

**“Restrictions on Use in Digital Services Contracts:  
The Legal Implications of Licensing vs. Ownership Models”**

by

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In line with academic integrity principles and transparency in research practices, I would like to disclose that Artificial Intelligence (AI)-based tools, specifically language models such as OpenAI's ChatGPT, Grammarly were used to assist in the drafting, structuring, and revision of this thesis.

Such tools were employed as a support mechanism for tasks including language refinement, improving clarity, formatting citations, generating alternative phrasings, and summarizing complex arguments - always under my full supervision and critical evaluation.

The intellectual content, analysis, argumentation, and academic judgement reflected in this thesis remain entirely my own. All cited sources and references have been personally selected, verified, and incorporated by me.

The use of AI tools in this thesis was strictly limited to enhancing writing efficiency and clarity, without compromising academic rigor or the originality of the substantive contributions.

# ABSTRACT

People in the digital age depend increasingly on digital services to communicate, produce work, and entertain themselves. However, digital service contracts place limitations on consumers which restrict their rights without their complete understanding. Consumers unknowingly consent to contracts that reshape their legal rights every time they click “*I agree*” for software updates or stream movies through platforms that can suddenly cut off their access. For example, they frequently accept terms from digital services including “*Spotify*” or “*Netflix*” which ban reshare, resale, and offline use beyond a specific period without reading their complete content. The typical digital transactions contain complex contractual systems which transform digital ownership definitions against consumer self-determination. Thus, this research investigates **the effects of the licensing model instead of ownership on consumer autonomy and access rights**. The primary model of digital services operates through licensing agreements instead of traditional ownership structures, thereby which preventing consumers from acquiring actual ownership of purchased content. The consumers become exposed to unanticipated access removals and service disruptions, often without prior notice or meaningful recourse, as providers retain unilateral control over key aspects of availability, functionality and contractual terms.

Standard form contracts and opaque terms of service within these restrictions limit consumer bargaining power and legal awareness about their diminished rights. The rise of subscription-based and cloud-hosted services intensifies this power imbalance because users need constant platform access to access their content. The digital environment creates new legal uncertainties regarding consumer rights scope, digital transaction durability, and traditional legal doctrines such as exhaustion of rights and transferability.

This research investigates this fundamental distinction through legal and consumer protection analysis to determine if present regulatory systems adequately safeguard consumer rights. Moreover, the research aims to develop legal and policy recommendations which balance consumer and digital service provider interests in the growing digital market through an evaluation of case law, statutory regulations and industry practices.

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# Introduction

Accessing information, software, and services in the digital economy is now being done through licenses structured around digital service contracts instead of ownership. These contracts usually have “restrictions on use” which limits what consumers can do with the purchased content. Whether it is a standard software license that bans resale, or a streaming platform that does not allow offline access, these limitations pose fundamental legal and consumer rights challenges. As digital services increasingly rely on licensing models, the traditional boundary between ownership and licensing begins to blur, signaling a substantive legal shift rather than a superficial change in terminology. The market evolution demonstrates an ideological change from ownership-based markets to permission-based markets, which require conditional access instead of providing inherent security.

The digital economy introduces new challenges to consumer protection, including *confusion about legal entitlements, narrowly defined user rights, provider-controlled access termination, and the inability to transfer purchased content*. These issues reflect a deeper transformation of consumer status - from autonomous owners to conditional users - which this thesis seeks to unpack.

Providers enjoy flexibility through licensing, but the enumerated consumer rights under property frameworks are largely absent and restrictive in nature, which severely undermines consumer’s rights by the shifts toward digital economy logic grounded in leases of control. The decline of traditional property expectations demonstrates the necessity to reevaluate digital law’s approach to consumer autonomy and legitimate expectations.



The foundation for effective consumer protection in a data-driven society depends on comprehending legal boundaries that govern digital content usage. The valid economic goals behind restrictions such as intellectual property protection and business model sustainability mask an unbalanced power dynamic between providers and consumers. Consumers lack control over their decisions because they must accept contractual terms that limit their freedom. For example, eBooks often come with resale bans and access to purchased software can be unexpectedly revoked. The legal framework has the potential to validate digital precarious conditions that create unstable access rights which providers can easily withdraw.

Digital service contracts need both clarity and fairness, given the expansion of digital content and the increasing involvement of courts and regulators in ownership versus licensing disputes. The legal framework is undergoing transformation through significant court decisions and EU Directives regarding digital content. The quick evolution of this environment reveals both legal transformation potential and doctrinal knowledge gaps. The current developments present an opportunity for the generation to create new consumer-centric digital rights which move away from analogies based on physical goods.

This research investigates the central question below:

**“What are the legal implications of licensing, rather than ownership, in digital service contracts - particularly in relation to restrictions on use - and how can consumer protection frameworks respond?”**

The research is presented in two chapters and a conclusion, all of which are guided by the central research question.

- **The first chapter - Unpacking Consumer Risks in the Digital Services** introduces the main consumer protection issues arising from digital service contracts, focusing on the shift

from traditional sales to licensing models that change the relationship between consumers and providers. This chapter is structured into four sections. **Section 1.1** begins by tracing the transition from ownership to licensing in digital content transactions, examining how this legal and technological shift reshapes consumer expectations and undermines the traditional protections of property law. **Section 1.2** then analyses the imbalance of contractual power and the erosion of meaningful consent in digital service agreements, highlighting how consumers are often unaware of the limited and conditional nature of their rights. **Section 1.3** addresses the prohibition on resale and the legal complexities surrounding the transferability of digital goods, with a focus on the principle of exhaustion and key judicial interpretations. Finally, **Section 1.4** discusses the fragility of access in licensing-based models, illustrating how digital services and content can be unilaterally revoked, thereby questioning the durability and fairness of consumer entitlements in the digital age.

- **The second chapter - Consumer Protection and Legal Reform** examines the European Union's evolving legal framework governing digital service contracts and evaluates whether it adequately protects consumers in licensing-dominated transactions. **Section 2.1** introduces the key instruments - namely, the Digital Content Directive, Consumer Rights Directive, Unfair Terms Directive, and the recently adopted Digital Services Act and Digital Markets Act - and outlines how each addresses consumer rights in the digital context. **Section 2.2** identifies regulatory gaps within these frameworks, particularly their failure to ensure durable access, restrict overly broad licensing practices, and resolve the ambiguity between ownership and access. **Section 2.3** situates these shortcomings within broader issues of market dominance and platform dependency, showing how licensing

terms, technical barriers, and asymmetric bargaining power deepen consumer vulnerability. Finally, **Section 2.4** outlines possible reform pathways, including legislative proposals to clarify ownership rights, improve licensing transparency, and strengthen enforcement mechanisms, thereby aligning legal protections with consumer expectations in the digital economy.

- The **Conclusion** brings together the thesis's key findings by examining how licensing models reshape consumer rights in digital service contracts. It first highlights the legal and practical challenges posed by the shift from ownership to access. It then evaluates the shortcomings of the current EU legal framework and relevant case law. Finally, it outlines reform proposals aimed at restoring fairness, durability, and user control in the digital marketplace.

# Chapter I. Unpacking Consumer Risks in the Digital Services

## 1.1. From Possession to Permission: Legal Questions Around Licensing

Imagine a consumer buying a physical video game cartridge in the early 2000s. They were free to play the game indefinitely, lend it to a friend, or sell it after making a single payment. Today, you may download that same game from an online platform like Steam. Despite paying a similar amount, the consumer only receives a license to play the game, frequently with limitations, rather than ownership. Revocation of access, prohibition of resale, and strict adherence to platform regulations and digital rights management (DRM) technologies control use.

This change is an example of how market practices and the law have changed more broadly in relation to digital content. As books, music, and software transitioned from physical to digital formats, traditional ownership models were increasingly replaced by licensing arrangements that grant only conditional access.<sup>1</sup> As Nancy Kim explains, the rise of digital transaction has redefined consumer expectations and the legal understanding of transactional finality.<sup>2</sup> Instead of transferring ownership, digital service providers rely on standard-form contracts - such as clickwrap and browsewrap agreements - which users accept by clicking a button or using the

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<sup>1</sup> Aaron Perzanowski and Jason Schultz, *The End of Ownership: Personal Property in the Digital Economy* (MIT Press 2016) chs 1-2.

<sup>2</sup> Nancy S Kim, *Digital Contracts* (2019-2020) 75 Bus Law 1683, 1685-86.

service, without negotiating any terms.<sup>3</sup> These contracts enable providers to retain greater control over the content while limiting consumer rights typically associated with ownership.<sup>4</sup>

Ownership traditionally grants a stable and transferable set of rights, including use, control, and exclusion, forming a core part of property law and legal certainty.<sup>5</sup> As *The End of Ownership* illustrates through a relatable example, “Ownership of this book means you can do lots of things with it. You can keep it forever; you can read it as many times as you like; you can lend it to a friend” - a set of liberties that sharply contrasts with the constraints of digital licenses.<sup>6</sup> Indeed, licensing differs from ownership in that it offers “conditional” and often “revocable” access, where consumer’s ability to use the product depends on the provider’s ongoing terms.<sup>7</sup> However, this shift redefines consumer expectations and weakens traditional protections associated with ownership, especially when digital content serves important social functions. For instance, in *VOB v Stichting Leenrecht* (Case C-174/15), the CJEU held that public libraries may lend e-books under the same conditions as physical books, provided that, specific requirements - such as one-user-at-a-time lending - are respected.<sup>8</sup> This ruling reflects a functional approach to digital content, acknowledging that equitable access should not be undermined merely because the format is digital. It underscores the broader principle that consumer and public interests must be protected, even within licensing regimes.

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<sup>3</sup> Ibid.

<sup>4</sup> Aaron Perzanowski and Jason Schultz, “*The End of Ownership: Personal Property in the Digital Economy*” (MIT Press 2016) 4-6.

<sup>5</sup> Ibid chs 2-3.

<sup>6</sup> Ibid ch 1.

<sup>7</sup> Kristin Cobb, “*The Implications of Licensing Agreements and the First Sale Doctrine on US and EU Secondary Markets for Digital Goods*” (2014) 24 Duke J Comp & Int 529, 531.

<sup>8</sup> Case C-174/15 “*Vereniging Openbare Bibliotheken v Stichting Leenrecht*” [2016] ECLI:EU:C:2016:856.

Under traditional ownership, consumers acquire lasting rights, including the ability to retain, transfer, and access the digital object indefinitely - even if the provider ceases to operate.<sup>9</sup> In contrast, licensing grants only a limited right of use, often subject to restrictive terms such as **revocation, modification, or termination** at the provider's discretion.<sup>10</sup> This shift from ownership to license-based models undermines consumer autonomy and creates legal uncertainties in the long-term use of digital content.

Restrictive licensing agreements and the absence of a functional resale doctrine prevent **copying, redistribution, and transfer** of digital goods, limiting consumer autonomy and eliminating access to secondary markets.<sup>11</sup> Licensing terms in digital sales consistently ban resale activities which weakens secondary markets and diminishes the economic worth of purchased digital products. The nonexistence of a digital resale market takes away **users' economic autonomy** which physical ownership used to provide.<sup>12</sup>

The digital service model has become increasingly prevalent because of cloud computing, streaming services, app stores and platform-based economies, which transformed how users interact with digital products.<sup>13</sup> The trend demonstrates how contractual control becomes embedded into technical infrastructure which enables law to function automatically through code and access architecture. Digital service contracts reach further than content distribution because they also apply to software-as-a-service and digital marketplaces and online platforms.<sup>14</sup> Most consumers remain unaware about the legal foundation which enables their digital service access.

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<sup>9</sup> Aaron Perzanowski and Jason Schultz, *"The End of Ownership: Personal Property in the Digital Economy"* (MIT Press 2016) ch 2.

<sup>10</sup> Kristin Cobb, *"The Implications of Licensing Agreements and the First Sale Doctrine on US and EU Secondary Markets for Digital Goods"* (2014) 24 Duke J Comp & Intl 531-533.

<sup>11</sup> Ibid 529-533.

<sup>12</sup> Ibid 532-533, 536-537.

<sup>13</sup> Nancy S Kim, *"Digital Contracts"* (2019-2020) 75 Bus Law 1683, 1685-86.

<sup>14</sup> Ibid.

As noted in Hugh Beale's discussion of a 2016 EU consumer study, the legal ambiguity surrounding digital content contracts - especially concerning ownership and remedies - leads to consumer confusion, as the absence of a physical product renders rights such as resale and durability less apparent.<sup>15</sup>

The observed gap between legal formalities and user understanding of digital ownership requires detailed examination of digital rights management systems. This shift also affects legal doctrines. The distinction between contractual agreements and property rights becomes indistinct in modern legal frameworks. Digital goods fail to possess the characteristics of physical property which results in new contractual terms that establish ownership rights through different legal mechanisms. Traditional physical property confers a "*bundle of rights*" - including possession, control, and transfer - that digital goods generally lack due to the prevalence of restrictive licensing regimes.<sup>16</sup> The substitution of "*sale*" with "*license*" serves as a legal device to prevent consumer protections that exist in sale-of-goods legislation from applying.<sup>17</sup> The licensing strategies discussed in this paper go beyond technicalities because they create fundamental contractual changes that test the current consumer protection frameworks.

## 1.2. Control, Consent and Contractual Power

These contractual dynamics reflect not just a shift in access but a broader imbalance in control and consent. The unequal nature of this system establishes a digital economy **controlled**

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<sup>15</sup> Hugh Beale, "*The Future of European Contract Law in the Light of the European Commission's Proposals for Directives on Digital Content and Online Sales*" (2016) 79 MLR.

<sup>16</sup> Aaron Perzanowski and Jason Schultz, "*The End of Ownership: Personal Property in the Digital Economy*" (MIT Press 2016) 38-42.

<sup>17</sup> Kristin Cobb "*The Implications of Licensing Agreements and the First Sale Doctrine on US and EU Secondary Markets for Digital Goods*" (2014) 24 Duke Journal of Comparative & International Law 529, 531.

**by platforms** which makes control move upwards while consumer dependence grows without providing any corresponding rights. The issue becomes especially problematic when consumers invest considerable sums under the wrong impression that they are purchasing a tangible product, when in fact “*they are merely acquiring a limited license to access digital content*”.<sup>18</sup> The difference between how consumers understand their rights, and the actual legal situation demonstrates an informed consent crisis because legal terms differ substantially from how consumers experience digital products.

It is questionable whether consumers would prefer to remain mere “conditional users” rather than “full owners” of the products they purchase. Unlike ownership, which traditionally includes rights of possession, transfer, and control, digital licensing frequently withholds these rights, offering instead a limited, revocable permission to access content.<sup>19</sup> This model allows providers to impose detailed “restrictions on use,” commonly found in End-User License Agreements (EULAs), which dictate how, where, and when a user may interact with the content.<sup>20</sup>

**Consumers are often unaware** of the full implications of these licensing sets. As Marotta-Wurgler’s empirical study shows, one-sided software licenses often tip the balance of rights in favor of providers, stripping away protections, consumers would otherwise enjoy under default legal regimes.<sup>21</sup> Licensing terms typically prohibit resale, restrict cross-device access, and exclude any claims to permanence or continued availability.<sup>22</sup> Guibault observes that consumers who

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<sup>18</sup> Aaron Perzanowski and Jason Schultz, *The End of Ownership: Personal Property in the Digital Economy* (MIT Press 2016) ch 1.

<sup>19</sup> Ibid 11-13, 18.

<sup>20</sup> Ibid 18-20.

<sup>21</sup> Florencia Marotta-Wurgler, “What’s in a Standard Form Contract? An Empirical Analysis of Software License Agreements” (2007) 4(4) J Empirical Legal Study 677, 680-693.

<sup>22</sup> Lucie Guibault, “Individual Licensing Models and Consumer Protection” (Amsterdam Law School Legal Studies Research Paper No 2016-01, Institute for Information Law 2016) 10-11



legally obtain digital content can still be prevented from using it in ordinary ways (for instance, making a private copy or transferring files between devices) due to restrictive licensing.<sup>23</sup>

Licensing structures reinforce **user dependency** on provider ecosystems. For instance, streaming platforms may restrict downloads, while software providers may revoke access upon policy changes or subscription lapses.<sup>24</sup> Moreover, digital licenses are frequently bundled with restrictive technologies - such as DRM, gated access, or embedded tracking - that limit how users interact with the content they've paid for.<sup>25</sup>

The authors Perzanowski and Schultz explain how the disappearance of ownership has damaged consumer expectations about digital content while establishing a system where users must function as “*perpetual renters*” without offline access, resale or lending capabilities.<sup>26</sup> By eliminating the stability and finality usually connected with ownership, this change redefines digital transactions. Providers can change licensing terms or remove access at any time because they still have backend control over digital goods, thereby ignoring the expectations of the purchaser. The situation becomes worse because contract terms hide inside lengthy end-user license agreements (EULAs) which consumers typically do not read or comprehend.<sup>27</sup> The unclear nature of these contracts raises concerns about transparency while damaging the moral basis of consent in digital business transactions.

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<sup>23</sup> Ibid 12-13.

<sup>24</sup> Ibid 10-11.

<sup>25</sup> Ibid 11-13.

<sup>26</sup> Kristin Cobb “*The Implications of Licensing Agreements and the First Sale Doctrine on US and EU Secondary Markets for Digital Goods*” (2014) 24 Duke Journal of Comparative & International Law chs 2-3.

<sup>27</sup> Craig S Wright, “*Electronic Contracting in an Insecure World*” (SANS Institute 2008) 18.

### 1.3. Transferability and the Right to Resell

**The prohibition on resale** is one of the most controversial aspects of licensing models. Unlike physical goods, which can be freely transferred or sold after purchase, digital goods are often locked within platforms that assert contractual rights to restrict redistribution. These licensing terms effectively strip consumers of the ability to dispose of their digital property - an essential element of ownership under traditional property law. This tension was judicially tested in *UFC-Que Choisir v Valve*, a French case that challenged the enforceability of Steam's prohibition on reselling downloaded games. In 2019, the Tribunal de Grande Instance de Paris ruled that Valve's contractual restrictions violated the EU's principle of exhaustion of rights under the Software Directive. **The exhaustion principle**, as defined in *Black's Law Dictionary*, holds that the intellectual property holder's rights are "exhausted" after an authorized sale, and thus the rights holder cannot control subsequent resale or distribution.<sup>28</sup> This doctrine supports the notion that ownership includes the right to transfer, a position that aligns with consumer expectations for both physical and digital purchases. The court's judgment suggested that users who purchase digital games should enjoy similar rights to those who buy physical copies, including the right to resell. From a consumer-rights perspective, the initial decision appeared to be a meaningful step toward rebalancing user rights and corporate control. However, the optimism was short-lived. On appeal, the Paris Court of Appeal overturned the ruling in 2022, siding with Valve's argument that "*its games were licensed, not sold*".<sup>29</sup> This reversal reaffirmed the dominant legal interpretation that favors provider control over consumer autonomy, despite significant economic and emotional investment by users. The case encapsulates the precariousness of consumer rights in digital

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<sup>28</sup> Black's Law Dictionary (11th edn, Thomson Reuters 2019) s.v. "*exhaustion doctrine*".

<sup>29</sup> *UFC-Que Choisir v Valve*, Tribunal de grande instance de Paris, 17 September 2019, Case No RG 16/01008; Cour d'appel de Paris, 21 October 2022, Case No 20/07967.

ecosystems where access is conditional, and the scope of user freedoms is often narrower than commonly understood. As Spedicato observes, the application of the exhaustion principle to digital goods remains “*one of the most debated and uncertain areas of copyright law*”, with courts offering divergent views on whether downloading constitutes a lawful “*first sale*” capable of triggering exhaustion.<sup>30</sup>

Although national courts have started to address the complexities in digital content transactions, it is the Court of Justice of the European Union (CJEU) that has most significantly influenced the legal distinction between ownership and licensing in the EU digital market. The CJEU ruled in *UsedSoft GmbH v Oracle (Case C-128/11)* that software license resale qualified as a valid transfer of ownership under the Software Directive (2009/24/EC) even though the software download occurred.<sup>31</sup> This judgment extended the principle of exhaustion to certain digital formats, challenging the prevailing practice of licensing digital content indefinitely.<sup>32</sup> By interpreting specific types of licensing as functional equivalents to sales, the Court affirmed users’ rights to resell software and introduced the notion of **digital ownership** in narrowly defined contexts.<sup>33</sup> The ruling applied only to software products while excluding all other digital content and it applied only to perpetual licenses that were fully paid.<sup>34</sup> This decision established that licenses demonstrate equivalent properties to sales thus enabling property-style rights including resale. In *Software Incubator Ltd v Computer Associates UK Ltd (UKSC, 2021)* case the UK Supreme Court established that electronic software delivery constitutes a “*sale of goods*” under

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<sup>30</sup> Giorgio Spedicato, “Online Exhaustion and the Boundaries of Interpretation” in Roberto Caso and Federica Giovanella (eds), “*Balancing Copyright Law in the Digital Age: Comparative Perspectives*” (Springer 2015) 27, 28.

<sup>31</sup> Case C-128/11 “*UsedSoft GmbH v Oracle International Corp*” ECLI:EU:C:2012:407.

<sup>32</sup> Lazaros G Grigoriadis, “*Copyright Exhaustion in the Digital Era: The CJEU’s Decision in UsedSoft and Its Aftermath*” (2020) 52(1) *IIC - International Review of Intellectual Property and Competition Law* 198, 200-205.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

the Commercial Agents Regulations 1993.<sup>35</sup> The ruling indicated a growing tendency to treat software licenses as goods which aligns with the *UsedSoft* decision. The court made its decision exclusively for business-to-business transactions while excluding consumer contracts from its ruling.<sup>36</sup>

However, the scope of *UsedSoft* has proven limited. In *Nederlands Uitgeversverbond v Tom Kabinet Internet BV* (Case C-263/18), the CJEU explicitly declined to extend the exhaustion doctrine to digital books, distinguishing downloadable eBooks from software.<sup>37</sup> The Court held that the sale of second-hand digital copies of eBooks constitutes a “*communication to the public*”, not a “*distribution*”, thus the exhaustion principle is not applicable.<sup>38</sup> This significantly limits the resale of eBooks under EU copyright law, marking a clear distinction between digital and physical goods in terms of ownership and consumer rights. *Tom Kabinet* exemplifies a restrictive and formalistic interpretation of EU law, particularly concerning the terms “*copy*” and “*sale*”. Joanna Pawlikowska notes that this narrowing reasserts the position that most digital goods fall outside ownership-based protections, reinforcing licensing as the dominant legal framework for non-software digital content.<sup>39</sup> On the other hand the *UsedSoft* decision stands as an isolated ruling because courts typically accept the contractual definitions of “*license*” even though they create unfavorable conditions for consumers. The court’s acceptance of contractual definitions indicates

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<sup>35</sup> “*The Software Incubator Ltd v Computer Associates UK Ltd*” [2021] UKSC 2.

<sup>36</sup> *Ibid.*

<sup>37</sup> Case C-263/18 “*Nederlands Uitgeversverbond and Groep Algemene Uitgevers v Tom Kabinet Internet BV*” ECLI:EU:C:2019:1111.

<sup>38</sup> *Ibid.*

<sup>39</sup> Joanna Pawlikowska, “*Glosa do wyroku Wielkiej Izby Trybunału Sprawiedliwości Unii Europejskiej z dnia 19 grudnia 2019 r., C-263/18*” (2020) *Forum Prawnicze* 87-97.

(Joanna Pawlikowska, *Glosa do wyroku... C-263/18* [Commentary on the Grand Chamber Judgment of 19 December 2019, C-263/18] (2020) *Forum Prawnicze* 87-97.)

a growing trend toward abandoning meaningful consumer protection laws that result from private agreements.<sup>40</sup>

## 1.4. Fragility of Access: When Services or Content Disappear

Although the digital age has brought us unprecedented levels of convenience and accessibility, these benefits tend to be heavily dependent on service providers' future existence. One striking example of this dependency, and the fragility of digital access under licensing models - is the *2023 shutdown of Google Stadia*, a cloud-based gaming service. Despite users having purchased access to games - sometimes investing significant sums - Google's decision to terminate the platform rendered all such purchases meaningless overnight. While Google issued refunds, this did little to erase the deeper implication: in a licensing-based digital ecosystem, "*access is not ownership*", and users' rights are tethered entirely to the provider's continued operation.<sup>41</sup> As digital services become increasingly integral to people's leisure and cultural life, this event is deeply unsettling. It exposes how fragile and conditional digital consumption truly is, even when transactions appear "purchased". Consumers were left with no enduring entitlement to the games they had paid for, because they never truly owned them in the first place. *The Stadia shutdown* is a clear reminder that access-based models not only limit use, but they can also erase all of a user's libraries in an instant. This raises important questions about the durability, fairness, and illusion of permanence in digital commerce.<sup>42</sup>

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<sup>40</sup> Ibid 89.

<sup>41</sup> Tom Warren, "Google Is Shutting Down Stadia" The Verge (29 September 2022), <https://www.theverge.com/2022/9/29/23378713/google-stadia-shutting-down-game-streaming-january-2023> accessed June 10, 2025.

<sup>42</sup> Ibid.

One moment it is there, the next it is gone - content withdrawal in the digital marketplace illustrates how little control users truly have over what they think they own. A prominent example illustrating the extent of **content withdrawal** is the *2009 incident involving Amazon's Kindle platform*. In this case, Amazon remotely deleted purchased copies of George Orwell's "*1984*" and "*Animal Farm*" from users' devices after discovering the third-party vendor lacked proper distribution rights. Despite consumers having paid for the eBooks, Amazon's ability to unilaterally revoke access - without prior warning - exposed the fragile and revocable nature of digital licenses. The backlash was swift and intense, as users expressed outrage over the loss of content they believed they owned. Amazon CEO Jeff Bezos issued a rare public apology, describing the action as "*stupid*", "*thoughtless*", and contrary to company principles.<sup>43</sup> This episode revealed the extent to which digital service contracts, when based on licensing rather than ownership, can undermine consumer expectations and autonomy. Unlike traditional sales, digital licenses frequently preserve the provider's dominance even after the transaction, meaning the user gains access without lasting rights. The revocability inherent in licensing not only destabilizes the notion of purchase but also raises deeper concerns about due process, trust, and the enforceability of digital consumer rights.

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<sup>43</sup> Stone B, "Amazon Erases Orwell Books From Kindle" The New York Times (17 July 2009), <https://www.nytimes.com/2009/07/18/technology/companies/18amazon.html> accessed June 10, 2025.

# Chapter II. Consumer Protection and Legal Reform

## 2.1. Overview of Legal Frameworks Governing Digital Service

### Contracts

The European Union (The EU) has established its laws to define consumer rights within the digital economy framework. The legal framework demonstrates an understanding that current consumer protection systems fail to address digital goods and algorithmic services. The EU developed specialized directives to address digital content and services because of their distinct nature while protecting consumer rights through transparency, fairness, and remedy access. The established legal protections face ongoing debate about their effectiveness because private contractual frameworks still control most digital transactions.<sup>44</sup> The main instruments consist of:

- ***Directive (EU) 2019/770*** on certain aspects concerning contracts for the **supply of digital content and digital services**
- ***Directive 2011/83/EU*** on **consumer rights**
- ***Directive 93/13/EEC*** on **unfair terms** in consumer contracts
- **The Digital Services Act (DSA) and Digital Markets Act (DMA)**

These directives combine to establish a complete legal structure which sets forth basic information requirements and safeguards consumers from unfair contract provisions and requires digital services to meet contract specifications regarding functionality and durability.

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<sup>44</sup> European Commission, “*Virtual Worlds - Consumer Protection*” (Digital Strategy, 2024) <https://digital-strategy.ec.europa.eu/en/policies/virtual-worlds-consumer-protection> accessed June 1 2025.

### 2.1.1. The Digital Content Directive

*The EU Directive 2019/770 - The Digital Content Directive (DCD)* stands out as the most important regulation which safeguards consumer rights. The directive mainly specifies that consumers have the right to receive a “conforming digital product” (Article 7 - Conformity of the digital content or digital service) and provides consumers with available remedies through repair, replacement, price reduction or contract termination.<sup>45</sup> The DCD reshapes the licensing vs. ownership debate by giving consumers certain rights regardless of ownership, based on contract performance and fairness principles rather than property law.

The DCD establishes common consumer protection standards for digital content contracts throughout European markets. However, the directive fails to specify whether the transaction involves transferring ownership rights or granting licensing permissions while leaving this question to national law and contract interpretation.<sup>46</sup> Thus, **the lack of specific provisions regarding long-term access and ownership rights** creates substantial uncertainty in the legal framework.

According to Perzanowski and Schultz, licensing-based approach creates a form of “conditional grants of access”, where the provider retains control and can revoke access, often without meaningful consumer recourse.<sup>47</sup> Consumers often assume that their digital purchases are permanent, yet in practice, providers can remove access entirely, leaving users with nothing to show for their payment.<sup>48</sup> Similarly, the DCD allows digital traders to modify or terminate access

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<sup>45</sup> Directive (EU) 2019/770 on contracts for the supply of digital content and digital services [2019] OJ L136/1, art 7.

<sup>46</sup> Ibid, recital 19 (“...this Directive should not determine whether digital content or a digital service supplied in exchange for the payment of a price or other counter-performance is to be qualified as a sale, a service, a license or another type of contract.”)

<sup>47</sup> Aaron Perzanowski and Jason Schultz, “*The End of Ownership: Personal Property in the Digital Economy*” (MIT Press 2016) p. 58.

<sup>48</sup> Ibid p. 7.



in accordance with conformity obligations, but this revocability - while commercially convenient - has raised concerns about the stability and finality of digital transactions.<sup>49</sup>

The DCD does, however, guarantee some conformity and remedy rights. Notably, Article 10 DCD entitles consumers to remedies if third-party intellectual property rights interfere with content use.<sup>50</sup> But as Oprysk observes, this provision is limited because traders themselves are often licensees of copyrighted content and cannot override upstream licensing restrictions.<sup>51</sup> Thus, consumers might face use restrictions not from traders directly, but due to copyright holders' contractual limits.

The absence of harmonized rules on ownership in digital content leaves consumers in a state of uncertainty. As Gliha argues, the DCD's attempt to balance market competitiveness with consumer protection inadvertently reinforces the bargaining power of rightsholders while offering limited avenues for contesting restrictive licensing practices.<sup>52</sup> This disparity is compounded by the lack of enforceable standards around what constitutes "*reasonable consumer expectations*" in digital services.<sup>53</sup>

### 2.1.2. The Consumer Rights Directive

*The EU Directive 2011/83/EU - The Consumer Rights Directive (CRD)* establishes basic rules about digital contracts and information obligations which directly apply to digital content.

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<sup>49</sup> Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services [2019] OJ L136/1, art 19, recital 67.

<sup>50</sup> Ibid art 10.

<sup>51</sup> Liliia Oprysk, "Digital Consumer Contract Law without Prejudice to Copyright: EU Digital Content Directive, Reasonable Consumer Expectations and Competition" (2021) 70(10) GRUR Int 943, 945-946.

<sup>52</sup> Dino Gliha, "The Digital Content Directive's Implications on the Exercise of Copyright and Market Competition" (2023) 10(1) InterEULawEast 21, 24-25.

<sup>53</sup> Liliia Oprysk, "Digital Consumer Contract Law without Prejudice to Copyright: EU Digital Content Directive, Reasonable Consumer Expectations and Competition" (2021) 70(10) GRUR Int 943, 947-949.

The law requires businesses to provide complete information about the main features of their products or services along with the full price and contract period.<sup>54</sup> Consumers have the right to return digital content within a 14-day period unless they have already downloaded or consumed it.<sup>55</sup>

The CRD provides better clarity but fails to extend protection to consumer rights after purchase or ensure ongoing access. The trader retains the right to restrict format conversion, resale, and device usage even after a consumer downloads an eBook because these matters are mainly defined by contractual provisions. As highlighted in the European Commission's evaluation of the Directive, these gaps mean that consumers often lack ownership-style rights in digital content licensing models, and the CRD does not fully address these shortcomings.<sup>56</sup>

As discussed above, The DCD and the CRD offer significant protections for conformity, transparency, and remedies in digital content transactions under the current EU consumer protection framework. These instruments, however, don't make it clear if customers get full ownership or just a restricted license. The CRD emphasizes pre-contractual transparency but largely leaves post-purchase rights to contractual terms, whereas the DCD concentrates on performance-based consumer remedies without addressing the underlying legal nature of the digital transaction. Because of this, there is still a great deal of uncertainty about the long-term legal standing of digital content in consumer hands, particularly when access can be restricted or revoked at the trader's option.<sup>57</sup>

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<sup>54</sup> Directive 2011/83/EU on consumer rights [2011] OJ L304/64, arts 5-6, 8(2).

<sup>55</sup> Ibid, arts 9, 16(m).

<sup>56</sup> European Commission: Directorate-General for Justice and Consumers, CSES, EPRD and RPA, "*Study on the application of the Consumer Rights Directive 2011/83/EU – Final report*", Publications Office, 2017, ch 3 <https://data.europa.eu/doi/10.2838/331610> accessed June 10, 2025

<sup>57</sup> Digital Content Directive (EU) 2019/770, arts 7-10; Consumer Rights Directive (EU) 2011/83, arts 5-6.

### 2.1.3. The Unfair Terms Directive

*The EU Directive 93/13/EEC - The Unfair Terms Directive (UTD)* regulates standard-form contracts which establish an “*significant imbalance*” between contractual rights and obligations that negatively affect consumers.<sup>58</sup> However, enforcement has been uneven. National courts demonstrate hesitation to challenge digital service contracts especially when restrictions for intellectual property protection and business model sustainability are presented. The review of contract terms is prohibited under Article 4(2) for pricing and main subject matter conditions as long as they use plain language.<sup>59</sup> The licensing core aspects of copying, resale, and interoperability remain protected from judicial review even though they restrict consumer autonomy.<sup>60</sup> As Micklitz and Reich observe, the Directive’s scope is marked by “*inherent contradictions*”, as its application merges “*a conundrum of different concepts, which could not easily be coordinated*”, resulting in a framework where “*the definition of the main subject matter and the adequacy of the price and remuneration were eliminated from review, provided these terms are in plain intelligible language*”.<sup>61</sup>

### 2.1.4. The Digital Services Act and Digital Markets Act

*The EU adopted the Digital Services Act (DSA) and Digital Markets Act (DMA)* in 2022 as a fundamental transformation of digital regulatory policies. These regulations establish

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<sup>58</sup> Directive 93/13/EEC on unfair terms in consumer contracts [1993] OJ L95/29, art 3(1).

<sup>59</sup> Ibid art 4(2).

<sup>60</sup> Ibid, art 4(2), Recital 19.

<sup>61</sup> Micklitz, Hans-W, and Norbert Reich. “*The Court and Sleeping Beauty: The Revival of the Unfair Contract Terms Directive (UCTD)*.” Common market law review 51.3 (2014): 771, 773-774.

obligations for online platforms and gatekeepers to provide transparent operations and fair market access while maintaining accountability.<sup>62</sup>

The DSA mandates that online platforms give users easily comprehensible information about how recommender systems and content moderation algorithms affect their experience, as well as clear and accessible terms of service.<sup>63</sup> The DMA requires gatekeepers to avoid actions that could stifle fair competition, like self-preferring and interoperability restrictions.<sup>64</sup>

These Acts do not directly address ownership issues, but they strengthen the legal environment by reducing platform dominance and improving consumer rights when platforms operate as both service providers and service access controllers.<sup>65</sup>

## 2.2. Regulatory Gaps in Current Frameworks

In today's world, keeping up with technology is hard, not just for users, but even for lawmakers. While policymakers are still trying to understand what's happening, digital service providers have already rewritten the rules to suit their interests. The essential nature of consumer protection emerges because digital services now dominate everyday life activities. Thus, this research evaluates existing consumer protection laws in digital service contracts to determine their effectiveness against licensing restrictions while developing new policy and legal frameworks.

Despite advancements in the EU digital regulatory landscape, the current consumer protection regime does not sufficiently address the unique challenges posed by licensing-based

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<sup>62</sup> Regulation (EU) 2022/2065 (Digital Services Act) [2022] OJ L277/1; Regulation (EU) 2022/1925 (Digital Markets Act) [2022] OJ L265/1.

<sup>63</sup> Digital Services Act, arts 13-14, 26-27.

<sup>64</sup> Digital Markets Act, arts 5-7

<sup>65</sup> Matthias Leistner, "The Commission's Vision for Europe's Digital Future: Proposals for the Data Governance Act, the Digital Markets Act and the Digital Services Act - A Critical Primer" (2021) 16(8) *JIPLP* 778, 779-780, 783-784.

digital service contracts. Digital service providers continue to draft restrictive terms under the cover of contractual freedom, while fundamental consumer rights remain vulnerable. Empirical research reveals a consistent pattern of non-compliance and exploitative terms in standard form contracts, particularly among foreign service providers.<sup>66</sup> The findings show that nearly all reviewed terms of service included clauses limiting liability, allowing unilateral changes to terms, and restricting dispute resolution rights - many of which are likely unfair under EU law.<sup>67</sup>

In essence, current consumer protection laws attempt to address these problems in several ways:

- **Transparency and Information Requirements:** Under the CRD, traders are required to provide clear and comprehensive pre-contractual information to consumers, including details about the product's functionality, interoperability, update policies, and the duration of access.<sup>68</sup> This transparency is essential because consumers often enter digital contracts without fully understanding the limitations imposed by licensing agreements.
- **Remedies for Non-Conformity:** The DCD requires that digital content or services conform with the contract. If they do not, consumers are entitled to remedies such as bringing the content into conformity, receiving a proportionate price reduction, or terminating the contract.<sup>69</sup> However, these remedies are often limited in practice because the legal relationship is structured as a revocable license rather than a sale, which weakens the consumer's position and creates ambiguity in enforcement.

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<sup>66</sup> Ewa Palka and others, "Do Foreign Service Providers Simply Ignore the EU Consumer Law? An Empirical Study of 100 Online Terms of Service" (2025) Journal of Consumer Policy.

<sup>67</sup> Ibid.

<sup>68</sup> Directive 2011/83/EU of the European Parliament and of the Council on consumer rights [2011] OJ L304/64, arts 6-9.

<sup>69</sup> Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services [2019] OJ L136/1, arts 3(1), 3(5)-(6), 14-16.

- **Protection Against Unfair Terms:** The UTD permits consumers to challenge contract provisions that cause a “*significant imbalance*” in the parties’ rights and obligations, contrary to the requirement of good faith.<sup>70</sup> However, the widespread use of click-wrap agreements and the complex nature of digital licensing have contributed to inconsistent judicial approaches.<sup>71</sup> Courts often defer to providers’ contractual freedom, especially where restrictions are framed as necessary for protecting intellectual property or sustaining the provider’s business model.

The DMA and the DSA aim to create a fairer and safer digital environment, particularly by regulating large platform behavior and enhancing transparency. However, they do not fully address the contractual and structural vulnerabilities consumers face in licensing-based models, particularly concerning long-term access and cross-border protections.<sup>72</sup>

This prevalence of potentially unlawful practices reflects deeper structural issues in enforcement and oversight. The UTD allows courts to strike out terms that create a significant imbalance in the parties’ rights and obligations, yet this protection is weakened by limitations in Article 4(2), which exempts core contract terms and pricing elements when drafted clearly.<sup>73</sup> Providers often frame restrictions - such as content access limits or revocation rights - as essential elements of the transaction, shielding them from substantive review.<sup>74</sup> Furthermore, standard

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<sup>70</sup> Directive 93/13/EEC on unfair terms in consumer contracts [1993] OJ L95/29, art 3.

<sup>71</sup> See *UsedSoft GmbH v Oracle International Corp* (Case C-128/11) EU:C:2012:407 (permitting software resale despite licensing terms); *Nederlands Uitgeversverbond v Tom Kabinet Internet BV* (Case C-263/18) EU:C:2019:1111 (denying resale rights for eBooks); *UFC-Que Choisir v Valve* (Paris Court of Appeal, 2022) (upholding license-based restrictions on digital game resale)

<sup>72</sup> Regulation (EU) 2022/1925 (Digital Markets Act); Regulation (EU) 2022/2065 (Digital Services Act).

<sup>73</sup> Council Directive 93/13/EEC on unfair terms in consumer contracts [1993] OJ L95/29, art 4(2).

<sup>74</sup> Lucie Guibault, “*Individual Licensing Models and Consumer Protection*” in P Bernt Hugenholtz and Ruth L Okediji (eds), *The Future of the Public Domain* (Kluwer Law International 2008) 9-11.

licensing practices remain largely insulated from scrutiny due to the directive's limited scope in digital contexts.<sup>75</sup>

The DCD introduces new rights concerning conformity and remedies but remains neutral on ownership, deferring to contractual terms and national law.<sup>76</sup> By failing to define whether digital content constitutes a sale or a license, the directive inadvertently permits legal ambiguity to persist. This regulatory silence undermines consumer confidence, particularly when access is terminated despite payment. As Gliha warns, the directive's implementation may bolster the bargaining power of copyright holders and dominant platforms at the expense of effective consumer protection.<sup>77</sup>

## 2.3. The Role of Competition and Platform Accountability

Licensing regimes also intersect with broader issues of market dominance and data-driven lock-in effects. Consumers face not only legal barriers, but also structural limitations imposed by platform ecosystems. As Guibault notes, licensing “*packaging*” frequently includes technical measures that prevent interoperability, format shifting, and cross-border access.<sup>78</sup> These restrictions reinforce user dependence on a single provider and limit the ability to switch services or preserve content across devices. Such technological constraints have competition implications, particularly when they solidify the dominance of large intermediaries.

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<sup>75</sup> Ibid.

<sup>76</sup> Directive (EU) 2019/770 of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content and digital services [2019] OJ L136/1, arts 3(8), 10.

<sup>77</sup> Dino Gliha, “*The Digital Content Directive’s Implications on the Exercise of Copyright and Market Competition*” (2023) 10(1) InterEULawEast 21, 24-26.

<sup>78</sup> Lucie Guibault, “*Individual Licensing Models and Consumer Protection*” in P Bernt Hugenholtz and Ruth L Okediji (eds), *The Future of the Public Domain* (Kluwer Law International 2008) 11-12.

Article 10 of the DCD attempts to resolve tensions between consumer access and copyright by providing remedies where use of digital content is prevented by third-party intellectual property rights. However, Oprysk points out that because traders themselves often act as licensees, consumers may be left without effective redress when access is hindered by upstream licensing agreements.<sup>79</sup> The directive thus risks prioritizing copyright enforcement over user accessibility, especially in markets with entrenched players that leverage licensing and DRM to control downstream use.

Moreover, the OECD has flagged growing concerns over deceptive practices and lack of transparency in e-commerce, exacerbated by the rise of large online platforms.<sup>80</sup> While the DSA and DMA offer structural reforms, their primary aim lies in competition and platform transparency rather than restoring consumer ownership-like rights. Farronato draws a parallel between the regulatory lag surrounding early e-commerce and today's AI-driven platform economy, warning that property rights in data - and by extension, access rights in digital content - remain structurally underdefined, enabling innovators to exploit legal grey zones at the expense of user control.<sup>81</sup>

## 2.4. Legislative Proposals and Reform Pathways

The blurry line between ownership and licensing in digital transactions makes it harder to figure out what rights consumers have and what makes people less sure about how long they can use and keep the content they purchase. This lack of clarity makes it harder to enforce digital contracts and shows that current consumer protection laws have holes in them. To solve this

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<sup>79</sup> Liliia Oprysk, “*Digital Consumer Contract Law without Prejudice to Copyright*” (2021) 70(10) GRUR Int 943, 946-948.

<sup>80</sup> OECD, “*Implementation Report on the Recommendation of the Council on Consumer Protection in E-Commerce*” (2022)

<sup>81</sup> Chiara Farronato, “*Data as the New Oil: Parallels, Challenges, and Regulatory Implications*” (2025) 1-3



problem, we need more than just technical legal fixes. We need a broader change in how private law frameworks define access, control, and value in digital spaces where users pay for things but don't own them.

To address these systemic challenges, reform efforts should move beyond transparency obligations and focus on substantive rights and enforceability. One proposal involves **creating default classification of certain digital transactions as sales**, which would grant consumers property-like rights, including access durability and transferability. As observed by Perzanowski and Schultz, the collapse of ownership in the digital space has distorted consumer expectations and removed the security historically associated with purchases.<sup>82</sup> Legislative creation of a continuous access right for licensed digital content purchased by consumers should be implemented. This would reconcile licensing principles with ownership expectations, safeguarding consumers when providers terminate access.

A related approach is **to bolster the legal interpretation of fairness in licensing clauses**. Digital service contracts need to present licensing terms in simple language that users can easily understand. Standardized formats that are easy to understand would enable consumers to better understand their rights and limitations. Scholars have called for expanding the concept of “*reasonable consumer expectations*” under DCD, enabling courts and regulators to strike down overly restrictive terms that conflict with the consumer’s understanding of what the transaction entails.<sup>83</sup> Guibault similarly advocates for embedding consumer protection standards directly into copyright and contract law, ensuring that licensing cannot undermine basic access rights,

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<sup>82</sup> Aaron Perzanowski and Jason Schultz, “*The End of Ownership: Personal Property in the Digital Economy*” (MIT Press 2016) chs 2-3.

<sup>83</sup> Liliia Oprysk, “*Digital Consumer Contract Law without Prejudice to Copyright*” (2021) 70(10) *GRUR Int* 943, 950.

especially where content has been lawfully acquired.<sup>84</sup> Moreover, digital service providers are required to present a “*clear summary of key contract terms*”, including access duration, termination rights, and any interoperability limitations, to ensure transparency and protect consumer rights.<sup>85</sup> Providers need to have a legal requirement to explain the actual effects of licensing agreements to their customers. If the purchase does not mean ownership, the contract should specify under what conditions access can be withdrawn, and whether the buyer has any rights to resell or transfer the digital content.

Enforcement mechanisms also require strengthening. The findings of Palka and others suggest that relying solely on court-based remedies is insufficient, given the chilling effect unfair terms have on consumer willingness to litigate.<sup>86</sup> Enhanced regulatory oversight, including **automated detection of unfair clauses** and stronger roles for national consumer protection authorities, would support more proactive enforcement.<sup>87</sup> The CPC Regulation and Omnibus Directive already offer mechanisms to improve cross-border cooperation and ensure better transparency of online consumer contracts, but further operationalization and coordination are still necessary.<sup>88</sup>

Finally, reform should address the interplay between consumer protection and platform regulation. The DMA and DSA must incorporate robust safeguards against restrictive licensing and abusive contract practices, particularly in areas like resale bans, revocation rights, and non-

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<sup>84</sup> Lucie Guibault, “*Individual Licensing Models and Consumer Protection*” in P Bernt Hugenholtz and Ruth L Okediji (eds), *The Future of the Public Domain* (Kluwer Law International 2008) 13.

<sup>85</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services [2019] OJ L136/1, arts 5-7.

<sup>86</sup> Ewa Palka and others, “*Do Foreign Service Providers Simply Ignore the EU Consumer Law? An Empirical Study of 100 Online Terms of Service*” (2025) *Journal of Consumer Policy*

<sup>87</sup> OECD, “*Implementation Report on the Recommendation of the Council on Consumer Protection in E-Commerce*” (2022) 14-15 <https://legalinstruments.oecd.org/api/download/?uri=/private/temp/a1024cdb-7613-430c-aa21-73fca9547c22.pdf&name=OECD-LEGAL-0422%20-%20Implementation%20Report%202022.pdf> accessed June 10, 2025.

<sup>88</sup> Regulation (EU) 2017/2394 [2017] OJ L345/1; Directive (EU) 2019/2161 [2019] OJ L328/7.

interoperability. These provisions should be interpreted with consumer rights in mind, ensuring that digital marketplaces do not evolve into legally sanctioned monopolies over user data and access.

## Conclusion

The increasing dominance of licensing models in digital service contracts has profound implications for consumer autonomy, legal certainty, and the enforceability of digital rights. Unlike traditional ownership-based transactions, which grant stable and transferable rights to users, the licensing paradigm transforms access to digital goods into conditional, revocable privileges governed by opaque standard-form contracts. These restrictions on use - ranging from limitations on downloads and resale to unilateral termination and interoperability constraints - create a digital environment in which consumers possess neither meaningful control nor clear legal protection over the content they have acquired.

While the EU has made steps through the DCD and related instruments, such as the CRD and the DSA, fundamental issues remain unresolved. The legal status of consumer transactions involving digital content remains ambiguous, as the DCD fails to clearly classify such interactions as sales or licenses, instead allowing providers to define the terms unilaterally through contracts.<sup>89</sup> This legal vacuum has permitted widespread reliance on licensing terms that erode the core protections associated with ownership, without offering functional substitutes for the user.

Case law such as *UsedSoft GmbH v Oracle* has made modest advances by recognizing that software licenses, under certain conditions, may lead to exhaustion and resale rights.<sup>90</sup> However, such protections remain confined to specific contexts and are not extended to broader categories of digital content, as affirmed in *Tom Kabinet*.<sup>91</sup> The selective application of ownership principles

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<sup>89</sup> Directive (EU) 2019/770 of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content and digital services [2019] OJ L136/1, art 3(8).

<sup>90</sup> Case C-128/11 “*UsedSoft GmbH v Oracle International Corp*” [2012] ECLI:EU:C:2012:407.

<sup>91</sup> Case C-263/18 “*Nederlands Uitgeversverbond and Groep Algemene Uitgevers v Tom Kabinet Internet*” BV [2019] ECLI:EU:C:2019:1111.

in digital law not only fragments the legal landscape but also deepens inequality between providers and consumers.

Empirical evidence further illustrates that many service providers, especially those based outside the EU, do not comply with even the most basic consumer protection requirements.<sup>92</sup> Terms of service frequently include clauses that would be considered unfair under the UTD but remain unchallenged due to enforcement limitations, consumer inertia, and the complexity of redress mechanisms.<sup>93</sup> This underenforcement has systemic effects: it not only disincentivizes user litigation but also normalizes exploitative practices in the market.

Looking forward, the thesis suggests several policy and legal responses. **First**, a substantive reassessment of the licensing model is required, particularly in cases where the consumer pays a fee or offers personal data in exchange for long-term access. **Second**, regulatory reform should strengthen legal presumptions in favor of ownership-like rights for digital goods, especially where functionality, duration, and consumer expectations resemble traditional purchases. **Third**, consumer enforcement should be made more effective through administrative oversight, automated clause review, and public interest litigation. Finally, digital platform regulation - through instruments like the DMA and DSA - must directly address contractual unfairness, not merely competition or transparency concerns.

In summary, digital services framework stands at a crossroads. Without decisive legal and regulatory clarification, the dominance of licensing will continue to weaken consumer protection and limit digital self-determination. As Marques suggests, resolving this imbalance requires integrating consumer law within a unified framework of digital constitutionalism. This means

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<sup>92</sup> Ewa Palka and others, “Do Foreign Service Providers Simply Ignore the EU Consumer Law? An Empirical Study of 100 Online Terms of Service” (2025) *Journal of Consumer Policy*

<sup>93</sup> Council Directive 93/13/EEC on unfair terms in consumer contracts [1993] OJ L95/29, arts 3-5

treating digital access as a quasi-fundamental right, subject to safeguards against manipulation and revocation. As digital services become essential for education, communication, and participation, the law must evolve not only to regulate markets but to protect democratic access and dignity in the digital sphere.<sup>94</sup> Ensuring fairness, durability, and control in digital transactions requires a normative shift toward recognizing consumer rights not as privileges derived from contracts, but as essential components of a just and sustainable digital economy.

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<sup>94</sup> Claudia Lima Marques, “Consumer Protection and Digitalization: Challenges to Overcome New Consumer Vulnerabilities in the Digital Age” in Stefan Grundmann and others (eds), *Private Law, Constitution and Frontiers* (Nomos 2023) 265.

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