



## DIGITAL RIGHTS IN THE CONTEXT OF UKRAINIAN CIVIL LAW: ANALYSIS OF CURRENT TRENDS AND PROSPECTS

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### ABSTRACT

**Objective:** The study aims to scrutinize the evolution and the current state of digital rights within Ukrainian civil law, forecasting future trends and developments in this realm.

**Methods:** The research employs an integrated approach that combines a thorough literature review of both national and international sources with an analysis of legislative measures and jurisprudence concerning digital rights in Ukraine. The study focuses on identifying the gaps in current legislation and the potential for future legal frameworks.

**Results:** It is evident from the analysis that digital rights are progressively becoming crucial within the legal system, necessitating refined laws and regulations to accommodate the fast-evolving digital landscape. The study also outlines practical recommendations for enhancing the legal infrastructure to better govern digital rights.

**Conclusions:** The paper concludes that there is an urgent need for the Ukrainian legal system to adapt and evolve to effectively manage and protect digital rights. This involves codifying digital rights within the national legislation to ensure they are comprehensive, up-to-date, and reflective of current technological advancements.

**Keywords:** Personal non-property rights. Property rights. Things. Digital rights. Legislation. Codification. Legal regulation. Digitalisation. NFT





## DIREITOS DIGITAIS NO CONTEXTO DO DIREITO CIVIL UCRANIANO: ANÁLISE DAS TENDÊNCIAS E PERSPECTIVAS ACTUAIS

### RESUMO

**Objetivo:** O estudo visa examinar a evolução e o estado atual dos direitos digitais dentro do direito civil ucraniano, prevendo tendências e desenvolvimentos futuros nesta área.

**Métodos:** A pesquisa utiliza uma abordagem integrada que combina uma revisão detalhada da literatura de fontes nacionais e internacionais com uma análise das medidas legislativas e jurisprudência relativas aos direitos digitais na Ucrânia. O estudo foca em identificar as lacunas na legislação atual e o potencial para futuros quadros legais.

**Resultados:** É evidente a partir da análise que os direitos digitais estão progressivamente se tornando cruciais dentro do sistema legal, necessitando de leis e regulamentações refinadas para acomodar a paisagem digital em rápida evolução. O estudo também delineia recomendações práticas para aprimorar a infraestrutura legal para governar melhor os direitos digitais.

**Conclusões:** O artigo conclui que há uma necessidade urgente do sistema legal ucraniano se adaptar e evoluir para gerenciar e proteger efetivamente os direitos digitais. Isso envolve codificar os direitos digitais dentro da legislação nacional para garantir que sejam abrangentes, atualizados e refletivos dos avanços tecnológicos atuais.

**Palavras-chave:** Direitos pessoais não patrimoniais. Direitos patrimoniais. Coisas. Direitos digitais. Legislação. Codificação. Regulamentação legal. Digitalização. NFT

### 1 INTRODUCTION

Life changes rapidly and society develops rapidly; accordingly, the legislation also responds promptly to reality and attempts to offer an appropriate answer to new challenges. The severe lockdown associated with the COVID-19 pandemic and the tremendous invasion of Russia in Ukraine on 24th February 2022 led to fast development of the virtual environment. The digitalisation of civil law relations has attracted the attention of the legal community to the problem of the need for legislative regulation. Cryptocurrencies, NFTs, digital content, and artificial intelligence have long been part of the modern world, so clear rules of interaction between participants in virtual relations should be established. All these virtual assets have become a common reality that requires further development.

To improve the regulation of the digital sector in Ukraine and harmonise national legislation with that of the European Union, new regulations were adopted and the Civil





Code of Ukraine was amended to include digital assets in the list of objects of civil rights. Ukraine is striving to integrate quickly into new processes to ensure efficient and sustainable growth in both the public and private sectors. Research in this area is relevant and necessary for the future development of the digital environment in Ukraine.

We are currently witnessing the adaptation of classical civil law to the use of the latest digital technologies based on information technology. Even today, researchers note that numerous changes to the legislation are not final. 'The legal norms enshrined in legislative acts need to be improved through a system that envisages concentrating most of them in one act - the Digital Economy Code or the law on the digital economy, which would codify the key provisions on the digital economy' (Vynnyk O., 2018).

As noted in the Concept, the second book, Personal Non-Property Rights, will undergo fundamental changes. For example, it is proposed to develop provisions on 'digital rights' as a type of personal non-property rights (hereinafter referred to as 'PNR') in the updated Civil Code of Ukraine (hereinafter referred to as the 'CCU'), which will enable individuals to realise their interests in the field of digitalisation. At the same time, the Concept does not define the content of the concept of 'digital rights', does not specify which rights are 'digital' and what exactly they will regulate.

Part 2 of Art. 179-1 of the Civil Code of Ukraine introduces a general rule of application of the provisions on things to them. In other words, the legal regime of things is established for digital things, which undoubtedly includes the regime of property rights, unless otherwise expressly provided by law or follows from their nature. At the same time, digital things are intangible, and the traditional doctrine of Ukrainian civil law is based on the fact that the property rights regime can be established only for objects of the material world (things).

Relations related to personal non-property and property relations based on legal equality, free expression of will and property independence of their participants are regulated by civil law in accordance with Part 1 of Article 1 of the Civil Code of Ukraine. The sphere of social relations that arises in the course of digitalisation of society and requires legal regulation is quite diverse: these are relations related to digital things and other objects of digital technologies, as well as absolute and relative civil rights arising in relation to such objects. All these relations are still insufficiently researched and require determination of their legal nature for further proper legal regulation.

Based on the proprietary concept, R. Ennan assumes that a specific property right arises for digital things, i.e., a regime of things. According to Ennan, digital objects have





certain characteristics that make them property objects, just like traditional material things. This is confirmed in his work (Ennan R., 2019).

This view is shared by other scholars in Ukraine who study the issue of ownership of digital objects. They emphasise that digital things can have a legal status similar to physical things, in particular in the context of property rights and their management. Among them are studies that analyse various aspects of digital property and its legal regime (Kharitonov E., 2018). K. Hunt also argues that virtual property has many of the characteristics inherent in traditional property rights. She notes that digital objects can be subject to legal relations that traditionally relate to tangible things, such as possession, use and transfer of ownership (Hunt K., 2007). In this way, digital objects can be incorporated into the legal system as property with all the relevant rights and obligations.

These approaches indicate the gradual integration of digital things into the legal field, where they are considered as full-fledged property objects. Fedosenko N. rightly noted that the material significance of digital technologies determines their integral use in civil property turnover, which forms the economic value of digital assets and rights (Fedosenko N., 2022). Levytska N. argues that the social relations arising in the digital environment and their peculiarities should be taken into account in the legal regulation of (Levytska N., 2019). Parasyuk M. concluded that new digital technologies create a new environment for civil law regulation, which becomes the technological foundation for the regulation of digital rights, digital turnover and objects, as well as the formation of new civil legal relations (Parasyuk M., 2022). Michurin Ie. O. notes that integration of digital technologies into the legal field contributes to the efficiency of legal regulation and protection of citizens' rights in the digital environment. All of these scholars agree on the need for further theoretical substantiation and civil law regulation of relevant social relations in the digital environment (Michurin Ie. O., 2023). The digitalisation of social relations has also led to the expansion of inheritance opportunities. It has become possible to include a wide range of property rights, as well as a number of non-property rights, in the inheritance. However, there are many problems in the legislation regarding digital rights, including digital inheritance. The absence of clear regulations governing the legal status of digital objects in inheritance relations creates significant difficulties in their application in practice (Iasechko S., 2022).

Despite the development of technology and the widespread use of digital assets, the state remains aloof from determining the legal regime of such objects in inheritance relations. The lack of clear legislative provisions leads to legal uncertainty and





difficulties in regulating issues related to digital rights. This requires a detailed analysis and development of appropriate legal mechanisms to ensure proper protection of such rights and regulation of such relations.

To address these issues, it is necessary to consider various aspects of legal regulation of digital objects in legal relations, taking into account both international experience and the specifics of national legislation.

## 2 METHODS

The technique for writing the scientific article Digital Rights in the Context of Civil Law of Ukraine: Analysis of Current Trends and Prospects was worked out taking into account these features, which allow conducting a thorough analysis on this issue. It is the first systematic work ever undertaken regarding digital rights and their international as well as national legal characteristics. The object of the study is to determine trends in setting up a legal framework and prospects for its improvement (perfection) of the system which regulates digital rights by means Ukrainian civil law. The project consists in a programme of research on the legal framework, theoretical concepts and implementation practice of digital rights. Documentary analysis: Study and Analysis of international conventions such as Directive 2019/770 from the European Union on-line recommendations presents to enforcement agencies (UN, EU commission...), in order to regulate digital rights. In addition to the said, an analysis of other legal acts governing digital asset and rights based on blockchain technology including Law of Ukraine «On Virtual Assets», Civil Code of Ukraine. Judicial decisions of national and international courts on digital rights are important to study since we can see which trends there are for the application in practice. In the process of comparative analysis of Ukrainian law and foreign regulation, best practices are established as well as deficiencies in national laws; a This report includes an overview of legal regulation models for digital rights in different jurisdictions, including the EU. The legal analysis is focused on evaluating the possibility of using current legislation in Ukraine, concerning digital rights and finding points leading to gaps relevant for developing proposals that will be useful for a better regulation of These areas based on international experiences. From the theoretical side, this is performed by analyzing scientific research publications related to digitalization and methods of using blockchain technologies in state processes; from empirical - conducting an experimental collection of statistical data on the use of dhts based on practical cases from various sectors. In this way, interviews with digital law





experts, and state servants were conducted among others; a survey of specialists was carried out to get the subjective feeling from them about future development path for legal regulation in relation to e-rights. EXPECTED RESULTS identification of key trends and prospects for the development of legal regulation in Ukraine, formulation of proposals to improve national legislation aimed at ensuring compliance with digital rights protection and public, professional information awareness sin about importance digital Media Rights category mechanisms them pushing forward. The development of the research will focus on providing an in-depth analysis and neutral evaluation of the approaches to legal regulation of digital rights which are applied nowadays, what will help to consider such problems from a different point or view as well as promoting creation true-to-life legislation framework up for challenges that exist in postmodern society.

### 3 RESULTS AND DISCUSSIONS

Digital rights, this concept that will only emerge at the end of the 20th century has not been able to be fully defined. Digital rights are seen as civil, but the perception of them is unclear and various authors interpret in different ways what those rights constitute and how they relate to state obligations that must be forced. Most academic publications analyse the so-called basic digital right - the right to access the Internet - and often comment on various aspects of the right to be forgotten, while other rights in this category do not attract such serious research interest. So far, there is no consensus in international law doctrine on whether digital rights should be classified as first-generation rights (personal and political human rights, inalienable natural rights), second-generation rights (socio-economic and cultural rights), or a new generation of rights that is fundamentally different from traditional rights (Iasechko, S., 2023).

Natalia Verlos rightly notes that, despite the controversial nature of this issue, the development of digital technologies has a real impact on the development of constitutional human rights, and the need for doctrinal rethinking and optimisation of regulatory regulation. The author also emphasises the need to allocate a separate group of 'digital rights', which should include: the right to access electronic devices and telecommunication networks (the Internet), the right to protection of personal data, the right to information self-determination (identification), the right to anonymity, the right to be forgotten, the right to free transmission and dissemination of information, etc. At





the same time, N. Verlos suggests that in the process of constitutional and legal modernisation, the possibility and necessity of realisation of fundamental human rights, which are already defined in the Constitution of Ukraine, but are being implemented in the context of digitalisation, should be taken into account (Verlos N.V., 2020).

As for the very concept of 'digital human rights', there is no single approach to this definition, as the need for it has arisen relatively recently, so it has no legislative basis, and there is not enough research at the scientific and theoretical level. Some sources define digital rights as human rights, which consist of the right of people to access, use, create and publish digital works, access and use computers and other electronic devices, as well as communication networks, including the Internet.

First of all, it is worth noting that legal discourse has recently been enriched with such terms as digital human rights, digital self-determination, right to the Internet, digital services, virtual reality, cyberspace, digital sovereignty, artificial intelligence, cloud services, Internet of Things, blockchain, etc. Thus, a separate interdisciplinary legal institution of digital human rights is gradually being formed.

Different authors propose different approaches to the classification of digital rights. Some consider them to be an extension of first- and second-generation rights, including personal, political and socio-economic rights. Others argue that digital rights are a new, separate generation of rights that arise from the development of digital technologies and require specific legal regulation.

Given all of the above, it is important to continue research in this area in order to develop a clear understanding of digital rights and ensure their effective implementation and protection in national and international legal systems.

The Civil Code of Ukraine now regulates the concept of a digital thing. This is particularly relevant given the proliferation of new intangible assets in our digital era, true property that are indiscernible from one another. Some of these are in game objects (virtual weapons and armour etc.) some cryptocurrencies, NFTs (non-fungible tokens) and other digital assets.

Computer game items, for example have considerable value and can be traded on dedicated platforms. Cryptocurrencies have turned from mere to an essential economic tool wield widely in financial transactions and investments such as bitcoin or ethereum. Through NFTs, we are able to verify both uniqueness and ownership of digital art (videos/ music/etc.), which creates new possibilities for creative vertical. A non-fungible token (NFT) is a one-of-a-kind piece of digital content, like an image or audio clip, with a proof of ownership stored on blockchain. Almost everything can be





digitized and turned into an NFT - meaning you will establish copyright, hand over ownership of the object to your buyer or make inanimate objects unique. First off, a token is essentially just an unique code (a few letters and alphabets) that exist as their own entity or could be tied to something; digital art for example, video game assets or real physical items in the world (Tsyban A. 2023). Well, NFTs are virtual assets and like most other things in the internet world they can be both secured or unsecured. If an NFT allows for the IP rights of its tokenised objects in favour of its owner - one could word it kinda "...the intellectual property is digitally transferred..." such an NFT can be considered as a VFA which. For example, an artist might create a work of digital art and sell it as through NFT Accessed there the ownership right to enjoy. Consequently, if the ownership of an NFT does not involve any additional rights to which a holder is entitled then such non-fungible token may be qualified as simply claimless virtual asset. In this case, the holder has only token with no other rights or benefits attached to real/digital assets. For instance, the owner of an NFT often has what amounts to a glorified receipt for buying rights to possess this token and not similarity anything like recognition concerning which is actually digitalized in side that representation. Original means that when the object in NFT form is destroyed or lost, it becomes a virtual asset and intellectual property rights belong to its creator (Limongi, R., 2024). The NFT, assuming it gains cultural or artistic significance - and also remains hosted in a public space as mentioned above(?!) then the actual file may be valued as an historical digital object. Collectors invest heavily on anything unique and well crafted. NFTs are to digital assets, what traditional art is to physical arts-it has innate value based on scarcity, usefulness and demand. Such as NFTs which may get more value for speculation or something related to that object being very hot. Hence, the cost of a digitised object and an NFT may differ considerably. Moreover, the rarity and uniqueness of digital assets like NFTs are in demand: as a result, their value grows exponentially making such digital valuables appealing to investors/collectors.

Pursuant to the Law of Ukraine 'On Virtual Assets', virtual assets are intangible goods that are subject to civil rights, have a value and are expressed as a set of data in electronic form. The existence and turnover of a virtual asset is ensured by the system for ensuring the turnover of virtual assets. A virtual asset may certify property rights, in particular, rights of claim to other objects of civil rights.

A secured virtual asset is a virtual asset that certifies property rights, in particular, rights of claim to other objects of civil rights. Collateral of a virtual asset means its certification of property rights, in particular, rights of claim to other objects of civil rights.







Collateralisation of virtual assets is not a security for the performance of an obligation. The certification of property rights means confirmation of the right of the owner of the secured virtual asset to claim the collateral. The object of collateral for a virtual asset is another object of civil rights, the claim to which is certified by such a virtual asset. The collateral for a virtual asset is determined by the transaction under which such virtual asset was created. Property rights, including claims, to the object of a virtual asset are transferred to the acquirer of such a virtual asset.

Unencumbered virtual asset means that has no mechanisms certifying property or non-property rights to them. Data, as such can be seen information and virtual assets in general, like digital content are directly data of the formed. Regulation of digital things in the civil law of Ukraine will enable not only to determine more precisely de lege lata legal and practical status, rights and obligations for parties involved into respective public relations but also - ipso facto- consequential increase overall level of juridical certainty among them as well by protection interests right onwers state-border (foreign) cyber owners. In addition, it will help align national regulations with EU requirements and contribute towards the more effective operation of the digital economy in Ukraine.

Digital content — a term which also includes data in digital form (such as textual information, audio or video) A wide variety of data are under the scope of a special law, titled in Ukraine as "The Law on Digital Content": computer programs (applications), mobile applications, video files and audio music tracks, digital games ), e-books. This is a non-comprehensive list that highlights the significance of digital content as it continues to permeate throughout our modern-day digital world.

Additionally, in accordance with EU Directive 2019/770, digital content also includes downloadable or streaming movies, Software as a Service (SaaS), email and messaging services, as well as other products and services provided on social media and cloud computing. Digital service means any service that allows a user to create, process, store or distribute data in digital form, or to access such data. This may include, for example, file hosting, as well as word processing or games provided through cloud computing or social media. The Law also extends its regulation to cover relationships where digital content or services are provided on a tangible medium, if such medium is used exclusively for storing digital content. This regulation ensures legal regulation of digital content, in particular, taking into account modern technological realities and consumer needs, and allows adapting civil law to the





challenges of the digital age, guaranteeing the protection of the rights of consumers and developers.

The emergence of such an object as a digital thing in civil law requires further legal regulation of rights to it. This includes both absolute rights that determine the ownership of an object of law by a certain entity and relative rights, obligatory rights that regulate the civil circulation of goods and their transfer from one person to another. Absolute rights to digital things should include ownership and other rights that allow their owners to exclude others from using or disposing of these objects. This includes legally defining digital property and ensuring that it is protected from unauthorised access and use. For example, the owner of a digital asset should be able to enforce its rights in court in the event of a violation of those rights by third parties.

Relative rights and obligations relating to digital things should ensure that transactions between entities that involve the transfer or exchange of digital assets are properly regulated. This may include rules for contracting, obligations of the parties to deliver digital goods, consumer rights to return or exchange digital goods, and the terms of licensing agreements for the use of digital resources. Regulation of such relations will help to increase transparency and fairness in the digital sphere.

The introduction of clear legal rules in this area will help ensure legal certainty and protection of the rights of digital asset market participants, which will contribute to the development of the digital economy in Ukraine and its integration into the global digital market. It will also help to avoid legal conflicts and ensure effective protection of the rights of all parties to legal relations in the digital environment.

Article 177(2) of the Civil Code of Ukraine (Ukraine's CC) explicitly specifies the peculiarities of the acquisition, exercise and termination of civil rights and obligations in relation to civil rights objects existing in the digital environment. This provision creates a legal basis for regulating legal relations related to digital goods and emphasises the need to take into account their specifics in the further development of legislation.

Key features that should be taken into account when regulating digital goods and rights to them (Michurin, *le.*, 2021), include:

A product of IT technologies: Digital goods are created by information technology and often exist exclusively in the digital environment.

Intangible nature: These objects are intangible, which distinguishes them from traditional tangible objects of civil law.





Definition through absolute rights: The ownership of digital goods by a certain person is determined through absolute rights, which allows the owner to have the exclusive right to use and dispose of these objects.

Separability and negotiability: Some digital goods, such as cryptocurrencies, are severable from the person and can be freely transferred in civil circulation. Others, such as a digital signature, are closely linked to a specific person and cannot be transferred.

For example, cryptocurrencies are negotiable and can be used as a means of exchange, storage of value or investment instruments. At the same time, a digital signature is a tool for authentication and confirmation of identity in digital transactions and cannot be transferred to another person.

Legislative consideration of these features is important for creating an effective legal mechanism to ensure proper regulation of digital legal relations. The implementation of the respective amendments to the Civil Code and other regulations will serve as a solution toward protecting citizens' rights and ensuring optimal operation conditions for digital economy. V. V. Mangora and Y.O. Mykhalchuk are studying in this area the issue of using digital technologies by law, highlighting specific opportunities for prospects and challenges posed alongside digitalization of legal process among which privacy problems (Mangora V.V., Mikhalchuk Y.O., 2023). Obviously, legislation (in particular the Law of Ukraine 'On Protection of Personal Data') also includes a detailed concept according to which any information or a set thereof related/relating to an individual is personal data. This includes a huge amount of data from identity to sensitive health, biometric and genetic information. A person may be defined by numerous characteristics, such as first name, last name or individual tax number or even passport details. The Digital Content Law is also important in the field of business-to-consumer (B2C) contracts, where a consumer does not pay money for digital content or offers to provide data containing personal characteristics as consideration within such transactions. This approach puts intrinsic value on personal data in the modern economic plan (Pereira, L. de M.; Gewehr, M. A.; Alves, M. F., 2020).

The exception is when personal data is provided solely for the purpose of receiving digital content or a digital service without further use of this data for other purposes. For example, when the data is used only to identify the consumer or to ensure security. Directive 2019/770 provides several examples of situations where the provision of personal data falls within the scope of the Digital Content Law. This includes cases where a consumer creates a social media account by providing their





name and email address, which are then used for purposes other than simply providing services or enforcing legal requirements. Another example includes cases where the consumer consents to the processing of personal data, such as photographs or posts, which the contractor uses for advertising purposes.

The contractor is obliged to comply with the requirements established by the Law of Ukraine 'On Personal Data Protection'. This includes ensuring the transparency of data processing, adherence to the principle of data minimisation, providing consumers with the right to access their data and correct or delete it.

In accordance with paragraph 40 of the Preamble to Directive 2019/770, national legislation must establish the legal consequences for the contractual relationship between the contractor and the consumer in the event that the consumer withdraws consent to the processing of personal data. In Ukraine, this issue is not directly regulated by the Law on Digital Content, which creates legal uncertainty.

The extension of the scope of the Digital Content Law to cover relationships where consumers provide personal data in exchange for digital services or content recognises the economic value of data. This requires contractors to comply with strict data protection standards and transparency of processing.

## 4 CONCLUSIONS

The article 'Digital Rights in the Context of Civil Legislation of Ukraine: Analysis of Current Trends and Prospects' emphasises the importance of legal regulation of digital rights in the modern information age. The study has shown that digital rights are becoming increasingly important in the context of digitalisation of society and the economy, and this requires appropriate changes in national legislation.

The global processes of digitalisation taking place in the modern information society require a detailed clarification of their legal nature. This is one of the important tasks of civil law for the near future. The development of social relations through digitalisation should be accompanied by the necessary legal regulation in civil law. This includes securing the ownership of digital things by persons through absolute law, their subsequent alienation by the will of the persons in control on the basis of contracts, fulfilment of relevant obligations and the use of smart contracts.

Modern civil law must adapt to the changes associated with the digitalisation of society. This means that the legal regulation of digital things and other digital goods and rights to them will become an integral part of the development of civil law in the





coming years. The main areas of development include:

**Ownership rights for digital things:** Ownership of all types of digital assets (cryptocurrencies, NFTs) and objects existing in the network only digitally must be legally consolidated. This involves understanding the value of their property and assets.

**Contracts and alienation:** A contract should be able to apply to digital things. Such mean transactions both sale and purchase as the well as other transaction types of transferring, transferring use rights digital assets. The process of finalizing terms and conditions with a contractual binding can be facilitated using smart contracts thereby providing the necessary automation as well security in execution of such contract.

**Regulation of Encumbrance :** Any obligation related to digital assets must be ensured under the patronage-principles and a strong legislative support. This holds true for contractual duties as well as consumer protection in the digital environment.

**Data protection and security:** As digital assets continue to rise in value, there will be a growing need for increased data protection and specialized measures. Technical implementation of policies and legal means to maintain the privacy, security requirements for data syndicated.

Analysis of the world practice with emphasis on provisions of Directive 2019/770 from European Union showed necessity to introduce best available solutions into domestic law, in order to ensure proper legal regulations and protection for digital rights. To refine the legal regulation of digital rights, it is important to produce more detailed research and put in place new norms that would respond to advances gained by digital technologies as well as their social implications.

These are things in digital form and other intersubjective consumption goods in electronic turnover, by determining which the civil-law development nearest era will accordingly directly or indirectly tied. The development of social relationships in the digital environment and the expansion with respect to their number among objects civil-rights goods is one reason. The legislative infrastructure must be adaptable for rapid modifications to ensure a timely response takes place with new threats and opportunities. In this respect, the article contributes significantly to understanding legal regulation of digital rights in terms of Ukrainian civil law and provides proposals for further refining national legislation.





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