Sebastian Lohsse/Reiner Schulze/Dirk Staudenmayer (eds.)

Data as Counter-Performance – Contract Law 2.0?

Münster Colloquia on EU Law and the Digital Economy V





Nomos

Sebastian Lohsse/Reiner Schulze/Dirk Staudenmayer (eds.)

Data as Counter-Performance – Contract Law 2.0?

Münster Colloquia on EU Law and the Digital Economy V





Nomos



Onlineversion Nomos eLibrary

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at http://dnb.d-nb.de

ISBN: HB (Nomos) 978-3-8487-7606-1

ePDF (Nomos) 978-3-7489-0853-1

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN: HB (Hart) 978-1-5099-4031-8

Library of Congress Cataloging-in-Publication Data

Lohsse, Sebastian / Schulze, Reiner / Staudenmayer, Dirk Data as Counter-Performance – Contract Law 2.0? Münster Colloquia on EU Law and the Digital Economy V Sebastian Lohsse / Reiner Schulze / Dirk Staudenmayer (eds.) 284 pp.

Includes bibliographic references.

ISBN: 978-1-5099-4031-8 (hardcover Hart)

1st Edition 2020

 $\ensuremath{@}$ Nomos Verlagsgesellschaft, Baden-Baden, Germany 2020. Printed and bound in Germany.

This work is subject to copyright. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or any information storage or retrieval system, without prior permission in writing from the publishers. Under § 54 of the German Copyright Law where copies are made for other than private use a fee is payable to "Verwertungsgesellschaft Wort", Munich.

No responsibility for loss caused to any individual or organization acting on or refraining from action as a result of the material in this publication can be accepted by Nomos or the editors.

Foreword

With ongoing digitization, data is increasingly seen as a tradable asset. Accordingly, digital content and digital services are frequently provided in return not for money but for data. The 5th Münster Colloquium on EU Law and the Digital Economy, held on 16th and 17th May 2019, brought together scholars and practitioners from across Europe for an in-depth discussion of issues surrounding this role of 'data as counter-performance'. Its impact on the economy and contract practice will be one of the central aspects in the further development of contract law and of consumer protection in the digital age. This is true, in particular, since data as counter-performance has also become a subject of European legislation with the new EU Directive 'on certain aspects concerning contracts for the supply of digital content and digital services' (whose publication in May 2019 coincided with the Colloquium).

The publication of the results of the 5th Münster Colloquium in this volume aims to stimulate the further discussion on this subject matter and to contribute to the development of modern private law. The editors kindly thank Karen Schulenberg for her role and support in the organisation of the Colloquium and in the preparation of this volume.

June 2020

Sebastian Lohsse Reiner Schulze Dirk Staudenmayer https://www.nomos-shop.de/isbn/978-3-8487-7606-1

Contents

Data as Counter-Performance – Contract Law 2.0? An Introduction	9
Sebastian Lohsse / Reiner Schulze / Dirk Staudenmayer	
Legal Nature and Economic Value of Data in the Contractual Relationship	
A Market Model for Personal Data: State of Play under the New Directive on Digital Content and Digital Services Axel Metzger	25
Regulating the Economic Impact of Data as Counter-Performance: From the Illegality Doctrine to the Unfair Contract Terms Directive <i>Philipp Hacker</i>	47
Management as Ownership of Data	77
Sjef van Erp	
Data Extra Commercium	95
Václav Janeček / Gianclaudio Malgieri	
Performance of Contract and Withdrawal from the Contract with respect to Data Protection – Contract Law at a Crossroads?	
Right to Withdraw Consent to Data Processing – The Effect on the Contract	129
Martin Schmidt-Kessel	

Contents

Article 16(2) of the 'Digital Content and Digital Services' Directive on the Consequences of Termination of Contract, or the Difficult Articulation between Union Law on Consumer Contract and Union Law on the Protection of Personal Data	147
Juliette Sénéchal	
Termination of the Contract for the Supply of Digital Content and Services, and Availability of Data: Rights of Retrieval, Portability and Erasure in EU Law and Practice	163
Sergio Cámara Lapuente	
Personal Data in Data Value Chains – Is Data Protection Law Fit for the Data Economy?	193
Christiane Wendehorst	
Autonomy or Heteronomy – Proposal for a Two-Tier Interpretation of Art 6 GDPR	225
Andreas Sattler	
Data as Counter-Performance in B2B Contracts Martin Fries	253
with thes	
Discussion Panel	
Statement	265
Benjamin Görs	
Data as a Counter-Performance Anne Riechert	267
Anne Riethen	
	279
Rebekka Weiß	
Contributors	283