCUSSIONS

In the absence of property rights over data, control is often achieved through contract. Businesses generally assert their control over data via terms of service, license agreements, privacy policies, and consent forms. These contracts specify what data is being collected, who may use it, for what purposes, and under what limitations. Through contract, entities such as tech companies, cloud service providers, or even data brokers craft effective frameworks for commercial exploitation of data even if ultimate legal "ownership" remains disputed. The contractual approach, while adaptable and market-driven, has significant limitations. Data often passes through numerous hands, is aggregated, co-created, or transformed, leading to a tangled web of competing contractual obligations. Disputes become deeply complex when a data set's provenance or entitlement is in question. The lack of standardized legal norms exacerbates confusion, especially at an international level where legal systems and regulatory standards diverge.

Intellectual property law provides partial, but not definitive, coverage for data. Copyright law protects databases only to the extent that they embody original arrangement or selection of facts, not the underlying data. Patent law may capture inventions relating to systems for processing or using data, rather than the data itself. Trade secret protection may extend to specially guarded, proprietary datasets if reasonable steps are taken to maintain secrecy, but the moment such information is made public or independently discovered, the protection evaporates. The law thus creates fragmented, context-based entitlements rather than a unified concept of data ownership [3].

This fragmentation also fuels a commercial marketplace where control over access, rather than property title, becomes the focal point. Businesses invest heavily in technical measures (digital rights management, encryption, contractual obligations) to shore up their de facto power over valuable datasets, reinforcing the practical gap between commercial need and legal doctrine. A unique dimension emerges with personal data, which relates to identified or identifiable individuals. The introduction of comprehensive data protection regimes, most notably the European Union's General Data Protection Regulation (GDPR), reframes the commercial law debate. GDPR centers the individual's rights with respect to their personal data, granting them control, consent, the right to access, rectify, delete, or port their information. Yet, these rights do not amount to property rights in the commercial sense; individuals generally cannot "own" their personal data in the way one owns a thing, nor can they easily sell or trade their personal information on open markets. Instead, data protection law constructs a regime of lawful processing—organizations are permitted to "control" or "process" data under specified justifications and purposes, subject to individual rights and regulatory oversight. The relationship is less about property and more about stewardship, fiduciary duty, and compliance. Nonetheless, in the digital marketplace, personal data has extraordinary economic value, sparking debate around whether new commercial or property-like rights should be extended to individuals [4].

The commercialization of data is evident in the explosive growth of markets for data-driven products and services. Data brokers, marketing agencies, platform operators, and financial institutions routinely monetize data by aggregating, analyzing, and selling information to third parties. Market prices are set for certain types of data, such as personal profiles or behavioral trends, reflecting the new commodification of what was once an unremarkable byproduct of commerce. This commodification, however, is not buttressed by solid property law principles. Instead, it is based on contractual rights, control of infrastructure (data centers, platforms, clouds), and practical exclusivity. The law often lags behind economic developments, struggling to catch up with new forms of value creation. Some economies have experimented with innovative rights in data, such as "non-personal data ownership" or "data trusts," but a clear, harmonized approach has yet to emerge.

Amid the rush to commodify and privatize data, the public interest in data as a commons remains a critical counterpoint. Data generated by public agencies, scientific research, or even by individuals using public infrastructure, can have immense value for society at large. Open data movements advocate for the release

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of government and research data for societal benefit, spurring innovation, transparency, and evidence-based policymaking. Lawmakers and courts continue to grapple with where the boundary lies between legitimate commercial control over data and broader societal interests in data access. The balancing act between incentivizing data-driven commerce and ensuring fair access, competition, and protection against abuses is a work in progress. Antitrust interventions address abuse of data-based dominance, while special regimes may require the sharing of certain datasets with competitors, researchers, or the public. These developments add another layer of complexity to the notion of "ownership."

The global nature of data flows introduces unique legal complications. Data routinely moves across borders, whether via cloud computing, international business transactions, or global communication networks. Jurisdictional clashes emerge as countries adopt varying rules on what data can leave their borders or who may access specific types of datasets. Data localization measures, increasingly favored by various governments for reasons ranging from privacy protection to national security and economic strategy, further complicate the legal landscape [5].

In commercial law terms, these cross-border issues underscore the difficulty of defining ownership, enforcing contracts, or ensuring compliance with multiple, often conflicting, regulatory regimes. The parties to data transactions must consider not only their own domestic laws but also those of every country where data may travel, exposing them to significant legal uncertainty, cost, and risk.

Recognizing the limitations of existing legal categories and the realities of digital commerce, scholars and policymakers are actively exploring new constructs for governing data. Proposals include the development of data stewardship models in which trusted third parties hold and manage data on behalf of groups or the public; fiduciary obligations for data controllers akin to those in trust or company law; statutory rights for individuals over their data beyond privacy and consent; and the formalization of data sharing as a regulated commercial activity with clear rights and liabilities for all parties. Some jurisdictions have proposed or implemented "data sovereignty" laws and data trusts, seeking to give individuals, groups, or public institutions more granular control over how, where, and by whom data is used. These approaches offer promise but still face practical and philosophical hurdles, such as interoperability, accountability, standardization, and enforcement in a polycentric digital world.

CONCLUSION

The question of who owns data remains one of the greatest legal, commercial, and philosophical challenges of the digital age. Existing legal frameworks, rooted in tangible property and traditional concepts of ownership, are ill-equipped to capture the unique and evolving characteristics of data as an asset. Commercial law provides powerful mechanisms for organizing rights and obligations around data, yet it falls short of establishing a universal, stable, and enforceable concept of data ownership. Instead, the current landscape is a complex patchwork of contract, partial intellectual property rights, data protection statutes, technical controls, and pragmatic business practices. As data becomes the primary driver of economic activity and innovation, the struggle to clarify and harmonize rules of data control, access, and accountability will continue. The trajectory of legal development points toward more nuanced, context-driven frameworks for data governance, emphasizing stewardship, accountability, and rights balancing rather than outright ownership in the classical sense. For commercial actors, the focus will remain on securing adequate control and legal certainty through contractual and technical means, while legislators and courts experiment with new doctrines. Ultimately, the law must strike a workable, dynamic balance between commercial imperatives, individual rights, and the broader public interest—an endeavor that will define commercial law and the digital economy for years to come.

REFERENCES

1. Purtova, N., "Property Rights in Personal Data: a European Perspective," Computer Law & Security Review, 2017.
2. Hustinx, P., "EU Data Protection Law: The Review of Directive 95/46/EC and the General Data Protection Regulation," European Data Protection Law Review, 2015.
3. Scassa, T., "Data Ownership," CIGI Paper No. 140, Centre for International Governance Innovation, 2017.
4. Erdos, D., "The Regulation of Cross-border Data Flows by Data Protection and Trade Law: A Complex Regulatory Landscape," International Data Privacy Law, 2020.
5. Finck, M., "Data Ownership as a Legal Concept," European Data Protection Law Review, 2018.
6. De Filippi, P. & McMullen, G., "Governance of Cross-Border Data Flows," Internet Policy Review, 2018.
7. Drexl, J., "Designing Competitive Markets for Industrial Data – Between Propertisation and

World Bulletin of Management and Law (WBML)
Available Online at: https://www.scholarexpress.net
Volume-58, May-2026
ISSN: 2749-3601

Access," Max Planck Institute for Innovation & Competition Research Paper, 2020.