DIGITAL ASSETS: 'THE GOVERNMENT' IS NOT GOING TO BAN THEM

Benjamin Dean – Director, Digital Assets
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2022 has seen a number of major public policy shifts for digital assets in the United States, United (UK) Kingdom and the European Union (EU). Far from banning digital assets, the new announcements are overt and positive signs that digital assets are being integrated into existing regulatory and legislative frameworks in different parts of the world. Now that the scale and benefits of digital assets are too great to ignore, governments in these countries are now playing catch-up with Switzerland and Singapore. The latter now serve as home to thriving digital asset industry clusters due to the clear regulatory and legislative positions established years ago.

The digital asset ecosystem is not the wild west that it once was. It is maturing, becoming safer and more could benefit as it becomes more regulated. This is the same process that many technologies go through as they become 'part of the furniture'[1]. Using these networks will become second nature just as many don't think twice anymore when using Global Positioning System (GPS) to navigate a city they've never been in before.

Scale that has become impossible to ignore

The digital asset ecosystem reached an all-time high of over USD$3 trillion in market capitalisation in November 2021[2]. The benefits that this new technology brings – such as increased speed, accessibility and transparency – are becoming too great to ignore. At the same time the potential risks – particularly related to cybersecurity and criminal activity – are now well known.

The first major announcement came out of the United States of America (USA). In March, the Biden Administration announced the "Executive Order for the Responsible Development of Digital Assets"[3]. This is a finely-worded policy document that clearly lays out potential benefits and risks from digital assets then tasks various federal agencies to investigate and provide recommendations on how the USA can continue to be, "a global leader, growing development and adoption of digital assets and related innovations", and, "defend against certain key risks, necessitate an evolution and alignment of the United States Government approach to digital assets."

Not wanting to be left behind, the United Kingdom's Treasury announced their intention to make the UK the 'global crypto hub'[4]. While details are scant, some initial initiatives include, "legislating for a 'financial market infrastructure sandbox' to help firms innovate, a 2-day Financial Conduct Authority (FCA)-led 'CryptoSprint' event in May 2022, working with the Royal Mint on a Non Fungible Token (NFT) and an engagement group to work more closely with industry."

Finally, the Markets in Crypto Assets (MiCA) proposal is snaking its way through various working groups in the European Parliament[5]. While the actual wording of this proposal is under constant review, if it continues to progress it will eventually be reviewed by Parliament, the European Commission and Council of Europe en route to providing the EU with a unified framework for regulating digital assets.

Governments deal with new technology in different ways

Each government will take a slightly different approach based on their own domestic political structure, how developed the digital assets industry is in their jurisdiction and other policy imperatives. The approach can take time to develop and can also evolve over time. This is no different to previous waves of technological change. Railroads went through a round of legislative efforts in the United Kingdom during the 1840s to raise safety standards of train carriages and lines[6]. So too did car safety in the United States due in part to the work of Ralph Nader in the 1960s[7].

The most recent major technology wave, the Internet, is still playing out. One facet of internet governance, data protection and privacy, is handled very differently in the United States. Where there is no federal digital privacy legislation, to the European Union and its General Data Protection Regulation and Directive (GDPR). This didn't happen overnight - it took two decades for the GDPR to be developed and implemented. Another example can be seen in the way that speech is regulated online. Section 230 of the US Communications Decency Act has provided online service providers with a safe haven for the liability linked to the conduct of their users on their platform. This was put in place in the 1990s and is part of the reason so many social media companies are US based. Contrast this with the EU Digital Services Act[8], which is a relatively new initiative that will only make its way out of the EU apparatus in 2024 – around 30 years since the commercial internet arrived.

There can be many homes for the digital assets industry

For years a recurring question about digital assets has been "what happens if 'the government' bans it?". It turns out that there are many governments – no single one chooses how new technology will be used worldwide. This is particularly the case for open source software in an internet connected world. Far from banning digital assets, many governments are now competing to be 'the home' of the businesses that use this technology. The governments who manage to strike the right balance of measures will be home to a new wave of technological change – including the jobs, tax revenue and well-being that come with it.

Sources

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