

Personal data is not property: why the GDPR opts for control

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"Data is the new oil," economist Clive Humby said in 2006. The metaphor is seductive and persistent: personal data as a raw material, as a possession, as something you ought to be able to buy, sell or take back. In legal terms it is misleading. The General Data Protection Regulation gives data subjects no property right in their personal data. What it gives is something else: control.

Ownership is not the same as control

In civil law, ownership is a comprehensive, in principle exclusive and transferable right (cf. Article 5:1 of the Dutch Civil Code). The owner may possess, use, alienate and exclude. Whoever sells a thing loses it. That figure fits personal data poorly. In *Grip op de AVG*, Terstegge puts it explicitly:

"The data are therefore not his property either, and that is just as well: property, after all, can be given away, lost or encumbered. The protection of personal data is a fundamental right, and that you cannot give away, lose or encumber; you always have it." (Terstegge, 2025: 125, translation by the author)

The distinction is not technical hair-splitting; it determines the nature of the protection. A fundamental right is not transferable in the way a property right is, and cannot be alienated as ownership. Its exercise may be limited within the framework of Article 52 of the Charter, but that is something other than contracting it away. The choice between a property regime and a fundamental-rights regime is therefore a choice between the tradability and the inalienability of the core.

But isn't the server the company's?

A common objection: if a company keeps all the data on its own server, surely those data are simply "the company's"? In everyday language that may sound right, but in legal terms it does not hold without qualification. What the company owns is the data carrier: the server or the hard disk. That is a corporeal thing (a *zaak*, cf. Article 3:2 of the Dutch Civil Code) and can indeed be property. The personal data represented by the electronic state of that carrier do not thereby become a separate object of ownership. Whoever owns the disk controls the device, not a title to the information on it.

The difference is clearest when data are copied. A physical object is rivalrous: if I give away my bike, I no longer have it. Data are non-rivalrous: a file can be copied bit for bit without the original disappearing. Someone who "transfers" data therefore hands over no replacement copy, but places a second, identical instance alongside the existing one. Exclusivity here does not follow from ownership; it has to be arranged separately, through a duty of confidentiality, a processor agreement, or a statutory retention or erasure obligation. With cloud services this is plainer still: the provider holds the physical carriers, while the customer has only contractual claims to access, export and deletion.

In short, ownership extends at most to the infrastructure, not to the personal data themselves. And that is precisely why the GDPR does not regulate ownership of a delimited object, but every processing of personal data, on whatever carrier and in however many copies they exist.

A name, a conclusion and intellectual property

The distinction becomes sharper through a simple example. If I write a colleague's name on a sheet of paper, the paper is my property. The name may at the same time be personal data about my colleague. The isolated name, or the fact that someone bears it, will ordinarily not be a copyright work: it is information rather than an original form of expression.

If I then write my own analysis or conclusion about that colleague, several legal layers may coincide. The conclusion may be personal data if its content relates to him; the Court of Justice has confirmed that subjective assessments can be personal data (*Nowak*, paragraphs 34-35). The text in which I formulate that conclusion may, in addition, attract copyright if it is the author's own intellectual creation. Copyright then protects the original expression, not the underlying fact, person or personal data as such (see CJEU *Infopaq*, C-5/08, paragraphs 37-39, and *Cofemel*, C-683/17, paragraphs 29-31).

There is therefore no point at which thoughts suddenly become "ownership of personal data". Different rights may arise side by side: property in the physical carrier, copyright in an original text, possibly a database right in a collection produced through substantial investment, and GDPR rights of the person about whom the text conveys information. None creates a general property right in the semantic information itself. This overlap explains why asking "who owns the data?" is too coarse; the legally relevant questions concern the protected object, the use at issue and the applicable regime.

What the GDPR does give

Anyone who reads Chapter III of the GDPR, the rights of the data subject, will find no provision stating that the personal data are "of" the data subject. What the Regulation does provide is a set of procedural and substantive rights: access (Article 15), rectification (Article 16), erasure (Article 17), restriction of processing (Article 18), objection (Article 21) and, as the only one with a quasi-property-like character, data portability (Article 20). None of these rights claims that the data subject is the "owner." On the contrary, they presuppose that a third party, the controller, determines the purposes and means of the processing (Article 4(7) GDPR), and that the data subject exerts influence on it through these rights.

That division of roles is also visible in the case law. In *Nowak*, the Court emphasises information that *relates to* the data subject, a formulation that fits data protection rather than the language of ownership (CJEU 20 December 2017, C-434/16, ECLI:EU:C:2017:994 (*Nowak*), paragraphs 33-35). The case was not about whom the exam "belonged to," but whether the assessment processed in it says something about the student. To reason in those terms is to move within a different legal framework than that of property law.

Why the EU legislature made this choice

The European choice fits the scheme of the Charter. Article 8 places data protection alongside, and expressly distinct from, the right to respect for private life (Article 7) and the right to property (Article 17). That systematic separation supports the conclusion that data protection is an autonomous protective regime; it does not, by itself, prove that no proprietary right can ever attach to any information-bearing object. That question depends on the separate legal characterisation of the carrier, the work, the database, the contractual position and the information.

The choice aligns with what the GDPR itself formulates as its aim. Not assets, but the fundamental rights and freedoms of natural persons (Article 1(2) GDPR; cf. recitals 1 and 4). The vocabulary is a different one from that of property law: fair processing, transparency, purpose limitation, data minimisation. These are not concepts of ownership.

Data portability: a quasi-property mechanism, not a property right

The right to data portability (Article 20 GDPR) is sometimes cited as evidence to the contrary. After all, the data subject can "take" his data to another service provider, and a true owner could do the same.

The scope of Article 20 is, however, far narrower than a property right would suggest. It applies to data that the data subject has "provided" to the controller, a notion that, according to the guidelines of the Article 29 Working Party, covers both actively provided data and data observed through use of the service (Article 29 WP, 2017: 9-10). It applies only where the processing is based on consent or a contract, and only in so far as the processing is carried out by automated means (Article 20(1) GDPR). Derived data, such as profiles, scores or an insurer's conclusions, fall outside it. These limitations diverge from what one intuitively associates with ownership, in which the power of disposal is in principle broader and is not tied to the source of the object.

What do we gain by this choice?

The appeal of the property metaphor lies in its simplicity. Whoever owns something can protect it; whoever sells something receives something in return. For personal data, that model works counterproductively. A property model implies tradability, and with it the possibility of definitively surrendering personal data in exchange for a service, a discount or platform access. The GDPR seeks precisely to prevent personal data from becoming tradable without safeguards. Under the Regulation, consent can be withdrawn at any time (Article 7(3) GDPR); a transfer of ownership, in principle, cannot.

The fundamental-rights approach offers a safeguard that a market does not: protection persists, even if the data subject were to wish to give away his rights at an unfavourable moment. See CJEU 4 July 2023, C-252/21, *ECLI:EU:C:2023:537 (Meta Platforms)*, in which the Court looks critically at the validity of consent where access to a service is made conditional upon it; and the guidelines of the European Data Protection Board (EDPB, 2020). The GDPR requires such consent to be "freely given" (Article 4(11) GDPR). Property law knows no comparable explicit quality requirement on the formation of will; there, free will is corrected mainly after the fact, through the general defects of consent (Articles 3:33 and 3:44 of the Dutch Civil Code).

Conclusion

Personal data are not the property of the data subject. They are about the data subject, and through the scheme of the Charter and the GDPR the EU legislature has chosen a different protective regime: control through rights, not tradability through ownership. Conflating these concepts can lead to misconceptions about the nature and scope of the protection the GDPR offers. With the debates over data economies, AI training data and "data wallets" that seem inevitable in the years ahead, that clarity deserves legal precision.

Or, more briefly: I do not own my data. The GDPR protects me nonetheless.

References

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- 1 [Charter of Fundamental Rights of the European Union](#), OJ 2012/C 326/02, Articles 7, 8, 17 and 52.
- 1 CJEU 20 December 2017, C-434/16, *ECLI:EU:C:2017:994* (Nowak v Data Protection Commissioner).
- 1 CJEU 16 July 2009, C-5/08, *ECLI:EU:C:2009:465* (Infopaq), paragraphs 37-39.
- 1 CJEU 12 September 2019, C-683/17, *ECLI:EU:C:2019:721* (Cofemel), paragraphs 29-31.
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- 1 Terstegge, J. (2025) *Grip op de AVG: de privacywet voor niet-juristen* [Mastering the GDPR: the privacy act for non-lawyers], 4th revised edition. Deventer: Wolters Kluwer, chapter 9.5, p. 125.
- 1 Dutch Copyright Act, in particular Articles 1 and 10; Dutch Database Act, in particular Articles 1 and 2.

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