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Informed Consent: From Protection of Freedom to Protection of Digital Assets

Éfren Paulo Porfírio de Sá Lima, Alexandre Bento Bernardes de Albuquerque

Law Department, Federal University of Piauí (UFPI), Teresina, Piauí, Brazil
Email: efrencordao@ufpi.edu.br, alexandre.albuquerque@ufpi.edu.br

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Abstract

Societies live in constant evolution and transformation, requiring from the law answers capable of providing the legal certainty required for their development. The answers to some problems that have arisen in society, owing to changes, can be achieved through the adjustment of existing institutes, some of them already secular. Informed consent is an example of this type of institute that allows solving problems in a different fashion than those currently in practice. It is an institute with centuries of existence and not regulated in Brazil, providing protection for physical safety, health, freedom, and information in the doctor-patient relationship. In these first years of the 21st century, this same institute took an important role in the wake of technological development, becoming an important tool for limiting the use of personal data. In this scenario, a new adjustment to support rights comes on the horizon, with a view to protecting digital goods in the face of the extinction of data storage service agreements.

Keywords

Informed Consent, Information Society, Digital Goods, Changes in the Private Order

1. Introduction

Law presents the most diverse answers to problems and conflicts arising in society. The mutability of society imposes on Law an evolution that seeks to meet interests and responses to conflicts. Regulation is always on the agenda when a new social situation arises, but the questions raised before society need effective and immediate answers, which entails paths based on analyses of existing institutes and their appropriateness.

In some situations, protection arises from the scholars themselves and from

the courts, which, when analyzing a certain situation, spot the need for support and protection of the individual and society. An example of this phenomenon happened in 2011, when the Federal Supreme Court (STF), when reviewing the stable union between same-sex couples, understood it as a family entity, grounded on the tenets of the dignity of the human person and the right to happiness (Albuquerque, 2012: pp. 22/23).

In recent years, a different society has emerged, with clamors and changes never expected and experienced. In addition to its own social mutability, there is a technological revolution that fiercely affects the relationships between individuals. And once again, the law will be in charge of the care of individuals and a society that does not realize the changes undergone and conflicts that have arisen, some new, but several only with new clothing.

Such conflicts cannot be taken for granted. The law needs to resolve them by seeking solutions in adapting existing institutes or innovating in the search for new ways to apply the Law. In recent years, life has changed from a mere reflection in the digital world to the experience of a virtual world with its own characteristics, which leads individuals to new experiences, new interests and new materializations of old rights, such as the rights to freedom, health, personal data, and property.

These new experiences embody the interest of each individual, triggering countless contracts every second, which are established through networks. Private relationships provide a plethora of data circulating on the world wide web. These relationships are the reflection of the interest of each individual who seeks items for a full and better life.

Evolution and changes are conspicuous, and the legal scholar cannot underestimate this situation. For instance, in this new reality institutes such as miserable depositum, closed will, *emptio rei speratae* and antichresis are no longer used by ordinary individuals, and such change betokens a world abounding in innovations and novelties (Nicolau, 2009: p. 13).

Institutes undergo the adjustments that society imposes, some losing their usefulness before the average man, and ultimately forgotten. Others may arise due to new relationships and applications, or some may be reborn in a refashioned way, with the aim of providing better paths for this average man and his social experience.

Among the institutes, one resurfaced and occupied a prominent place in the protection of physical safety, health, and especially freedom. This is the institute of informed consent, which, from the construction of courts and researchers, maintains protection in the best interest of thousands of patients undergoing health treatments (Lima, 2016b).

Informed consent imposes the protection of fundamental rights of the human being. Even though it is not an innovation arising from the twentieth century, it reaches its peak at this moment, when the protection of health, freedom, and physical safety have arisen as fundamental rights of human beings, in the hope that atrocities would not be repeated.

It ends up taking up an important space in the relationships between doctors and patients (or whoever represents them), since it imposes the duty of the doctor to have all the information about the procedure and its consequences with absolute clarity, including any risks, and the doctor cannot escape his responsibility for the information.

Once this space is taken up for the defense of patients' rights, a new page is turned as concerns this institute, owing to the dramatic social transformations triggered by the digital revolution. In a world pervaded by data, informed consent has come to have a modern and virtual mission, protecting the interests of the individual with regard to their digitalized data.

This study presents informed consent. It uses empirical knowledge to show the importance and application of the said institute. The research, based on the outlining of consent over time, deals with the transformations in its use and in the very development of its legal nature. It also demonstrates its new applications in a fast-paced world, clouded by the immense amount of data that surrounds it (De Carvalho, 1997: p. 11)[1].

The starting point of the research is the current form of use of informed consent, its obligation and its own characteristics, including, in Brazil, the absence of regulation. Based on these particularities, we seek the generalization to be applied to the institute, through the inductive method (Henriques & Medeiros, 2003: p. 36). By this method, the concept, form, and use of informed consent will be addressed.

The research is qualitative with a focus on bibliography. Specialized works were consulted in order to obtain information on the form of existence and use of informed consent, while legal works were consulted in search of support for the existence of this institute and its protection, reviewing its interpretations and narratives.

The present research is prominently cross-disciplinary, owing to the fact that its subject-matter is discussed in both branches of Law and in technological sciences. In these lines, this article regards informed consent and its application in the protection of health and safety, seeks to show its transformation for use in the protection of personal data, ultimately expanding upon the new mission of informed consent, the protection of digital goods.

2. The Informed Consent

Consent is the mainspring of world of transactional relationships. Contractual relations only arise for the legal world after the exposure of will. The birth of a private legal relationship depends directly on the expression of will of the parties involved in it. Thus, it is the initial milestone of legal relationships of a private nature, without acceptance there is no link and in this case another relationship

[1]Interesting speech presented about this new world: The human being has been conditioned to act faster and faster; not to stop (inertia has a negative value) and to engage in several activities at the same time, (dynamism, on the other hand, is positive).

may originate, of a reparatory or compensatory nature (Rizzardo, 2015: p. 519)[2].

The contractual establishment depends on the institute of consent that produces effects among the participants who issued their wills. Consent, either express or tacit, should be free and spontaneous, otherwise, it may have its validity or effectiveness impacted by the defects of the legal transaction (error, intent, coercion, state of danger, injury, and fraud) (Gonçalves, 2022: p. 39).

The importance of the manifestation of will is undeniable, as it plays a preponderant role in the legal transaction, being one of its basic elements. Such volitional declaration should be free and in good faith, and may not contain a defect of consent, nor social, under penalty of transaction invalidity or ineffectiveness (Diniz, 2022: p. 173).

The expression of the will to consent to a contract is protected by the principle of contractual freedom, based on the power of the parties to give rise to the effects they intend. The principle of freedom is founded on the freedom to perform the contract itself; the choice of with whom to contract and the type of content and effects of the contract, but this freedom may be conditioned to the existence of mandatory or non-mandatory rules on the subject-matter of the legal transaction (Amaral, 2018: p. 132).

These are the issues revolving around the establishment of the contract itself, which would be naturally raised, since informed consent is an institute applied to the doctor-patient relationship, but this is one of the first precautions that should be taken when this topic is addressed. Informed consent is not a manifestation of the formative will of a doctor-patient contract; it arises at a later time, when, after the establishment of a doctor-patient bond, the correct transmission of treatment or procedure information should occur in order to obtain the necessary consent (Farah, 2009).

Note that there are several "paths" taken for the establishment of this type of bond, the patient can go directly to the doctor in search of an assessment or situations may occur in which the patient cannot express his will (cases of medical urgency), which provides a great diversity of types of relationships, and when it comes to liability, there will also be issues involving civil, consumer, and labor laws (Moraes & Guedes, 2015: pp. 11-17).

Care in the analysis of the type of bond between the physician and the patient is of utmost importance, since the type of bond is defined and elements such as civil redress and statute of limitations come into play (Lima, 2022)[3].

In the development of doctor-patient relationships, there is a search for a health provision that facilitates the satisfaction of the patient's interest (treatment, research, cure of a disease or aesthetic change…), here, after the estab-

[2]In Rizzardo's words:—"Consensus requires a communion from side to side, that is, the wills of both parties communicate and combine through proposal and acceptance. Someone makes the proposal, or issues a declaration of will. The other party takes note of the proponent's statement, accepting it. Therefore, there is proposal and acceptance. Once the two declarations of will come into accord, or get integrated, the consent is mutual, and the business can take place."

[3]This subject is important and interesting, and can be deepened by a keen reader, but not in this article, since the aim for this paper is to address the informed consent itself. Suggested reading on the subject.

lishment of the relationship, the construct of informed consent appears as necessary for the performance of the medical activity, as a way to protect the patient's interests and avoid any reparatory requirements.

Informed consent is of crucial importance in the relations between doctors and patients, constituting the right to obtain clear and precise information about a particular medical practice, in order to protect the right to freedom, health, and physical safety of patients.

Informed consent enables the patient's freedom, since after receiving all the information about the treatment and its consequences, it allows the patient or their representatives to inform the physician of the willingness to proceed or not with the path suggested by the health professional. Therefore, it is not an act of contractual establishment, but a requirement for the validity of the medical act (Lima, 2016b: pp. 2-3), especially the provision of health care.

The exercise of this right in the third decade of the 21st century is consensually accepted, being considered as a power of the patient to dispose and control their personal and intimate information so that they can decide when and under what conditions it is appropriate to reveal the situations pertaining to their health and life (Seoane, 2013: pp. 13-34). Here we can already see a step in the evolution of this institute, insomuch as it relates to the issue of personal data.

Informed consent took a few years to be regarded and respected, providing that it is part of the doctor-patient relationship, which for centuries treated the patient in a supporting role, the one who merely provided the information to facilitate the diagnosis (Soares, 2020: pp. 8-10). The evolution of society imposed the change in this type of relationship, even without an express regulation, doctors, directors, clinics, and hospitals began to abide by the will of those who are most important in this relationship, the patients (Nascimento, Espolador, & Crivilim, 2023: p. 168).

For centuries, the relationship between doctor and patient was centered on the figure of the individual who had all the knowledge and exercised the job of saving lives, the doctor. In the paradigm of paternalistic medicine there was the centralization of information and the physician judged what was relevant to be imposed to the patient, with rare exceptions in which there was some care with the will of the patients (Júnior, 2006: pp. 304-324)[4].

At the end of the 19th century, changes began to appear in social behavior that led to a change in the attitude of health professionals, especially after the decisions that based precedents imposing the need for clear information to the patient about the conduct carried out to protect their interests and health.

Some decisions, even before the 19th century, can be cited as first defenses to the right to Informed Consent (Miller, 2019)[5]. In the twentieth century there is a

[4]Crawford Long, the father of anesthesia, is an example of doctor who epitomizes respect for the patient's will. He performed several procedures enabling the anesthesia of his patients and avoiding the suffering and pain of such procedures.

[5]The case "Slater versus Baker and Stapleton" is regarded as one of the first to deal with Informed Consent. From 1767.

decision that is pointed out as the one of greatest reference for informed consent, namely the case of *Schloendorff v. Society of New York Hospital* (decided in 1914 by the Supreme Court of New York) (Lima, 2016b: p. 6).

In this case, the judge rules about the need to respect the patient's will by stating that "therefore the surgeon who carries out an intervention without the patient's consent commits an unlawful act, for which damages can be claimed" (Pereira, 2003: p. 26). Such position serves as one the first steps for the emergence of protection of the right to informed consent.

Unfortunately, such a glimpse of informed consent succumbs to human conduct during the main conflict of the twentieth century, because at the end of the great war there were news of the most despicable and abominable practices carried out in the name of research and with broad support in the ignominious idea of a superior race. The atrocities committed in the name of a nation and arbitrary, brutal medical studies and without due consultation of the people subjected to them projected intolerable horrors and crimes.

The post-war response came in the form of legislation that dealt with the protection of fundamental human rights and other issues. Fundamental rights began to be treated with a special and principled character, the most prominent one being the principle of human dignity transformed by the winning countries as a political goal (Ruiz & Silva, 2016: pp. 897-917).

In addition to this treatment of fundamental rights, international provisions have emerged addressing, among other topics, informed consent as a rule for performing any medical act, whereby the conduct should respect the best interest of the patient.

In the Nuremberg Code (1947), it is imposed that the voluntary consent of the human being is absolutely essential; in the Declaration of Geneva (1948) it is stated, in the first person, that the physician will not use his knowledge to violate human rights and civil liberties; and the Declaration of Helsinki (1964) provides for the need for medical consent to be voluntary (Jadoski et al., 2017: pp. 119-121).

In spite of a certain delay, Brazil could not remain parted from this global movement. The protection of this institute came, on Brazilian soil, from administrative resolutions, especially from the councils. Examples of these provisions are the Brazilian Code of Medical Ethics of 1988, and Resolutions No. 1/886 (1988), 196/967 and 196/96 of the National Health Council of the Ministry of Health (Sardenberg et al., 1999: pp. 295-296).

In addition to administrative rules, informed consent has been treated sparingly in the laws. Its application can be found in some rules, according to the type of bond between the physician and the patient[6]. In cases where there is a doctor-patient relationship provided by a professional, every doctor is a professional, although he can also be a public servant. The fact of holding public office

[6]Some rules that deal with the subject: See Article 1, III; Article 196; Article 5, XXXII; Article 170, V; Article 226, Paragraph 7; Law 9263/96 (Family Planning); Law 9263/96 (Voluntary Sterilization); Law 9434/97 (Removal of Organs) and Law 13146/2015 (People with Disabilities).

does not remove from the medical activity the nature of a professional act; the understanding is that it is a consumer relationship, with the application of the Consumer Protection Code[7].

The Civil Code does not specify the protection of informed consent; it only has an article limiting the form of treatment by stating that no one can be forced to undergo life-threatening medical treatment or surgical intervention (Article 15, Civil Code).

Éfren Lima points out the absence of specific legislation dealing with the subject, so the specific protection of informed consent has been made based on the review of Brazilian courts predicated on the interpretation of consumer protection legislation and private relations (Lima, 2016a).

It ought to be noted that the entire construction of the institute was one of struggle and the search for protection of the rights of the individual. The right to informed consent has the facet of not being the right by itself; it seeks the protection of other rights, almost as a tool for the protection of fundamental rights.

Informed consent, in its application in the doctor-patient relationship, protects the right to freedom, the right to information, the right to physical safety, and the very dignity of the human person. The institute has, in its essence, the protection of multiple rights, always seeking the best interest of the person. And its aim is exactly to protect the decision of the individual in his moment of greatest fragility.

But it does not end in protecting the patient. In the new millennium, the institute of informed consent was assigned a new mission, in the world of technological innovation; it was recruited for the purpose of protecting a fundamental right newly provided for in the Federal Constitution, the right to the protection of personal data[8].

3. The Protection of Personal Data and Informed Consent

The changes brought to society by technological advances are numerous, words such as internet, social media, *IoT* (Internet of things), *Big Data*, and *bitcoins* have been included in the vocabulary of the 21st Century individual. Such

[7]Article 6. The basic rights of the consumer are: I—the protection of life, health and safety against the risks caused by practices in the supply of products and services considered dangerous or harmful; II—education and dissemination on the appropriate consumption of products and services, ensuring freedom of choice and equality in contracting; III—appropriate and clear information about the different products and services, with accurate specification of quantity, characteristics, composition, quality, taxes and price, as well as the risks they pose; (…). Article 12. Manufacturers, producers, constructors, either domestic or foreign, and importers are liable, irrespective of the existence of fault, for the award of damages caused to consumers by defects in design, manufacturing, construction, assembly, formulas, handling, presentation or packaging of their products, as well as for insufficient or improper information on their use and risks.

[8]Article 5. Everyone is equal before the Law, without distinction of any kind, ensuring to Brazilians and foreigners residing in the country the inviolability of the right to life, freedom, equality, security, and property, in the following terms: (…) LXXIX—the right to the protection of personal data, including in digital media, is ensured, under the terms of the law. (Included by Constitutional Amendment No. 115, of 2022).

changes implied changes in society and in the relationships of individuals and these need the protection of body of law, new, by old or relevant institutes. These are transformations that the Law needs to keep up with in order to better protect society (Pinheiro, 2021: p. 24)[9].

Law accompanies these transformations through the updating of its institutes or the emergence of new ones. Among so many new issues, personal data stands out, owing to the possibility of affecting countless people, providing absurd profits or causing immense corporate and individual losses, as an example of this situation, the leakage of 540 million Facebook data (Neto, Freitas & Holanda, 2022: p. 45) and its recent conviction in two public-interest civil actions summing up to BRL 20,000,000.00 (Migalhas Jurídicas, 2023).

The key point about the use and need for data protection is Big Data. This term, which does not have a single concept, designates new means of capturing, analyzing, storing, and extracting value from a large amount of information, providing decision-making through automated tools (*machine learning*)[10] (Netto & Maciel, 2021: p. 118), also enables an increase in business and government efficiency, innovating in business models, generating substantial wealth and saving valuable resources (Gomes, 2017: p. 8).

Digital data is called the crude oil of modern society, which bespeaks the importance of this data for the economy and people, meanwhile this comparison with oil shows the diversity of data use, as technological, economic, political, social possibilities arise, stemming, among others, from the availability of these "raw materials." usually linked to changes in various social areas (Wolfgang, 2021: p. 47).

Companies, especially *big techs* (large technology companies—Google, Amazon, Apple…), know the gross and aggregate value that all this information has, especially the information of users of the World Wide Web. In this set of information about the individual, many decisions can impose changes in their routine, some of them unsatisfactory.

This information about the individual is his data, divided into two species. Personal data have a very personal character, since they determine its subject as well as identify it. And sensitive data, which are those that deal with issues of racial origin, ethnicity, beliefs, and preferences of the individual. All this information has political and economic value (Sarlet & Caldeira, 2019: p. 2).

Personal data has acquired great importance in modern times, its use can be in the search for market consolidation, when *big techs* use it for product and service offerings or when used illegally, by the most diverse natural and legal actors, and can cause material losses and the decline of the individual's own health.

[9]As Peck points out: "If the Internet is a medium, such as radio, television, fax, telephone, then there is no need to talk about Internet Law, but rather about a single Digital Law that meets the great challenge to be prepared for the unknown, whether applying old or new rules, but with the ability to interpret social reality and adjust the solution to the concrete case at the same speed as society's changes."

[10]According to Nelli (2015), Machine Learning is the subject that makes use of a whole range of procedures and algorithms to identify patterns, clusters or trends and then extract useful information for data analysis, in a fully automated way. Roughly speaking, it can be said to be mathematical methods used to train algorithms that identify patterns.

Two questions arise about personal data: collection and use. Law 13709, enacted on August 14, 2018 (LGPD[11]), holds the answer to both questions (Lugati & De Almeida, 2022)[12]. It deals with all care in the processing and use of individual data, protects the exercise of the fundamental right to the protection of personal data, especially as a way to prevent the misuse of data (either by the companies that collect this data or by those that through data leaks use it for illicit purposes).

In this legislation, the institute of informed consent expressly appears[13]. Contrary to what happens in the doctor-patient relationship, its application is expressed in the protection of personal data, which shows the progress and its importance to the subject (Bioni, 2021: p. 116).

It should be noted that LGPD laid down the correct importance on informed consent, providing for the need for its exercise by the recipient of the legislation (the owner of the data). Unambiguously, the wording of Article 5, XII, considers "consent: free, informed, and unequivocal manifestation by which the subject agrees to the processing of their personal data for a determined purpose."

Consent to the use of data also enables informational self-determination in protection, since the data subject can establish limits on the use of their data. This occurs because the consent to data processing is not absolute, in the case of circumstantial, purpose or understanding changes, the consent may be revoked (Paiano & Schiavon, 2021: p. 160).

The protection of personal data arises as a response to the effects of modern and technological life, including exposure, to which everyone is subjected. It is accomplished in the most assorted ways, at all times the user of the networks provides data such as name, email, WhatsApp number, among others. LGPD protects the way in which this data is collected and used, meanwhile it provides users with the foremost position to control the use of their data, their right being to consent or revoke (De Teffé & Tepedino, 2020: p. 93).

The use of personal data by those who collect it depends on specific consent and is informed of the type of data, form of collection, and its destination, and cannot be used in a manner other than that in which it was informed to the data subject. The rule of clear information to the data subject is a true dogma to consent applied in LGPD. The destination cannot be changed, under the penalties of administrative fines or the request for reparation directly from the person who requested the data and changed its destination.

Informed consent plays a prominent role in the protection of personal data, making the individual the main player and controller of their information, thus showing the importance of this institute today, albeit a new requirement for consent, the protection of digital goods, appears on the horizon.

[11]LGPD—Lei Geral de Proteção de Dados (General Data Protection Law).

[12]For more data on the legal evolution of Data Protection in Brazil see: Lugati, LN. and DE ALMEIDA, JE. (2022) A LGPD e a construção de uma cultura de proteção de dados. Revista de Direito. v.14. n.01. p.01-20.

[13]The importance of consent in data processing is so strong that the word "consent" is transcribed 35 times in the LGPD.

4. Protection of Digital Assets: A New Mission to Informed Consent?

Modern life entails the production of a large amount of data, each individual produces, consumes, makes available or files an immense amount of data, including emails, music, videos, photos, and audios. Just to give an idea of the amount of data circulating in Brazil, according to the Brazilian Internet Association (ABRANET), in 2023 there will be 199.8 million users on the internet (ABRANET, 2020).

This number of individuals produces and files digital content, their warehouses being machines or "clouds." Some of these items are digital goods, which are an organized set of instructions, in language format, stored digitally and with preset functionalities (Silva & Greco, 2019: p. 6).

These digital assets are a set of files in binary format, which would constitute the digitalized assets of a person, natural or legal (Taveira Júnior, 2018: p. 74), and may have usefulness and financial valuation. They are presented as unique items with property characteristics for the individuals who use them and keep them stored on their computers, smartphones or in the clouds. Examples of digital goods are various types of files, such as e-books, audios, videos, images, texts, emails, digital currencies, and NFT's.

These goods have their own characteristics, which can provide a legal nature of ownership to their users. The property is an ancient institute that enables the accumulation and circulation of wealth. This institute has undergone changes as a result of the social changes to which the individual has been subjected, the "concept and understanding, until reaching the modern conception of private property, have suffered numerous influences in the course of the history of various peoples, since antiquity. The history of property is a direct consequence of political organization" (Venosa, 2003: p. 178).

The right of owner, or the exercise of the right of ownership, is that which arises from the faculty of an individual to use, enjoy, dispose of and the right to recover anything from someone who unjustly owns or holds it, being able to exercise his right against any person, limited to the requirements of the social function[14]. This right is fundamental, as well as supports and protects the very existence of the good, object of the property.

Digital goods can be stored in the owner's own equipment or remotely, on the world wide web, and it is this situation that can expose the owner to vulnerability, and limit the exercise of their property right. Filing through the web is done by hiring a very common and popular service called "clouds."

This type of service is only possible due to Cloud Computing technology,

[14]The Federal Constitution, Article 5 (…) XXII—property rights are guaranteed; XXIII—property will meet its social function. In Civil Code, Article 1228. The owner has the power to use, enjoy and dispose of the property, and the right to reclaim it from the power of whomever unjustly possesses or owns it. Paragraph 1. The property right should be exercised in accordance with its economic and social purposes and in such a way that, in keeping with the provisions of a special law, flora, fauna, natural wonders, ecological balance, and historical and artistic heritage are preserved, as well as air and water pollution is avoided.

which provides access to files and use of computer programs (or applications) through the world wide web, without the need for a local and complete machine, which reduces costs for individuals and companies.

This technology stands out in a period that data files are increasingly larger for better quality images, audios, and videos. Its importance is linked to the current lifestyle of society, always interconnected to the computer network and with access to Big Data. It is a service in which the internet user contracts with a provider to have remote access to all their files, securely and quickly processing data (Silva, Favera, & Olmos, 2018: p. 94).

The economic issue is very strong in this type of technology, precisely because users do not need to have large financial resources invested in high-tech equipment with larger memory spaces, and also have the advantage of not having to move equipment or hardware (flash cards, pen drivers…) to access their files, but simply to log into a computer or smartphone to have access to all their digital assets.

Even though it is advanced and presented as safe, there are risks in the use of this type of technology, such as security (privacy and confidentiality), regulatory issues, commitment to the availability of information (David, Alves, Nunes, & Oliveira, 2022: pp. 540-541) and the loss of data itself (Forbes, 2015).

Aside from the technological issues themselves, there is a relational situation, resulting from the user and storage service provider contract, which implies care and deserves attention. Provider companies impose their rules on the user, who often does not understand or even read the service agreement and the consequences on the digital goods filed.

The user may not be properly informed about the conditions under which their file will be stored. He may not be aware of the loss due to operational problems or due to the expiration of his storage services agreement, which may result in the absence of access to his files, as well as the loss of ownership of the so-called digital assets.

Those contracting this type of services are informed of the policy and terms of use unilaterally, through an immense text that does not focus on thorny points of the contract and that deserve due attention, among them, what happens to the files in the event of the end of the provision of service, either by loss of access or termination of the contract in the most diverse ways.

The terms of use inform the situations that the provider considers important, but unfortunately their interests are not always commensurate with those of the user. Clarity of information not provided in the terms of use is necessary, besides the fact that the term of use will not necessarily provide adequate protection. Such a situation will result in judicialization and the use of objective good faith in the execution of the contract.

In order to materialize the situation and show how these terms work in the "real" world, see the Apple term, available on its website. Apple provides the following information about iCloud, its data storage service:

VII. Termination

> A. Voluntary Termination by You
> (…)
> B. Termination by Apple
> (…)
> In addition, Apple may terminate your Account upon 30 days' prior notice by email to the address associated with your Account if 1) your Account is inactive for one (1) year; or 2) the Service is generally discontinued or if there is a material modification to the Service or any portion thereof.
> (…)
> C. Effects of Termination
> When your Account is terminated, you may lose all access to the Service and portions thereof, including but not limited to your Account, Apple ID, email account, and Content. **Also, after a while, Apple will delete the information and data stored in the Account**. Any individual components of the Service that you may have used subject to stand-alone software license agreements shall also be cancelled pursuant to those license agreements. (APPLE, 2023)

This term expresses the hypotheses of account termination and a warning about the consequences of termination. The possibility of data deletion is real. Digital goods, stored in these spaces, will be deleted. Once this act is performed they will cease to exist. Being property, such assets cannot have their existence exhausted as presented.

The loss of traditional property may occur 1) due to the owner's desire for disposal, waiver, abandonment and 2) involuntarily by the perishing of the property and expropriation, according to Article 1275 of the Civil Code. It is important to remember to be careful with other specific causes of loss, such as accession and adverse possession that depend on a specific law (Tepedino, Filho, & Renteria, 2022: p. 191).

The situation particularly expressed in this article deals with the termination of the storage contract and the possibility provided for in the provider's contract, without further explanation, to delete all filed content, without providing the user with the chance to transmit or send these digital goods to another storage location.

Here the new function to be performed by informed consent arises, since the loss established elsewhere should only occur after full, clear, and specific information about the destination of the account in the event of contractual termination, either at the time of establishment of the relationship or at the time of declaration of the discontinuance of the relationship.

Thus, it should be considered that, in a cloud storage service agreement, the protection of digital goods will be necessary in two moments. First, when preparing and accepting the terms of service, there must be clear, specific, and separate information on the destination of the digital goods in the event of the expiration of the agreement.

In addition, a second moment protection will be needed as pertains this information, if the contractual termination is effected, the user should be notified, in order to mitigate his risks of loss, providing the chance that he protects his digital assets by copying in another medium and for a given period.

Thus, the call for informed consent to the protection of ownership of property rights comes into play, insomuch as there is no legislation on the subject, as well as the courts have not yet matured theses on this situation, and this important institute should thus be further developed.

5. Final Considerations

Informed Consent is an important institute, which emerged after many doctrinal and caselaw debates, always seeking the protection of the individual regarding their health, physical safety, and information.

Its use was cemented after debates and the need to protect the rights of the individual, especially information, and applied in the doctor-patient relationship, when, even without clear regulations, it was adopted in order to provide people undergoing medical care with the need for awareness about all procedures and their consequences.

The protection and respect for the choice of the individual were evident when informed consent was consolidated as a duty of health service providers, and no treatment or procedure can be performed without all the information being presented.

Expressly, informed consent has become decisive for the exercise of the right to personal data; the regulation of the General Data Protection Law imposes the controller's duty to receive the free, informed, and unequivocal manifestation of the data subject agreeing to the processing of their personal data for a certain purpose.

The institute of informed consent was adapted to the needs of technological and virtual society, as it began to provide protection to the individual based on regulation, including with constitutional support for the protection of personal data as a fundamental right.

In this paper, a new horizon was opened, the use of informed consent in the protection of rights over digital goods. There is no doubt that the immense circulation of data on the internet and the way this data is stored can subject an average man to new situations, never experienced, and this data provides just that.

Some data, as demonstrated, acquire the nature of what was called digital goods, being valued, having utilities, and being subject to the interests of its user, which allows the need for protection in a different way of a service agreement or a mere assignment of rights of use.

The owner of these digital assets cannot be subject to the loss of these by a unilateral act of a firm providing services in the clouds. Rather, it is essential that these firms make clear the procedure in the event of unilateral breach of contract, every owner has the right to act in order to avoid any losses to which it

may be subjected.

The way out proposed, in these cases, is that the service provider firm clearly informs the procedure to which the owners of these goods will be subjected, and this information must be presented prominently and specifically to show the consequences in the event of unilateral termination, at first.

And if the contract reaches its moment of termination, the provider should also take care of notifying the owner of the digital assets, acknowledging the deadline for them to have the right of protection and proceed with the transfer of the digital assets to a new place capable of storing them and protecting them from loss.

If these procedures are not followed, there will be the possibility for the owner to submit this matter to the courts, especially in the cases of single files, which have not been stored elsewhere or copied, seeking redress for the loss of their property.

These protections, in the latter aspect, have not yet been addressed by caselaw and most of the doctrine, but when faced with the amount of information stored in the clouds and the emergence of internet 3.0, which will greatly increase the use of clouds, they will certainly soon become common themes in the courts.

This presents users and, above all, service providers with the need to anticipate debates and possible losses. Informed consent emerges as a solution capable of avoiding damage to users and a duty to redress to providers. The simple act of providing more clear, express, and specific information in the search for the user's consent will accomplish this protection.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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