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EXTRACT OF THE DOCTORAL THESIS

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*The Adaptation of Digital Data as a Subject of Ownership in the Context of the Property
Interactions of Digital Goods*

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I. Summary

In our exponentially evolving age, digitalisation is one of the main drivers of development, and has become a prerequisite for managing the processes of human society in the face of a growing population and increasingly complex, globalised social interactions. Digitalisation therefore interacts with the whole social system, and the legal system is no exception.

Digitalisation is adding new processes and new phenomena to our systems, and the fact that these processes and phenomena are able to find their way into our systems, even if they are not perceived or explicitly opposed by the current legal regulatory environment, implies that these are not mere abstractions but a kind of extension of the physical world. Let us consider cryptocurrencies, for instance, or digital data as goods, which have been able to function as currencies or goods in legal processes around the world despite being recognised as currencies or goods by legal systems. The legal adaptation of these phenomena is currently underway worldwide.

Despite the ambivalent feelings that digitalisation evokes, we consider it to be fundamentally useful and its phenomena valuable. Accordingly, digital data, the building blocks of the digital world, have value in themselves, to which value may be added, depending on the quality with which the data are interpreted. Thus, data may have a different value when approached purely as data, and a different value when interpreted for example as cryptocurrency, digital intellectual property, or information protected by trade secrets. However, neither the data economy nor data commerce would be possible if data did not have value in itself.

Digital data, by becoming a store of value, has interacted with the concept of property in law through the economic concept of property, and it is now necessary to adapt digital data to property law, i.e. to regulate digital data as being subject of ownership or object of property in the legal system.

In this thesis, I will examine the enforcement of the right to property and succession and the possibilities of property regulation in relation to digital data/digital goods, demonstrating that, on the one hand, the legal system follows closely the evolutionary dynamics of our culture and evolves with it, and on the other hand, that digital goods in the global space, through their

interaction with the legal system, i.e. their economic viability and the exercise of rights associated with them, are able to point to the need for and ways of regulating them in terms of property law through the right to property. On this basis, an attempt will be made to situate the digital data underlying digital assets within the regulatory framework of property law of the Hungarian legal system.

II. Concise overview of the research

One of the main drivers of the accelerated development of our exponential age¹ is digitalisation, which has interacted with the legal system at several points through digital, data-based goods. The legal system, as one of the most important regulatory systems of societal systems, keeps pace with change through a constant feedback loop. New phenomena in human culture, which have a strong potential for development, compel their adaptation to the legal system through these feedback processes. We are currently witnessing this adaptation in the case of digital data/digital goods, interpreted within the framework of public law, constitutional approaches to the right to property, they themselves, through the rights exercised in relation to them, point to the necessity of being brought within the scope of property under private law and the way in which they are to be regulated. In this way, they reveal the part of the legal system where private law regulation grasps objects on the basis of the most general features of the objects of property, so that the norms at the subsequent levels can govern these phenomena by drawing on their diversity and the specific characteristics of their subject matter (e.g. intellectual property).

The aim of this research is to explore and prove the ‘the capacity of digital data - and through them digital goods – of being owned’, as well as the possibility of regulating their ownership. This will be achieved by exploring the interactions between property rights and ownership of digital data. Before doing so, however, we will define a focal concept of digital data, appropriate for targeted regulation, starting from the nature of digital data, after having distinguished between data and information, and shed light on the process of digital data becoming value, goods and then an asset. In doing so, we will take a position on the question of whether digital data are tangible or intangible and see how the property interactions of digital data determine where and how they are to be regulated.

¹ AZEEM AZHAR: *The Exponential Age: How Accelerating Technology is Transforming Business, Politics and Society*. Diversion Books, USA, 2021. 1.

We will demonstrate that the property adaptation of digital data has already reached different property regimes, and the examples cited illustrate that the Anglo-Saxon, French and German property regimes are responding to this change in different ways, according to their own specificities. Whereas in the Anglo-Saxon and French property law systems the range of objects of property and subjects of ownership may be considered to be essentially identical, in the German property law system these two sets are different and the subjects of ownership (things) are only a subset of the objects of property. The differences in the property regimes are also reflected in the adaptation of data as subject of ownership, e.g. while under the ABGB §285 which may be linked to the French model, digital data clearly constitutes a thing, an indirect subject of the proprietary relationship, under Sections 5:1, 5:14 and Section 8:1.5 of the Hungarian Civil Code which is similar to the German property regime, digital data is not only excluded from being an object of property, but also from the scope of assets.

Our assumption is that this does not necessarily have to remain the case, and therefore, having taken a position on the tangible or intangible nature of digital data, we will, starting from the deeper connections between absolute protection, the principles of ownership and the idea of corporeality, point out that the exclusion of digital data from the idea of corporeality cannot be justified, and that there is therefore no theoretical impediment to their regulation under property law.

After outlining the possibilities for such regulation, we will draw conclusions from our findings in a separate chapter on succession, pointing out that in order to ensure that the right of ownership in digital data prevails in the context of succession, it is worth considering supplementing not only the legal norms of property law or rights in rem but also the provisions on succession. In this way, the next objective of the thesis will be achieved, namely to formulate *de lege ferenda* proposals for the adaptation of digital data to property in both areas on the basis of our conclusions. This is done in order to promote the adaptation of digital data as a subject of ownership that we consider necessary.

III. Methods of research and enumeration of sources

The research is based on a systems approach to the interactions of observed phenomena. Interactions are examined when analysing interactions of data - value - property relations in the

legal system, and also when examining the justification and the manner of regulating the ownership of digital data in the light of public and private law interactions of the right to property and succession, and then in the relations between the principle of ownership and the idea of corporeality.

The methods of research will include those traditionally used in the field of jurisprudence, such as grammatical, logical, taxonomic, historical, and doctrinal methods of interpretation, as well as those based on principles of law, in addition to induction, deduction and syllogism, and the so-called focal method. Qualitative methods also include documentary and content analysis, case law comparisons, analysis of the legislative environment and judicial practice.

The thesis mixes hermeneutic and scientific paradigms of cognition, in the sense that it analyses the functioning and interactions of the elements of the field under study by observing them and seeking the explanations behind these phenomena in order to answer the ‘whys and hows’. The thesis uses these approaches in conjunction with each other, with the aim of shedding light on the processes and possibilities of adapting data-based assets, and ultimately digital data, to property/ownership by exploring the contexts of the legal system under investigation. The research methodology of the thesis therefore reflects the relationship between the general and the particular, the whole and the part.

Among the research methods, the so-called focal method plays a prominent role, since in both legislation and case law a given word changes meaning depending on the context in which it is used, and it is therefore necessary to explore and clarify the relationship between meanings in order to obtain a clear picture of the analogical, metaphorical or focal nature of the concepts that the legal term denotes.²

The legal vocabulary relating to data is rather chaotic, as we shall see, and to a large extent undeveloped. The data-related texts are a tangle of similarities that overlap and cross over, as if the concept of data for use in a legal system had not yet been sufficiently clarified. We speak of personal data, public data, data of public interest, data in the public domain, data property and data ownership, and we speak of data and information interchangeably and inconsistently. We also use the term ‘meaning’ inconsistently in relation to both. Accordingly, the meaning

² BLUTMAN LÁSZLÓ: A jogi terminusok fokális elemzése: ókori üzenet a palackban? *Jogelméleti Szemle*. 2010/3. 37. <https://jesz.ajk.elte.hu/blutman43.html> (Letöltve: 2023.01.15.) (továbbiakban: BLUTMAN 2010)

relations of these definitions are often unclear and, from the point of view of data ownership/property regulation, are absolutely insufficient to provide normative certainty.

The complexity of the subject justifies the use of general system theory and complex systems theory, and systems theory based on them, as methods, and for this reason the thesis devotes more time to presenting these in the discussion of research methods.

Ownership, the right to property and, consequently, the right to succession are universal values, deeply rooted in human culture and therefore with an extensive network of interactions, and systems theory itself deals with problems of a universal nature and seeks universally valid answers to the general problems that arise. This is the ever-evolving basic science, general system theory.³

The research methodology of this thesis is based on general system theory⁴, including complex systems theory, which considers itself as a general science that covers all natural and social sciences, and therefore aims to provide a general theoretical framework that allows mutual communication between the various disciplines, so that they can understand each other by combining the advantages of analytic and synthetic thinking. General system theory does not merely consider the elementary components, but always looks beyond them to the whole, to the relationships between the elements, to their interactions, to the self-organisation and functioning of the system. It is based on the premise that the whole is more than the sum of its parts, that the properties of the system do not necessarily follow from the properties of its constituent parts, and that causal links form a complex, intricate network⁵. The legal system, in the author's interpretation, is a dynamic complex system whose essential characteristic is constant change, and whose elements, despite their fundamental differences, form a unity that transcends the parts, which means that the components cannot be examined in isolation from the system, but that the interrelationships and processes of the system must be the focus of our

³ SASVÁRI PÉTER: Rendszerszemlélet és rendszerelmélet. In: SASVÁRI PÉTER (szerk.): *Rendszerelmélet*. Dialóg Campus, Budapest, 2020. 34-35. http://real-eod.mtak.hu/9259/1/734_Rendszerelmélet.pdf (Letöltve: 2023.03.14.) (továbbiakban: SASVÁRI 2020)

⁴ Ludwig von Bertalanffy may be considered as the father of general system theory. LUDWIG VON BERTALANFFY: „Zu einer allgemeinen Systemlehre“, *Blätter für deutsche Philosophie*, 1945/3-4. 114-129.; LUDWIG VON BERTALANFFY: An Outline of General System Theory. *British Journal for the Philosophy of Science*. 1950/2, 139-164.; LUDWIG VON BERTALANFFY: *General System Theory – Foundations, Development, Applications*. George Braziller Inc, New York, 1968.

⁵ SASVÁRI 2020. 33

analysis. This requirement may be seen as a fundamental principle of systems theory.⁶ An early manifestation in the legal system of this approach can also be found, for example, in the abstract approach to ownership, according to which the rights specific to the proprietary relationship together form a new institution of a quality that transcends the parts, namely ownership.

The thesis is essentially based on sources in the field of jurisprudence, which can be considered contemporary in relation to digital data, and is based partly on the newest and partly on recent or earlier domestic sources, as well as on German, English, American, Dutch, Swiss, French and other sources. In addition, the subject matter of the thesis required the use of contemporary sources in methodology, systems theory, data science and economics.

IV. Brief summary of the findings

In the part of the thesis dealing with digital data (Chapter II), we will get acquainted with the nature of digital data, on the basis of which we will take a position on the corporeal nature of data, and subsequently, after distinguishing between data (syntactic level) and information (semantic level), we will define a focal concept of digital data that, in consideration of Chapters III and IV, could serve as a starting point for the property/rights in rem regulation of data. In the same chapter, we will explore the process of data becoming a value and then goods that define global data commerce and data economy, and we will demonstrate that this process has turned data into an asset in economic terms, an economic entity in its own right, which brings the property quality of data into the scope of the concept of property in law through the economic concept of property. Thus, digital data naturally triggers the reactions (reflexes) of the legal system in terms of property law and, through this, underlying ownership.

In the analysis of the property-ownership relations in Chapter III, by analysing public law approaches to ownership, we will demonstrate that these approaches and the characteristics of the content and societal constraints of ownership not only do not prevent the adaptation of digital data as an object of property, but also point to the necessity of this adaptation.

⁶ SASVÁRI 2020. 14.

Chapter IV of the thesis highlights that the private law adaptation of digital data is more or less underway in all property regimes and, as will be seen in the analysis of the private law principles of ownership and the idea of corporeality, neither the principles of ownership nor the idea of corporeality stand in the way of this adaptation. It may also be established on the grounds of further analyses that the creation of the right of ownership of digital data, the related subject and indirect object of the legal relationship, and the external and internal interactions of the legal relationship may clearly be defined and interpreted from a doctrinal point of view. In other words, there is essentially no barrier in the legal system to the adaptation of digital data as an object of property or subject of ownership. In the light of the above, by discussing the justification, conditions and possibilities of such adaptation we are convinced of its necessity.

The thesis then outlines the internal and most significant external direct interactions of the ownership of digital data, outlining the optimal place of data ownership regulation in the legal system and making a *de lege ferenda* proposal.

In Chapter V of the thesis, applying our previous conclusions to the field of succession, we illustrate that the inheritance of digital data depends on its ownership/property adaptation, but that this adaptation not only affects the regulatory structures of property law/ownership, but also necessarily has an impact on the law of succession, in relation to which the thesis makes a *de lege ferenda* proposal.

Summarising the results of the research, it can be concluded that the phenomena examined and the processes identified together support the conclusion that the regulation of digital data in property law cannot be avoided, despite all the difficulties, real or perceived, that this entails, and that private law will sooner or later be able to capture digital data as an object of property/subject of ownership, thus completing the adaptation of the data-driven digital world to the legal system, and at the same time laying the foundations for a consistent recognition of data and their succession. At the same time reinforcing the security of the data economy.

V. *List of publications*

1. *Publications on the subject of the thesis*

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