

DEMYSTIFYING THE DIGITAL ASSETS
DISPUTE RESOLUTION LANDSCAPE



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I. INTRODUCTION

1. The world of digital assets is in a continuous state of development, fueled by a combination of technological innovation, financial speculation, and a desire for greater financial autonomy and privacy.
2. The volume of digital assets that are traded on a daily basis as well as the substantial capital influx in tech products based on distributed ledger technology (“DLT”) is indicative of the exponential boom experienced by the sector. The current market capitalization of cryptocurrencies alone is approximately US\$ 1.19T.¹
3. While consensus on a singular legal definition of digital assets is currently lacking, it is usually agreed that they are broadly defined as any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology.² Digital assets are nothing but lines of code that exist as property, which may be fungible or non-fungible.
4. As we continue to witness the rapid growth and development of the digital economy, digital assets have emerged as a key component of this transformation. These assets, have fundamentally altered the way we think about money and the transfer of value. With the advent of Web3, the decentralized web,³ digital assets are poised to play an even more significant role in the future of finance and commerce.
5. The classification of these assets has been an arduous task. This insight follows a mode of classification wherein a digital asset is categorized into sectors on the basis of its actual or intended use. We have focused on (i) Non-Fungible Tokens (“NFTs”) and Metaverse, from the culture and entertainment sector, (ii) Decentralized Finance (“DeFi”) and Stablecoins, from the financial services’ sector and (iii) Virtual and Digital currencies, part of settlement mechanism sector.
6. While the untapped nature of digital assets presents a wealth of opportunities, it also carries a deep potential for misuse and disputes. Efficient management and resolution of such disputes can make or break these opportunities and set grounds for future growth. We analyze the myriad disputes faced across these assets; and provide an overview of the available options and solutions related to these disputes.



II. OVERVIEW OF THE ASSETS AND DISPUTES

A. NFTs AND METAVERSE

A.I. NFTs

7. NFTs are units of data stored in a distributed ledger representing unique collectibles, artwork, or other property which can be sold and traded, but cannot be edited or deleted. A critical characteristic of NFTs is that they are “non-fungible”, i.e., unlike cryptocurrency, they are not interchangeable. Any work, including physical goods, that can be represented in digital form, such as a photo, music albums, video or a scan, can be turned into an NFT.
8. NFT collections like CryptoPunks and Bored Ape Yacht Club have gained considerable prominence and money over the years. The rise of NFTs has led to the emergence of marketplaces including OpenSea, Nifty Gateway, Rarible and SuperRare. It has also led to the emergence of innovative and some non-conventional uses. For instance, recently an Argentinian airline, Flybondi, integrated Web3 into its ticketing process by issuing e-tickets as NFTs, built on the Algorand blockchain.⁴ The NFTs have also seen some big money sales. For instance, Twitter's CEO, Jack Dorsey, sold an NFT of his first tweet for the equivalent of USD 2.9 million⁵ and an NFT of a collage of works by digital artist, Beeple, was auctioned at Christie's for a sum of almost USD 70 million.⁶ Similarly, NFTFi platforms have also emerged which allow NFT owners to borrow against the value of their NFTs without having to sell them, essentially enabling the NFT owners to unlock the value of their digital asset and achieve liquidity.⁷
9. As the market for NFTs has exploded, concerns regarding the conflict between the rights created by an NFT and that of various stakeholders has arisen. There are three key avenues of conflicts - the rights held by the owner of the underlying art, rights of a buyer, and the liability of the NFT platform or intermediary.
10. Some pivotal legal challenges like StockX's Vault NFTs (by Nike),⁸ Tarantino NFT Collection (by Miramax),⁹ METABIRKINS NFTs (by Hermès),¹⁰ may help clarify how key legal principles relating to freedom of speech and fair use would apply in the context of NFTs. The recent judgment related to 'Quantum' NFT is part of a larger effort to define rules of ownership for digital artworks.¹¹
Rights of the owner of the underlying art
11. Since NFTs are premised on the digitization of artwork, the rights linked to the underlying artwork are a primary source of disputes. Copyright law does not



give an NFT owner any rights unless the creator takes affirmative steps to make sure that it does – ideally, by executing a standard, formal copyright license to the work connected to the NFT.¹² There have been instances of NFTs being mined and marketed without the permission of the artist¹³ potentially amounting to a copyright infringement. Who gets to sue will depend on who owns the copyright: the artist or the owner of the physical work.

12. Online marketplaces appear to have developed procedures to address the potential for infringement. For example, OpenSea's Terms of Service invites rights holders to submit complaints, and also states the site will take down works in response to formal infringement claims and will terminate a user's access to the services if the user is determined to be a repeat infringer.¹⁴ However, the owners or artists may sue the NFT marketplace as well if the marketplace has authorized the sale of an NFT without determining actual ownership thereby without the permission of the owner of the underlying work.

Rights of the buyer of NFTs

13. Buyers of NFTs are also exposed to legal risks stemming from the right holders of the artwork and the process of the sale of the NFTs. Generally, the buyer does not acquire the copyright in the underlying work unless the artist expressly agree in writing to convey the copyright interest to the buyer.
14. A buyer may also bring claims against a seller for misrepresentation or violation of contract terms (for example, issuance of additional copies of a limited edition NFT)¹⁵ or for fraud/ misrepresentation (for example, if the buyer is led to believe that he is buying artwork directly from the artist or buying authentic works of a particular artist). Buyers may also attempt to sue the platform hosting the sale of the NFT for misrepresentation.¹⁶
15. To protect themselves, buyers interested in getting into the NFT market should familiarize themselves first with the terms of what they are buying, and the scope of what will be conveyed. They should conduct the same level of authenticity and provenance diligence (about the seller and the marketplace) before buying an NFT that they would before buying a physical work of art. This importantly includes checking the marketplace's Terms of Use, which may often include clarity of the ownership, terms of usage of the NFTs purchased, and the arbitration agreement.
16. Buyers are also susceptible to thefts and scams. These include (a) phishing scams - the scamsters attempt to get access to the private wallet key of NFT holders. They do so by sending links through email or social media laced with spyware granting access to the account. For example, scammer known as Monkey Drainer stole worth roughly \$1 million in crypto and NFTs;¹⁷ (b) Rug



pull scams - developers hype an NFT on social media to drive up its price but pull out after receiving substantial funds from investors. For example, the Frosties rug pull scam.¹⁸

Liability of intermediaries

17. The liability of intermediaries relating to copyright infringement is usually determined basis three broad approaches: (i) the actual knowledge (ii) the notice-and-takedown approach and (iii) the active role approach. The 'actual knowledge' approach imposes liability on intermediaries only if they are found to have actual knowledge of the act of infringement. The 'notice-and-takedown' approach places responsibility on intermediaries if they continue to host infringing content for which they have received a notice for takedown. The 'active role' approach places responsibility for infringing acts on all intermediaries that play an active role in organizing content.¹⁹
18. Recently, Bigverse, an NFT marketplace, was held liable for copyright infringement using the active role approach as a third party used the platform to mint and sell an NFT without the authorization of the copyright owner.²⁰
19. The marketplaces may also face lawsuits over security concerns. For instance, a case was filed against OpenSea where the buyer claimed that his Bored Ape Yacht Club NFT was stolen due to a security vulnerability on OpenSea that enabled an outside party to illegally enter through OpenSea's code and access his NFT wallet. The allegations against OpenSea included negligence, breach of fiduciary duty and contract.²¹
20. NFTs have also become the subject of compliance and trade restrictions, anti-money laundering laws, bribery laws, KYC compliance requirements and other rules. Moving forward, the scope of disputes will only keep increasing as states turn their attention to legislate such malpractices.

A.II. METAVERSE²²

21. The metaverse is a network of digitized worlds using advanced technology to allow people to have lifelike personal and business experiences online. A metaverse both mimics the real world by providing virtual social possibilities, while simultaneously incorporating some gaming or simulation type of experiences for players to enjoy.²³ A report by McKinsey, surveying 3,400 consumers, predicted that the value of the Metaverse could reach US\$5 trillion by 2030.²⁴



22. Companies including Starbucks,²⁵ L'Oréal,²⁶ and Nike²⁷ have created novel tools to engage consumers and generate revenue through blockchain-based loyalty programs, communities of digital creators, or new e-commerce platforms. In the virtual real estate space, HSBC has purchased digital real estate in The Sandbox,²⁸ which is expected to become a stadium to host virtual sporting events. Different Metaverse platforms such as Decentraland and The Sandbox are independently evolving in parallel.
23. Despite the promise of the metaverse, there remain risks.²⁹ It is anticipated that the problems of yesterday's and today's internet—impersonation, attempts to steal credentials, social engineering, nation-state espionage, inevitable vulnerabilities—will be with us in the metaverse.³⁰
24. It is unavoidable that the complexity of this asset, combined with the level of capital invested, will lead to disputes. The Metaverse will add new angles to traditional disputes; examples of the same can include a Metaverse user accusing a platform of depreciation in the value of virtual real estate due to actions by the platform, misrepresentation or mis-selling of assets including ownership of an NFT, tax concerns with respect to transactions in the Metaverse, and political usurpation of power or violence between user avatars.

Claims by users against Metaverse platforms

25. Like with NFT and virtual currency platforms, many disgruntled users may seek to bring claims against the Metaverse platforms in relation to their investments. These may include claims related to real estate, copyright infringement, business disruptions, fund withdrawals among others. The nature of Metaverse platforms also increases the likelihood of class action claims by users.
26. The extent to which users will be able to bring claims in relation to on-platform digital assets will depend on the recognition provided to such assets under applicable law. For example, the English Law Commission concluded that in-game digital assets do not currently qualify as property but recognised that there is scope for the English legal system to move towards recognising more meaningful ownership and property rights for in-game digital assets.³¹

Claims by users against other users

27. The primary cause of inter-user disputes is that users in the Metaverse can, laissez-faire, provide services to each other, create virtual assets, and freely exchange these assets and services, essentially engaging in virtual trade. These tools provide users with the opportunity of committing offences and giving rise to disputes similar to physical-world disputes. For example, there have already been concerning instances of sexual harassment in the metaverse.³²



IP Disputes

28. IP is showcased on the Metaverse in new and innovative forms. The owners of IP rights may face the challenge of determining how best to protect their marks against IP infringers in the new environments within the Metaverse, thereby resulting in patent applications being filed by proprietors of new hardware and software technology to protect their investments.
29. Further, the Metaverse also enables users to create original content within the Metaverse, raising the possibility of copyright infringement in relation to works originating both “outside” as well as “inside” the virtual world.

Tax Concerns

30. Platforms and users (individuals and companies) may also face real world tax liabilities and compliance obligations, even if transactions occur in the Metaverse, and thus will need to navigate an increasingly complex tax landscape as states and countries around the globe seek to tax Metaverse transactions.³³

B. DeFi AND STABLECOINS

B.1 DeFi

31. Decentralized finance (“**DeFi**”) is a financial technology model which operates on the premise that there is no centralized authority to dictate, control or direct transactions. In DeFi, individuals are entrusted with the task of directing and approving transactions, in a peer-to-peer manner.³⁴ Transactions on DeFi are executed through smart contracts, applications which run on a blockchain and execute the terms and conditions of the transaction between the parties.³⁵
32. The decentralized and anonymous nature is inherent to the attractiveness of DeFi. However, it also ipso facto brings about a plethora of concerns and disputes, including related to hacking and misrepresentation.

Hacking

33. Since DeFi models operate on blockchains, there lies a potential for hacking of the blockchain. Hacking of a blockchain can happen in multiple forms, for instance (a) 51% attacks and (b) vulnerability in the code.
34. For a successful attack on an entire blockchain an attacker needs to control a large fraction of the total network power, typically 51%, which resulted in the nickname “51% attack”. In such an attack, the hacker essentially attempts to make fraudulent miners who will take over the process of validating the smart contracts being executed on the blockchain.³⁶



35. Creation errors refer to errors in the coding during creation of the blockchain. These errors can be security gaps which are then exploited as vulnerabilities by hackers. The decentralized autonomous organization (“DAO”) hack of 2016 involved a bug in the DAO smart wallets allowing hackers to drain DAO wallets is one such instance.³⁷

Fraud and Misrepresentation

36. Users in DeFi applications are also susceptible to fraud and misrepresentations. In 2021, the SEC levied a fine on Blockchain Credit Partners for raising more than US\$ 30 million through fraudulent offerings and for misleading investors about the profitability of their business. The model promised that the tokens bought by users would yield an interest because the investors' digital assets would be used to buy real world assets that yielded an income. Subsequently, after launching DeFi Money Market (DMM), they discovered that the price volatility of the investors' digital assets would lead to insufficiency of income generated through the real-world assets. Upon discovering this roadblock, instead of informing the investors, the company decided to misrepresent the profitability of its venture.³⁸

B.II. STABLECOINS

37. Stablecoins are a type of cryptocurrency that are designed to maintain a stable value due to their backing by an asset such as gold, fiat currency, or even cryptocurrency.³⁹ Stablecoins are of two kinds (a) collateralized stablecoins and (b) algorithmic stablecoins.
38. Collateralized stablecoins maintain a pool of collateral to support their value. For instance, fiat collateralized stablecoins that peg their value to a currency, like the US Dollar, would then be redeemable for a fixed amount of the US Dollar. Algorithmic stablecoins maintain their value through algorithms that regulate the supply of the token to maintain price stability. If the price of such a token were to rise, the algorithm would create more such tokens to increase the supply thereby leading to a reduction in the value.

Misrepresentation

39. Stablecoins make representations to customers and the market as to the reserves they hold of the currency or asset against which the coin is pegged. These representations are crucial to the purchase of stablecoins. The ability of a stablecoin to maintain its price is determined by the collateral it maintains. Collateral would also reassure customers that they would be able to redeem the stablecoins for equivalent collateral at any stage.



40. Companies have made misrepresentations regarding the extent, the nature and the redeemability of the collateral they hold and have consequently been fined for misrepresentations. For example, Tether Holdings Limited, Tether Limited, Tether Operations Limited and Tether International Limited (“**Tether**”) were fined US\$ 41 million by the Commodity Futures Trading Commission (“**CFTC**”) for violations of the Commodity Exchange Act (CEA) and CFTC regulations. Tether had represented that the tether token was a stablecoin with its value pegged to the US\$ and it maintained that each tether token was backed with an “equivalent amount of corresponding fiat currency”. Upon investigation, the CFTC concluded that from 1 June 2016 to 25 February 2019, Tether misrepresented that they maintained sufficient US\$ reserves. The order found that Tether failed to discuss that the reserves included unsecured receivables and non-fiat assets.⁴⁰

System errors

41. Since stablecoins operate on smart platforms, the codes, once executed cannot be stopped mid transaction. This increases the onus upon evaluation and thorough testing of the code before execution of the smart contract. If an error were to crop up, it would be irremediable at the execution stage. One such scenario is in the case of algorithmized stablecoins, wherein the price of the stablecoin is kept stable by using an algorithm that regulates the quantity of the stablecoin as per its value. Any error in such a code would result in a sudden loss of value of the stablecoin and severe losses to its holders.
42. The YAM Finance Incident of 2020⁴¹ is pertinent on that front. YAM tokens had been released with a new technology that would mint or burn tokens to maintain stability of the price of the token. If the price was too high, more tokens would be mined to dilute the supply and reduce the price. If the price was too low then tokens would be 'burnt' to create scarcity and increase the price. Such a process was termed as a rebase. The first rebase went successfully however the second rebase, wherein the price had to be adjusted by mining more tokens, saw an error occur in the code. This meant that the number of tokens mined was far more than needed to regulate the price. This excess in supply caused a sharp reduction in the price of the token, from close to US\$ 200 to nearly US\$ 0.5, thus resulting in severe losses.

C. DIGITAL CURRENCIES

43. Digital currency is simply a term used to denote any currency, money, or money-like asset that only exists in digital/ electronic form rather than physical form. It is used as an umbrella term and it primarily includes virtual currency, cryptocurrency, and Central Bank Digital Currencies (CBDCs).⁴²



44. Adoption of digital currencies, such as Bitcoin, Ethereum, and other cryptocurrencies, has brought about many changes in the way we conduct financial transactions. While these currencies have been touted for their convenience, security, and anonymity, they have also been linked to a sharp increase in criminal activity. Cryptocurrency-related crimes are broadly categorized into two types: crypto-enabled and crypto-dependent crimes. The distinction between these two categories is based on the extent to which cryptocurrencies are needed for the commission of illegal activities. Digital currencies offer a high level of anonymity and privacy, and thus play a vital role in laundering the proceeds of cyber-dependent crime, directly facilitating cyber-criminal financial flows.⁴³ Despite the slowdown in the global market, illicit transaction volume in digital currencies rose in 2022 for the second consecutive year, hitting an all-time high of US \$20.6 billion.⁴⁴
45. The increase in criminal activity and money laundering involving digital currencies has led the courts to apply established legal principles to novel factual situations. In addition to cases involving frauds like Initial Coin Offering (ICO) fraud,⁴⁵ Ponzi schemes,⁴⁶ Pump and Dump schemes,⁴⁷ disputes involving cryptocurrency exchanges,⁴⁸ regulatory matters,⁴⁹ and individual fraudsters,⁵⁰ have been regular before courts and regulators.
46. One of the biggest obstacles for investors has been hacking. For instance, in the early days of Ethereum, a hacker stole some ethers and transferred them to their wallet. Ethereum proposed reversing the transactions, which were accepted by most users but opposed by some who believed that they violated the immutability of the blockchain. As a result, two chains emerged: Ethereum and Ethereum Classic, with most users migrating to the new system and the dissenters remaining on the Classic.⁵¹ Interestingly, in the case of *Fabian v. Nano*,⁵² the court has to decide whether it has jurisdiction and power to order the "forking" in the blockchain.⁵³
47. In recent times, a number of cryptocurrency exchanges have faced financial failure, leaving traders without means to recover their investments.⁵⁴ Examples of such collapses include Japan's Mt. Gox exchange and the more recent failure of Italy's BitGrail exchange.⁵⁵ In the Mt. Gox case,⁵⁶ the remaining Bitcoin was considered to be the property of the exchange rather than the customers, which allowed it to be used for paying off the exchange's debts to other creditors. This has raised concerns that customers of Coinbase may encounter difficulties in recovering their cryptocurrency in case of insolvency, as Coinbase does not segregate blockchain addresses.⁵⁷ In contrast, Gemini guarantees that the crypto assets in its custody accounts will be segregated from any other assets held by Gemini.⁵⁸



48. In what is known as the largest investor action ever brought against a cryptocurrency platform, a group of 700+ claimants, funded by a Swiss-based litigation funder Liti Capital, filed an arbitration action against Binance. The case stems from a wide spread service outage on 19 May 2019, which coincided with a massive drop in the price of bitcoin. The traders caught up in the incident allege that Binance liquidated their positions as a result of the exchange freezing causing millions of dollars' worth of losses. The total loss incurred across all 700+ claimants is expected to be well in excess of 100 million US dollars.⁵⁹
49. The Singapore International Commercial Court, in *B2C2 Ltd. v. Quoine Pte. Ltd.*⁶⁰ ("B2C2 case"), while considering a dispute between traders and cryptocurrency exchanges, found in favour of B2C2 (trader) for both, the breach of contract and breach of trust claims, and awarded damages.

III. INVESTIGATION

50. Investigations play a crucial role in managing digital asset disputes, as they can help uncover important information and evidence that can be used to resolve disputes fairly and efficiently. They can be particularly helpful in identifying the methodology used to defraud the victim, tracing subsequent transactions and other related information which can be used to support legal proceedings.
51. Investigations of different digital assets are similar since they involve common steps like regulatory compliance analysis, collateral analysis, and transaction analysis. However, there may be some critical divergences which one must keep in mind while considering digital asset dispute management.

NFTs

52. As seen above, NFTs have been associated with various illegal activities such as pump and dump schemes (illegally inflating an asset's value before selling it at a high price), money laundering, rug pulls (where developers collect funds for a project before disappearing), and tax evasion. Hence, the investigation into NFTs is geared towards analyzing activities linked to these offences.
53. Investigators generally leverage Open Sea, world's largest web3 marketplace for NFTs and crypto collectibles to find NFTs, view their current and historic valuation and transaction history for that NFT, often including the name of the buyer.⁶¹
54. The investigators also look for patterns that emerge over other social media to promote fake NFT marketplaces for purposes of defrauding the victims, and conducting wallet analysis to trace the money to uncover large scale operations which have multiple fake sites.⁶²



Metaverse

55. Investigations related to the metaverse may involve a wide range of considerations given that it combines elements of virtual reality, gaming, and social media. Since users may own virtual assets such as avatars, digital clothing, and other items in metaverse, the investigations may need to focus on verifying ownership of these assets, including analyzing blockchain records and smart contract code.
56. Another aspect may involve analysis of in-game transactions, for identification of suspicious activity, such as money laundering or fraud.

DeFi and Stablecoin

57. Investigations in decentralized finance (DeFi) digital assets are generally similar to investigations in cryptocurrency and blockchain, as they involve analyzing transactions and blockchain data.
58. The investigations relating to DeFi also involve:
 - (a) Performing on-chain cryptocurrency track and tracing investigations.
 - (b) Developing and verifying factual timelines of transactions.
 - (c) Analysis of the “know your customer” (KYC) information for the account holders on the DeFi exchange, to verify that the account holders were either known to each other or were in fact, the same person.
 - (d) Analysis of liquidity pools and token swaps that are common in DeFi platforms to identify suspicious activity.
59. In terms of stablecoin, since many of them are backed by fiat currencies or other assets, such as gold or other crypto currencies, the stablecoin related investigations generally focus on verifying the existence and quantity of these assets (collateral) to ensure that the stablecoin is fully backed. The investigations may also focus on how reserves are being managed, including whether the reserve assets are being properly diversified and managed to minimize risk.

Digital Currencies

60. The investigations related to digital currency involve an examination of the transactions recorded on the blockchain in order to identify the specific address that holds the funds that were stolen. After identifying an address, they attempt to unmask the owner of the address using clustering, and a combination of open-source intelligence and Know Your Customer (KYC) data collected by the exchanges.⁶³



61. The investigated data can then be used for filing complaints with law enforcement agencies or contemplating civil actions against myriad actors involved in the process.
62. One of the biggest challenges in investigating digital currency crimes is the sheer volume of new crimes that arise every day. The law enforcement agencies are making significant efforts to investigate digital currency crimes. For example, in the United States, the Department of Justice has set up a virtual currency task force to investigate and prosecute digital currency-related crimes.

IV. PROSECUTION AND ENFORCEMENT

63. In light of the disputes and innovations in frauds, legal and enforcement authorities are trying to keep pace. The onset of crypto winter and resulting heavy losses for retail investors has also been a catalyst for heightened regulatory scrutiny, including for crypto advertising.⁶⁴ The courts and arbitrators have also got the ball rolling and continued to apply established legal principles of interim reliefs, bankruptcies, constructive trustee, negligence, breach of contract, misrepresentation in cases involving digital assets. The disputes have also seen innovation in litigation funding and challenges relating to assessment of damages. The enforcement actions have met with its own set of unique challenges and solutions.

A. INTERIM RELIEFS AND PROCEDURAL ORDERS

64. There is a heightened risk of fraud, theft, and hack with digital assets. Despite the asset class being around for more than a decade, there is a dearth of cases for guidance. However, the limited cases confirm the application of the familiar legal principles relating to various injunctions, to digital assets.⁶⁵
65. The Singapore High Court⁶⁶ held that there were no issues ordering injunctions against unknown persons based on existing jurisprudence.⁶⁷ The court ultimately found that there was a serious question to be tried and that the balance of convenience lay in favour of granting the injunction as there was a real risk of dissipation of the stolen assets that would prevent recovery even if judgement was obtained. The court also granted ancillary disclosure orders to assist in tracing stolen crypto and the identification of the parties responsible for the theft.
66. The parties have, across jurisdictions, time and again been granted various injunctions including Mareva injunctions/ freezing orders,⁶⁸ seizure orders,⁶⁹ disclosure orders including Bankers Trust order and Norwich Pharmacal order,⁷⁰ appointment of court receiver,⁷¹ and proprietary injunctions;⁷² and other procedural orders including making applications against persons unknown,⁷³



service out of jurisdiction,⁷⁴ and private hearings.⁷⁵ Additionally, though not seen yet,⁷⁶ parties may also seek search orders from courts when misappropriated digital assets may be in cold storage.

67. We have seen courts adapting to the special circumstances created by digital assets and application of the familiar principles to procedural orders. For instance, Singaporean, English, and American courts have allowed service of court documents via blockchain,⁷⁷ including as an NFT airdropped⁷⁸ into the person's wallet.

B. LITIGATION

68. In the early part of 2022, as cryptocurrencies crashed in value, lawsuits related to crypto assets soared. It is estimated that as of May 2022, more than 200 individual and class action lawsuits have been filed—up more than 50% since the start of 2020.⁷⁹

69. Litigation remains the default avenue to resolve the civil and commercial disputes arisen, irrespective of the sector.

70. In recent years, we have seen a shift to alternative dispute resolution mechanisms on account of costs and length of proceedings before courts. Additionally, corporations are weary about litigation due to lack of confidentiality, foreign language barriers, and dependency on unknown local counsel.

71. Having said that, for a new sector, resorting to courts is of utmost importance as it helps develop jurisprudence and ground in certainty with respect to applicable principles and drawing a parallel from conventional assets' disputes. Some instances include courts confirming that digital assets are property⁸⁰ and can form subject matter of trust,⁸¹ situs of the asset,⁸² granting of interim reliefs (as seen above), what would be against public policy,⁸³ setting out parameters to determine jurisdiction,⁸⁴ confirming reliance on precedents of similar principles to unique circumstances,⁸⁵ and permitting to pursue claims against bitcoin network developers for breach of fiduciary duties and/or duty of care to crypto asset owners.⁸⁶ A certainty in outcome based on similarly decided facts and circumstances can also increase the potential for litigation funding (in arbitrations as well).

72. It is also beneficial to go to courts as a substantial number of claims are basis losses from fraudulent schemes where it is difficult to determine the identity of the fraudster recipient.



73. The courts are also adopting the latest technology to digitize justice. Some instances include ADGM Courts' announcement of a groundbreaking development enabling the enforcement of commercial judgments on the blockchain,⁸⁷ courts allowing service via NFT airdrop (as seen above), and a Columbia court hosting the first-ever court proceeding in the metaverse.⁸⁸

C. ARBITRATION

74. Arbitration is the most popular alternative dispute resolution mechanism and has long been used in both domestic and international disputes, especially commercial and financial products' disputes. The popularity is on account of its perception as an efficient, transnational and neutral mechanism which enables quick, cost-effective, informal, confidential, and enforceable dispute resolution.

75. Arbitration may be inherently well-suited to the resolution of disputes in digital asset industry. Arbitration's confidentiality and cross-border nature provides the anonymity and no border resolution which underpins the cryptocurrency industry. Party autonomy gives the parties the freedom to choose the arbitrator with the relevant expertise that can be relevant for novel questions of law and facts.

76. Arbitral institutions have also come at par in providing immediate relief in arbitration, including by introducing virtual proceedings, emergency arbitration and expedited proceedings provisions in their rules. For instance, emergency arbitrations are very useful for this industry given the ease with which cryptocurrencies can be transferred or en-cashed or dissipated through mixers to private wallets. In such cases, it is of paramount importance that these assets be frozen. Institutes have also introduced rules focused on digital assets disputes.⁸⁹ Moreover, arbitral institutions like the Dubai International Arbitration Centre (DIAC) have also launched their own metaverse to provide a higher level of accessible and effective alternative dispute resolution services.⁹⁰

77. We have often seen intermediaries predominantly including arbitration agreements in their user agreements.⁹¹ Though have some criticized this as it compels individual customers to refer their disputes to a private forum than traditional courts, arbitral institutions have developed specialized consumer arbitration rules to help combat the criticism.⁹² A key point of these rules is a nominal fee to be paid by the consumer and the remaining fees, including administration and tribunal fees, is to be borne by the company. However, the validity of the same would depend on the jurisdiction. For instance, the English Court of Appeal, in a case considering NFT platform, considered the interface between arbitration and consumer protection laws and has allowed to proceed



to trial the question of validity of the arbitration agreement in a consumer contract.⁹³ A similar decision was passed by the English courts in *Chechetkin v Payward Ltd and others*.⁹⁴

78. Compared to traditional courts, arbitration come with its own challenges including identification of the correct counterparty to the arbitration, enforceability of the awards in jurisdictions which digital assets have been banned as enforcing the same might be against public policy (discussed below), possible limitation of adopting class action procedures in arbitration in the absence of rules on point by the arbitral institutions.
79. Arbitration in this space is still developing and it will be interesting to see how these challenges are addressed.

D. DECENTRALIZED FORUM FOR RESOLUTION

80. Online Dispute Resolution that is built on blockchain technology and infrastructure is championed by supporters as capable of revolutionizing dispute resolution.
81. The industry has adapted fast and has adopted decentralized arbitration service. Decentralized justice is a new approach to online dispute resolution that combines blockchain, crowdsourcing and game theory in order to produce resolution systems. The prominent projects in the decentralized justice industry include Kleros,⁹⁵ Aragon,⁹⁶ and Jur.⁹⁷
82. Decentralized justice platforms are a form of “digital courts” supported by blockchain technology whose purpose is the settlement of disputes by crowdsourcing jurors under economic incentives to provide fair rulings. It is decentralized because the process is driven by peers, built on blockchain technology and cannot be controlled by any single agent.⁹⁸
83. These disputes involve submitting pleadings and evidence on the platform; anonymous selection of jurors/arbitrators, and passing the award in a short period of time.⁹⁹ The cases are usually binary where the decision is to be made only between two options.
84. Further, the main economic mechanism used is the Schelling Point, which is, in game theory, a solution that people tend to choose by default in the absence of communication. Kleros, Aragon and Jur are using this mechanism. The theory behind Schelling points is that if everyone expects everyone else to vote truthfully, then their incentive is to also vote truthfully, and that's the reason why one can expect others to vote truthfully in the first place; a self-reinforcing Nash equilibrium.¹⁰⁰



E. CLASS ACTION

85. Digital assets have, in a short span of time, seen multiple class actions across jurisdictions. The defendants in these actions range from virtual asset service providers (VASPs) to individuals to fraudsters to celebrities.¹⁰¹
86. As per the data in the US, class action cases amount to approximately 44% of all cryptocurrency cases. Most of the class action cases have arisen out of alleged violations of securities regulations and consumer protection statutes.¹⁰² It was not until 2017 that crypto-related litigation began to gain momentum. Current rates suggest the number of class action suits may surpass the 2018 and 2020 peaks.¹⁰³ The rate of class-action filings has increased in 2022 as the industry's market capitalization dropped by \$2tn before stabilizing.¹⁰⁴
87. These lawsuits usually claim damages for investments, alleging that the trading platforms, issuers, and other firms are not disclosing regulatory requirements for securities. Class-action lawsuits have been launched against major companies in the crypto ecosystem, including Binance,¹⁰⁵ Coinbase,¹⁰⁶ Block One,¹⁰⁷ and Bitmex.¹⁰⁸ In a coordinated strike alleging sale of unregistered securities, a US law firm issued a barrage of class action lawsuits in US District Court for the Southern District of New York. It filed 11 suits naming 42 defendants from more than a dozen countries including Singapore, BVI, Canada, Cayman Islands, China, Estonia, Switzerland, Japan, Seychelles etc. This event popularly gained the name 'Red Wedding' in reference to a coordinated massacre that took place in TV series, Game of Thrones.¹⁰⁹
88. In the UK, a first in competition law applying to digital asset sectors, a claim has been brought in the Competition Appeal Tribunal on behalf of an estimated 240,000 investors in Bitcoin Satoshi Vision. The claim seeks an opt-out collective proceedings order.¹¹⁰
89. In addition to the high volume of class actions involving cryptocurrencies, there have been a number of cases involving NFTs¹¹¹ and DAOs¹¹² as well.
90. An important topic on this subject is of class action waivers in consumer contracts, mainly with the intermediaries like the cryptocurrency exchanges.¹¹³ In essence, this requires all disputes to be referred separately rather than collectively in an arbitration. The United States Supreme Court has consistently affirmed the strong federal policy favoring arbitration and the enforceability of class action waivers in arbitration agreements.¹¹⁴



F. LIQUIDATION AND BANKRUPTCIES

91. As digital asset markets continue to struggle and collapse and multiple digital asset platforms seek refuge in bankruptcy proceedings, courts will be confronted with several novel issues.
92. The recent in the series has been the collapse of three of the most crypto-friendly banks – Silvergate, Silicon Valley Bank (SVB) and Signature.¹¹⁵ The collapse of FTX,¹¹⁶ the highest profile exchange, also sent shockwaves on a macro level across jurisdictions. FTX's fall came in only months after failure of TerraUSD and subsequent bankruptcy cases of Three Arrows Capital (3AC), Voyager Digital, and Celsius. However, the insolvency of FTX and associated companies (including Alameda Research) prompted a cascade of liquidity and solvency concerns across the crypto ecosystem.
93. The questions are too many with limited answers. The key question is who is the 'owner' of the asset and when owned indirectly through an intermediary and what is the impact of an intermediary's bankruptcy? While the principles in the parallel fiat financial markets are settled via jurisprudence over the years, such norms are still evolving (or may not yet exist) in the cryptocurrency markets. This uncertainty may lead to significant loss of capital.
94. An instructive case on the subject is the decision in Celsius' bankruptcy where Chief Judge Glenn of the United States Bankruptcy Court for the Southern District of New York held that the digital assets held on Celsius' cryptocurrency platform are not owned by the customer, but rather are property of the bankruptcy estate.¹¹⁷ This decision was basis the unambiguous Terms of Use entered into between the customers and Celsius. A key takeaway is that unless the Terms of Use expressly provide for digital assets to be held in trust for the customer, digital assets held in yield-earning or other accounts, where property is hypothecated by the cryptocurrency platform, are likely to be deemed property of the bankruptcy estate.
95. Another case decided by New Zealand court in *Ruscoe v Cryptopia Ltd (in Liquidation)*¹¹⁸ may be instructive. While holding that cryptocurrencies constitute property and were capable of forming the subject matter of a trust, the court held that Cryptopia was acting as a bare trustee under a separate trust for each individual account holder held on its platform. On the facts, it was found that there was an intention on the part of Cryptopia to create a trust including as Cryptopia's internal financial accounts and database demonstrated that it did not assert ownership over the cryptocurrencies of the account holders, and its terms and conditions for use contained express trust provisions.



96. It is noteworthy that these failures have met with new opportunities. The founders of failed hedge fund 3AC. resurfaced with a crypto-exchange venture, Open Exchange, that will let users trade bankruptcy claims from insolvent platforms and funds, including their own.¹¹⁹ The exchange allows one to use bankruptcy claims, priced against the backstop, as collateral to trade bitcoin (BTC) or ether (ETH) derivatives products.¹²⁰

G. REGULATORY ACTION

97. Digital assets operate in a relatively unregulated environment, which can leave investors vulnerable to fraud and other forms of abuse.

98. As the digital assets space continues to develop and mature, so does the regulatory and compliance landscape. Once viewed as a niche field, digital assets are now a major regulatory and compliance priority for regulators. The authorities leading regulatory and compliance investigations and initiatives for this space appear to have twin priorities, consumer and investor protection and financial crime prevention.

99. The focus of regulatory actions has included cracking down on institutions involved in operating unregistered money service businesses,¹²¹ operating unregistered cryptocurrency platforms,¹²² offering unregistered securities,¹²³ operating unregistered crypto ATMs,¹²⁴ non-compliance with anti-money laundering laws,¹²⁵ mixing services (mixers or tumblers),¹²⁶ raising monies through fraudulent offerings,¹²⁷ and inadequate privacy practices.¹²⁸ The watchdogs have also, over the years, published warnings and lists against fraudulent exchanges and fraudsters.¹²⁹ The regulators have also acted strongly against individuals operating these intermediaries,¹³⁰ celebrities for their endorsements,¹³¹ and individuals for tax violations.¹³² For instance, in March of 2022, the U.S. Department of Justice (DOJ) charged Frosties founders with conspiracy to commit fraud and conspiracy to commit money laundering in what is considered to be the agency's first NFT "rug pull" bust.¹³³

100. A further example of the regulatory enforcement action is that taken by the CFTC - it brought 18 actions involving conduct related to digital assets, representing more than 20% of all actions filed during FY 2022.¹³⁴ The CFTC charged for manipulation of the Digitex Futures native token; charged a DAO; addressed failures to register or seek designation as a designated contract market (DCM), swap execution facility (SEF) or futures commission merchant (FCM); and took on fraud, including a \$1.7 billion fraudulent scheme.

101. The legislative actions are also acting fast to introduce new laws to tackle the crimes. These actions include bestowing law enforcement agencies with



powers such as bringing virtual currency businesses under money laundering reporting ambit¹³⁵ and powers to seize crypto assets linked to criminal activities.¹³⁶

H. ENFORCEMENT OF JUDGMENTS AND AWARDS

102. The effectiveness of dispute resolution depends on the reasonable expectation that the losing party will perform or easily be compelled to perform. Therefore, enforceability continues to be perceived as one of the most valuable characteristics. Winning a dispute may just represent the first step in a long and difficult haul to make that piece of paper of an award or a judgment into money in your bank.
103. The English High Court granted the first third-party debt order in relation to cryptocurrency in an application involving allegations of fraud related to a cryptocurrency initial coin offering.¹³⁷ The decision confirms that cryptoassets may be capable of being traced and enforced against, similar to other classes of property under English law. As noted above, ADGM courts have introduced solutions resulting in substantial time and cost savings for parties in the enforcement of their commercial judgments. Secure, immutable judgments will be available to parties and enforcing courts, via ADGM's website, an API or directly on the blockchain for member courts. Parties will no longer need to wait for a certified copy of the judgment to start the process in the enforcing jurisdiction.¹³⁸
104. The inherent nature of these digital assets also poses unique issues relating to enforcement. For instance, what is the remedy for an infringing NFT? In typical cases, infringing copies are seized and destroyed (tangible copies) or taken down (online copies). However, with an NFT, neither the owner nor the platform can 'destroy' the NFT. The issue of destruction arose in the Bigverse case, where the court noted that an NFT can be made redundant by sending it to an 'eater address' or 'burn address', which exists on the blockchain. Consequently, the NFT cannot be transferred further and the act of sending an NFT to an eater address is irreversible. While this does not destroy the NFT in a way that is comparable to physical destruction, it renders the NFT unusable and redundant.¹³⁹
105. An additional consideration is that the claimants and arbitral tribunals may be faced with important questions with respect to the currency in which the damages or debt should be awarded- the fiat currency or the cryptocurrency in which the transaction took place. An additional question would be the date of conversion. These answers may have a mighty impact on enforcement. A



claimant will need to identify jurisdictions both where the respondent has assets, and which are likely to permit the enforcement of the intended arbitral award.

106. An international arbitration award is enforceable in over 150 countries under the New York Convention. This is particularly important given the cross-border nature of cryptocurrency disputes. Under the New York Convention, refusal is on very limited grounds. For the purposes of digital assets, one can expect all eyes to be on the ground of public policy. For instance, Greece, among other countries,¹⁴⁰ has not adopted an appropriate and specific regulatory framework to regulate all issues arising from the way cryptocurrencies operate in Greece and Greek jurisprudence appears hesitant to recognize them. The Court of Appeal of Western Central Greece published its decision no. 88/2021 ruling that the recognition of a US award granting damages in bitcoin runs contrary to Greek public policy.¹⁴¹
107. Enforcement in this sector may raise many practical considerations such as when the cryptocurrencies could be traced, how could the award debtor be compelled to transfer of cryptocurrencies to the successful party when enforcing an arbitration award. The judgment debtor could come up with myriad of excuses including that the private keys are lost, the wallet was hacked, the trading account is lost or otherwise blocked from access.
108. Though one may perceive that tracing may be easier as compared to conventional assets on account of blockchain, it is possible that it may be more difficult on account of increasing encryption and usage of mixers to protect privacy. The investigators shall play a significant role including for tracing the digital assets, wallet addresses, identity of the owner of the wallet address, and relevant third-party intermediaries with whom these assets may be stored. One of the solutions may be on-chain enforcement where parties code automatic execution on issuance of an award or judgment. An example of the same is the development of Blacklist Manager, a software that enables compliance with court orders to freeze bitcoins.¹⁴² However, questions remain to be addressed; for instance, what happens in case of conflicting decisions from various jurisdictions?¹⁴³

V. ASSESSMENT OF DAMAGES

109. The digital asset market displays a high degree of heterogeneity in terms of their nature, utility and function. It can often be difficult to assess damages due to price drivers, including demand-supply shifts, and other allied factors that are far more apparent in traditional financial asset markets. Complex issues



around the correct valuation are common in many cryptocurrency arbitrations on account of the volatility of cryptocurrencies.

110. The hesitancy arrives from the instability in the price of digital assets that make the conversion process difficult. If the assessment of damages was done at US\$ 100 million, as on 19 March 2023 that would be BTC 3696.30. Whereas, as on 31 December 2022 it would be BTC 6,043. Indeed, with the sharp decline in cryptocurrency values since late 2021, the choice of valuation date can significantly impact the quantification of damages. For instance, the price of bitcoin on 14 November 2021 was \$65,466.84 and on 15 May 2022 was \$31,305.11.
111. Another key challenge is the currency of award/ judgment. Courts have been hesitant to use digital assets as the mode of awarding such costs and damages.¹⁴⁴ For instance, in B2C2 case, B2C2's request for the specific performance of the trades was rejected by SICC as the price of BTC on the day of judgment was substantially higher than in April 2017 when the trades were executed.¹⁴⁵
112. In such circumstances, courts have drawn parallel to volatile assets like securities in determining the valuation. The Superior Court of Delaware treated cryptocurrency tokens as securities and then awarded damages for the breach of the contracts using Delaware's 'failure to deliver securities' protocol, while relying on the CoinMarketCap website as a valuation tool.¹⁴⁶
113. While the hesitancy remains, there are some encouraging signs on this front. For instance, the British Law Commission in its Digital Assets Consultation paper observed that courts in England and Wales could be provided with the discretion to award damages denoted in cryptocurrency through law reforms.¹⁴⁷ Even arbitral tribunals have passed awards in BTC.¹⁴⁸ The parties could also test the argument that BTC is a foreign currency, having been recognized as legal tender including, in El Salvador and Central African Republic, and obtain a judgment in BTC using applicable foreign currency judgment rules.
114. There would also be an increase in the involvement of expert witnesses to submit on the valuation of the cryptocurrencies, where the valuation methodologies used and assumptions adopted by each expert might be tested against each other.

VI. LITIGATION FINANCE

115. Litigation funders have also been at the forefront for dispute resolution related to digital assets.



116. The industry has taken the opportunity to innovate its work mechanism. For instance, a litigation funder, Liti Capital, through blockchain technology, has tokenized digital, asset backed, equity shares of its company. In essence, it is a private equity company on the blockchain.
117. Another intriguing innovation is an initial litigation offering (“ILO”). An ILO opens up the market to retail investors to participate in a type of investment that was previously only available to institutional investors and high net worth individuals. A prominent example of the same is Ryval¹⁴⁹ - law firm-backed crypto project which is attempting to create a pseudo stock market of litigation funding, by using the purchase and trade of crypto tokens that fund civil lawsuits.
118. An example of an ILO being utilized in a case is that of Apothio LLC against Kern County in California. Apothio LLC is a hemp and cannabis company, that made claims arising out of the County's alleged destruction of its crops.¹⁵⁰ Crypto tokens were created, using the Avalanche blockchain.¹⁵¹ These tokens represent tokenized shares in the funded claim which could be purchased by retail users.
119. Though these innovations are upcoming and are yet to be the 'new thing', like disputes, the funders are looking at digital assets' disputes with greater scrutiny as the lack of jurisprudence substantially compels their diligence team to draw parallels with similar factual cases for conventional assets.

VII. CONCLUSION

120. The staggering growth of the overall sector as well as frauds, bankruptcies and disputes have led to an increase in investigations and regulation in this sector. The key concerns mirror those found while dealing with conventional assets and more, including cybercrime, Ponzi schemes, misrepresentations, celebrity endorsements, theft, jurisdiction and fora, asset tracing, and identifying the right respondent. Looking to the future of digital assets, it is clear that disputes surrounding their ownership, transfer, and use will also become increasingly complex and prevalent.
121. Therefore, it is essential to develop optimized practices and strategies for resolving disputes in the digital assets' ecosystem.



*The marketplaces for various assets mentioned in this insight are only by way of examples and are not our endorsements.

¹ <https://coinmarketcap.com/> (as on 29 March 2023).

² <https://www.irs.gov/businesses/small-businesses-self-employed/digital-assets#:~:text=Digital%20assets%20are%20broadly%20defined,Convertible%20virtual%20currency%20and%20cryptocurrency>

³ What Is Web3? Harvard Business Review (10 May 2022). Accessible at <https://hbr.org/2022/05/what-is-web3>

⁴ Argentinian Airline Issues Every Ticket as an NFT, Coindesk (1 April 2023). Accessible at <https://www.coindesk.com/web3/2023/03/30/argentinian-airline-issues-every-ticket-as-an-nft/>

⁵ Jack Dorsey's first ever tweet sells for \$2.9m (23 March 2021). Accessible at <https://www.bbc.com/news/business-56492358>

⁶ Beeple sold an NFT for \$69 million (11 March 2021). Accessible at <https://www.theverge.com/2021/3/11/22325054/beeple-christies-nft-sale-cost-everydays-69-million>

⁷ see platforms including BendDAO, ParaSpace, JPEG'd.

⁸ *Nike, Inc. v. StockX LLC*, 1:22-CV-00983-VEC. Dubbed as Sneaker Wars. Nike alleges that StockX engaged in the unauthorized and infringing use of Nike's famous marks in its Vault NFT collection. Complaint available at <https://heitnerlegal.com/wp-content/uploads/Nike-v-StockX.pdf>

⁹ *Miramax, LLC v. Quentin Tarantino et al* [Case Number- 2:21-cv-08979-FMO-JC (C.D. Cal. Mar. 10, 2022)]. Miramax LLC sued Quentin Tarantino to block the auction of NFTs of exclusive scenes of the film "Pulp Fiction" as the same was without Miramax's permission. It alleged that this breaches the contract and infringes the studio's trademarks and copyrights in the movie. The parties settled the dispute. The settlement order is accessible at <https://storage.courtlistener.com/recap/gov.uscourts.cacd.836944/gov.uscourts.cacd.836944.41.0.pdf>

¹⁰ *Hermès Int'l v. Rothschild*, 22-cv-384 (JSR) (S.D.N.Y. Feb. 2, 2023). Hermès sued artist Mason Rothschild in the U.S. District Court for the Southern District of New York, including for trademark infringement and dilution, misappropriation of its BIRKIN trademark, cybersquatting, and injury to business reputation. The court decided in favour of Hermès awarding it \$133,000 in damages. See the jury verdict.

¹¹ *Free Holdings Inc v. Kevin McCoy and Sotheby's Inc.* (Case no: 22-CV-881 (JLC)) Available at: <https://www.nysd.uscourts.gov/sites/default/files/2023-03/Free%20Holdings%20vs%20mccoy.pdf>

¹² Copyright Vulnerabilities in NFTs by James Grimmelman, Yan Ji, and Tyler Kell of Cornell University. Accessible at <https://medium.com/initc3org/copyright-vulnerabilities-in-nfts-317e02d8ae26>

¹³ *Supra* notes 6 to 9. Also see, *The Pokémon Company International, Inc v Pokemon Pty Ltd* [2022] FCA 1561

¹⁴ <https://opensea.io/tos> (Terms of Service as updated on 4 April 2023).

¹⁵ *Thayer v. Furie et al.* (Case Number- 2:22-cv-01640). Matt Furie, the creator of Pepe the Frog, and Chain/Saw (company behind PegzDAO who organized the sale) was sued for \$507,084.00 over alleged fraud involving a Rare Pepe NFT. The lawsuit alleges falsely advertising the rare nature of the NFT and released identical editions of it, tanking its resale value. ("**Rare Pepe lawsuit**")

¹⁶ For example, the Rare Pepe lawsuit.

¹⁷ Phishing Scammer Has Drained \$1M in Crypto and NFTs in Past 24 Hours, Says On-Chain Sleuth, CoinDesk (26 October 2022). Accessible at <https://www.coindesk.com/business/2022/10/25/phishing-scammer-has-drained-1m-in-crypto-and-nfts-in-past-24-hours-says-on-chain-sleuth/>

¹⁸ Two Defendants Charged In Non-Fungible Token ("NFT") Fraud And Money Laundering Scheme (24 March 2022). Accessible at https://www.justice.gov/usao-sdny/pr/two-defendants-charged-non-fungible-token-nft-fraud-and-money-laundering-scheme-0#_ftn1. Other NFT rug pull scams relate to Big Daddy Ape Club and Baller Ape Club (<https://nftnow.com/features/the-biggest-rug-pulls-in-nft-history/>)

¹⁹ Indranath Gupta & Lakshmi Srinivasan (2023) Evolving scope of intermediary liability in India, International Review of Law, Computers & Technology, DOI: 10.1080/13600869.2022.2164838

²⁰ NFTs and Copyright: Some Burning Issues, Kluwer Copyright Blog (21 July 2022) Accessible at: <https://copyrightblog.kluweriplaw.com/2022/07/21/nfts-and-copyright-some-burning-issues/>

²¹ *McKimmy v. OpenSea* (Civil Action No. 4:22-CV-00545), District Court, S.D. Texas. The parties were compelled to refer the disputes to arbitration in terms of their agreement..



²² Matthew Ball in his book *The Metaverse: And How It Will Revolutionize Everything*, defines the metaverse as “A massively scaled and interoperable network of real-time rendered 3D virtual worlds that can be experienced synchronously and persistently by an effectively unlimited number of users with an individual sense of presence, and with continuity of data, such as identity, history, entitlements, objects, communications, and payments.”

²³ *Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898 (N.D. Cal. 2021).

²⁴ Value creation in the metaverse, McKinsey & Company (June 2022) Accessible at: <https://www.mckinsey.com/~media/mckinsey/business%20functions/marketing%20and%20sales/our%20insights/value%20creation%20in%20the%20metaverse/Value-creation-in-the-metaverse.pdf>

²⁵ Starbucks Brewing Revolutionary Web3 Experience for its Starbucks Rewards Members (12 September 2022). Accessible at <https://stories.starbucks.com/press/2022/starbucks-brewing-revolutionary-web3-experience-for-its-starbucks-rewards-members/>

²⁶ L'Oréal unveils the future of beauty powered by tech at Viva Technology 2022 (16 June 2022). Accessible at <https://www.loreal.com/en/press-release/group/vivatech-2022-pr/>

²⁷ Nike Metaverse: Virtual Designs, Digital Shoes & More (16 March 2023). Accessible at <https://metaverseinsider.tech/2023/03/16/nike-metaverse/>

²⁸ HSBC buys virtual plot of land in digital push (17 March 2022). Accessible at <https://www.reuters.com/business/finance/hsbc-buys-virtual-plot-land-digital-push-2022-03-17/>

²⁹ McKinsey Explainers: What is Metaverse? (17 August 2022) Accessible at: <https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-the-metaverse>

³⁰ The Metaverse is coming. Here are the cornerstones for securing it, Charlie Bell (28 March 2022) Accessible at: <https://blogs.microsoft.com/blog/2022/03/28/the-metaverse-is-coming-here-are-the-cornerstones-for-securing-it/>

³¹ Digital Asset, Consultation Paper, UK Law Commission (28 July 2022) at [7.41] to [7.69]. Accessible at <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2022/07/Digital-Assets-Consultation-Paper-Law-Commission-1.pdf>

³² The Metaverse has a groping problem already, MIT Technology Review (16 December 2021) Accessible at: <https://www.technologyreview.com/2021/12/16/1042516/the-metaverse-has-a-groping-problem/>

³³ How the metaverse and Web3 are creating novel tax issues, EY Global (29 April 2022) Accessible at: https://www.ey.com/en_gl/tax/how-the-metaverse-and-web3-are-creating-real-tax-issues

³⁴ What is Decentralized Finance, Tech Target Accessible at: <https://www.bis.org/publ/work1061.pdf>

³⁵ How smart contracts work?, IBM Accessible at: <https://www.ibm.com/in-en/topics/smart-contracts>

³⁶ BIS Working Papers Cryptocurrencies and Decentralized Finance, Monetary and Economic Department (December 2022) Accessible at: <https://www.bis.org/publ/work1061.pdf>

³⁷ What was the DAO, Cryptopedia, Gemini (17 March 2022) Accessible at: <https://www.gemini.com/cryptopedia/the-dao-hack-makerdao>

³⁸ SEC Charges Decentralized Finance Lender and Top Executives for Raising \$30 Million Through Fraudulent Offerings (6 August 2021) Accessible at: <https://www.sec.gov/news/press-release/2021-145>

³⁹ An Introduction to Stablecoins (17 August 2022) Accessible at: <https://www.forbes.com/advisor/investing/cryptocurrency/stablecoins/>

⁴⁰ *CFTC Orders Tether and Bitfinex to Pay Fines Totaling \$42.5 Million, Tether to Pay \$41 million Over Claims that Tether Stablecoin was Fully Backed by US Dollars*, Release No. 8450-21 (15 October 2021) Available online at: <https://www.cftc.gov/PressRoom/PressReleases/8450-21>

⁴¹ Yam Finance Smart Contract Bug Analysis & Future Prevention (13 August 2020) Accessible at: <https://medium.com/certik/2020-08-13-yam-finance-smart-contract-bug-analysis-future-prevention-b4220976ebeb>

⁴² Central bank digital currencies (CBDCs) are the digital form of a government-issued currency that isn't pegged to a physical commodity. They are issued by central banks, whose role is to support financial services for a nation's government and its commercial-banking system, set monetary policy, and issue currency. Examples of central banks include the US Federal Reserve System, the Bank of Japan, the People's Bank of China, and Germany's Deutsche Bundesbank. See What is central bank digital currency (CBDC)? (1 March 2023) Accessible at <https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-central-bank-digital-currency-cbdc>



⁴³ National Risk Assessment of Money Laundering and Terrorist Financing, 2017 Accessible at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf

⁴⁴ *The 2023 Crypto Crime Report*, Chainalysis; See also, *Internet Organized Crime Threat Assessment (IOCTA) 2021*, Europol Accessible at: <https://www.europol.europa.eu/publications-events/main-reports/iocta-report>

⁴⁵ See e.g., SEC Halts Alleged Initial Coin Offering Scam (30 January 2018) Accessible at: <https://www.sec.gov/news/press-release/2018-8>

⁴⁶ See e.g., SEC Charges Texas Man With Running Bitcoin-Denominated Ponzi Scheme (23 July 2013) Accessible at: <https://www.sec.gov/news/press-release/2013-132>

⁴⁷ See e.g., SEC Uncovers \$194 Million Penny Stock Schemes that Spanned Three Continents (18 April 2022) Accessible at: <https://www.sec.gov/news/press-release/2022-62>

⁴⁸ See e.g., FTX customers file lawsuit seeking to recover crypto assets (28 December 2022) Accessible at: <https://www.cbsnews.com/news/ftx-customers-class-action-lawsuit-sam-bankman-fried/>; See also SEC Plans Lawsuit Against Coinbase, According to Exchange (22 March 2023) Accessible at: <https://www.wsj.com/articles/sec-plans-lawsuit-against-coinbase-according-to-exchange-624f3a69>

⁴⁹ See e.g., SEC Charges Crypto Trading Platform Beaxy and its Executives for Operating an Unregistered Exchange, Broker, and Clearing Agency (29 March 2023) Accessible at: <https://www.sec.gov/news/press-release/2023-64>

⁵⁰ Dubai court issues 500-year prison sentences for Exential agents who fleeced cabin crew and church-goers of their life savings (April 2018). Accessible at <https://www.thenationalnews.com/uae/exclusive-dubai-court-issues-500-year-prison-sentences-for-exential-agents-who-fleeced-cabin-crew-and-church-goers-of-their-life-savings-1.720147>

⁵¹ What was the DOA Hack, Cryptopedia, Gemini (17 March 2022) Accessible at: <https://www.gemini.com/cryptopedia/the-dao-hack-makerdao>

⁵² *Fabian v. Nano*, 2019 WL 105597 (N.D.Cal.) (Trial Pleading) United States District Court, N.D. California

⁵³ A fork happens whenever a community makes a change to the blockchain's protocol, or basic set of rules. When this happens, the chain splits – producing a second blockchain that shares all of its history with the original, but is headed off in a new direction. For more, see What is a Fork, Coinbase Accessible at: <https://www.coinbase.com/learn/crypto-basics/what-is-a-fork>

⁵⁴ *The Failed Hopes of Disintermediation: Crypto-Custodian Insolvency, Legal Risks and How to Avoid Them* (April 30, 2020), Leiden Law School Research Paper, Hazelhoff Accessible at: <https://ssrn.com/abstract=3589381>

⁵⁵ *Mt. Gox* case, Ref. No. 25541521, Tokyo Dist. Court, Heisei 26 (Year of 2014), (Wa) 33320, Judgement of Civil Division 28 of 5th August 2015 (Year of Heisei 27) Date of conclusion of oral argument; 10th June 2015, English Translated copy accessible at: <https://blogs.law.ox.ac.uk/business-law-blog/blog/2019/02/english-translation-mt-gox-judgment-legal-status-bitcoin-prepared>; See also, *Mt Gox: The History of a Failed Bitcoin Exchange* (4 August 2015) Accessible at: <https://www.coindesk.com/markets/2015/08/04/mt-gox-the-history-of-a-failed-bitcoin-exchange/>; Bitgrail Exchange Ordered Down Indefinitely as Italian Court Upholds Halt (27 May 2018) Accessible at: <https://news.bitcoin.com/bitgrail-exchange-ordered-down-indefinitely-as-italian-court-upholds-halt/>

⁵⁶ *The Failed Hopes of Disintermediation: Crypto-Custodian Insolvency, Legal Risks and How to Avoid Them* (April 30, 2020), Leiden Law School Research Paper, Hazelhoff Accessible at: <https://ssrn.com/abstract=3589381>

⁵⁷ *The Failed Hopes of Disintermediation: Crypto-Custodian Insolvency, Legal Risks and How to Avoid Them* (April 30, 2020), Leiden Law School Research Paper, Hazelhoff Accessible at: <https://ssrn.com/abstract=3589381>

⁵⁸ *What is Gemini Custody*, Gemini Accessible at: <https://support.gemini.com/hc/en-us/articles/360032474912-What-is-Gemini-Custody-#:~:text=With%20a%20Gemini%20Custody%20account,auditable%20on%20their%20respective%20blockchains>

⁵⁹ *Liti Capital to Fund Action Against Binance* (19 August 2021) Accessible at: <https://liticapital.com/liti-capital-to-fund-group-action-against-binance/>

⁶⁰ *B2C2 Ltd. v. Quoine Pte. Ltd* [2019] SGHC(I) 03

⁶¹ *Cryptocurrency and NFT OSINT Investigations Tips & Techniques* Accessible at: <https://www.skopenow.com/resource-center/cryptocurrency-and-nft-osint-investigations-tips-techniques>; See also *Smart Contracts for creating NFTs on Opensea* Accessible at: <https://canecom.com/smart-contracts-for-creating-nfts-on-opensea/>

⁶² *Nisos Research: NFT Scam* (November 2022) Accessible at: <https://6068438.fs1.hubspotusercontent-na1.net/hubfs/6068438/Nisos-Research-on-Non-Fungible-Token-Scam.pdf>



⁶³ Forensic Analysis of Digital Currencies in Investigations (5 April 2021) Accessible at: <https://www.americanbar.org/groups/litigation/committees/pretrial-practice-discovery/practice/2021/forensic-analysis-of-digital-currencies-in-investigations/>

⁶⁴ In August 2022, US consumer watchdog group Truth in Advertising (TINA) put seventeen high-profile celebrities on notice for allegedly promoting NFTs without appropriate disclosures. Those named included Gwyneth Paltrow, Eva Longoria, Floyd Mayweather, Tom Brady, DJ Khaled, Snoop Dogg, and Paris Hilton. See <https://truthinadvertising.org/industries/celebrities-promoting-nfts/> In a class action, claimants are pursuing claims against a handful of celebrities, athletes and the Golden State Warriors for their roles in partnering with FTX as brand ambassadors and promoting the platform on social media accounts and participating in marketing campaigns. *Garrison v. Bankman-Fried et al* (Case no: 1:22-cv-23753)

⁶⁵ See including *Danisz v. (1) Persons Unknown (2) Huobi Global Ltd (Trading as Huobi)* [2022] EWHC 280 (QB)

⁶⁶ *CLM v CLN and others* [2022] SGHC 46 (CLM v. CLN)

⁶⁷ Applying the usual principles of *American Cyanamid Co v Ethicon Ltd* [1975] 2 WLR 316 and that the requirements for granting an injunction per *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another* [2015] SGCA 45.

⁶⁸ See e.g., Hong Kong court's judgment in *Nico Constantijn Antonius Samara v Stive Jean Paul Dan* [2019] HKCFI 2718

⁶⁹ The Enforcement Of Arbitration Awards And Judgments: Seizing Cryptocurrencies Under French Law, Delos (15 June 2022) Accessible at: <https://delosdr.org/the-enforcement-of-arbitration-awards-and-judgments-seizing-cryptocurrencies-under-french-law/>

⁷⁰ See including, *AA v Persons Unknown and Ors.* [2019] EWHC 3556 (Comm) (*AA v. Persons Unknown*); *Mr. Dollar Bill Ltd V Persons Unknown and Others* [2021] EWHC 2718 (Ch); *LMN v Bitflyer Holdings Inc and others* [2022] EWHC 2954 (Comm)

⁷¹ *The People of the State of New York, By Lelita James, Attorney General of the State of New York v. Coinseed Inc.* Accessible at https://ag.ny.gov/sites/default/files/borrok_default_judgment_decision_-_9.13.21.pdf

⁷² See including, *AA v Persons Unknown; Fetch.ai Ltd and another v Persons Unknown Category A and others* [2021] EWHC 2254 (Comm); *CLM v CLN and others*

⁷³ See including, *AA v Persons Unknown and Ors.*

⁷⁴ See including, *AA v Persons Unknown and Ors.*; *CLM v. CLN; Fetch.ai Ltd v Persons Unknown* [2021] EWHC 2254; *D'Aloia v Persons Unknown* [2022] EWHC 1723

⁷⁵ In *AA v Persons Unknown and Ors.*, the court ordered a private hearing because, inter alia, a public hearing could: (i) potentially tip off the unknown fraudsters to dissipate the crypto-currency (the court noting that it is quick and easy to do so with virtual currencies); and (ii) risk further revenge or copycat attacks on the insurer and/ or insured (the court also protecting against this risk by allowing the insurer and insured to remain anonymized).

⁷⁶ To the best of our knowledge

⁷⁷ *LCX AG v. 1.274M U.S. Dollar Coin*, No. 154644/2022, 2022 WL 3585277 (Sup. Ct. N.Y. Co. Aug. 21, 2022); *D'Aloia v. Person Unknown and Others*, [2022] EWHC 1723 (Ch) (June 24, 2022); and *Janesh s/o Rajkumar v Unknown Person* [2022] SGHC 264.

⁷⁸ An "airdrop" is a process by which blockchain tokens (such as NFTs or cryptocurrency tokens) can be distributed directly into the digital wallets of one or more individuals whose wallet addresses are known, without any initiating action required on the part of the wallet owner.

⁷⁹ Crypto Lawsuit Deluge Has Big Firms Scrambling to Keep Up (17 May 2022) Accessible at: <https://news.bloomberglaw.com/business-and-practice/crypto-lawsuit-explosion-has-big-law-scrambling-to-keep-up>

⁸⁰ see including, *AA v Persons Unknown and Ors.*; *CLM v CLN*; *Ruscoe v Cryptopia Ltd (in liq)*; *Janesh s/o Rajkumar v Unknown Person* [2022] SGHC 264; *Re Gatecoin Ltd* [2023] HKCU 1456.

⁸¹ see *AA v Persons Unknown and Ors.* [2019] EWHC 3556 (Comm) and *Ruscoe v Cryptopia Ltd (in liq)*

⁸² see including *Ion Science Ltd v Persons Unknown* (unreported, 21 December 2020); and *D'Aloia v Persons Unknown*, where the court held that the situs of the asset is England because the evidence is that the claimant was at all material times domiciled in England, and, as such, the USDT and USDC of which he was deprived by the fraudulent misrepresentation by the persons unknown, was located in England.

⁸³ *EZ Blockchain LLC v. Blaise Energy Power, Inc.* 589 F. Supp. 3d 1102

⁸⁴ *Osbourne v Persons Unknown and Ors.* [2023] EWHC 39 (KB)

⁸⁵ *U.S. v. Gratkowski*, 2020 WL 3530575; *Rio Christoff v Malcolm Tan Chun Chuen* [2013] SGHC 66



- ⁸⁶ Tulip Trading Limited v. Wladimir van der Laan and ors [2023] EWCA Civ 83.
- ⁸⁷ ADGM Courts put justice on the blockchain (15 November 2022) Accessible at: <https://www.adgm.com/media/announcements/adgm-courts-put-justice-on-the-blockchain>
- ⁸⁸ Colombia court moves to metaverse to host hearing (25 February 2023) Accessible at: <https://www.reuters.com/world/americas/colombia-court-moves-metaverse-host-hearing-2023-02-24/>
- ⁸⁹ Digital Dispute Resolution Rules, UK Jurisdiction Taskforce Accessible at: <https://resources.lawtechuk.io/files/2.%20UKJT%20Digital%20Dispute%20Rules.pdf>
- ⁹⁰ https://www.linkedin.com/posts/dubai-international-arbitration-centre_diac-metaverse-alternativedisputeresolution-activity-7047189672581566466-7tQr/?utm_source=share&utm_medium=member_desktop
- ⁹¹ See including, Gemini User Agreement Accessible at: <https://www.gemini.com/legal/user-agreement#section-welcome-to-gemini>; Coinbase User Agreement Accessible at: https://www.coinbase.com/legal/user_agreement/united_states; Kraken Terms of Service Accessible at: <https://www.kraken.com/legal>
- ⁹² See including, JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness consumer policies introduced Accessible at: <https://www.jamsadr.com/consumer-minimum-standards/>; AAA Consumer Arbitration Rules Accessible at: <https://adr.org/sites/default/files/Consumer%20Rules.pdf>
- ⁹³ *Soleymani v Nifty Gateway LLC* [2022] EWCA Civ 1297
- ⁹⁴ The English High Court, in *Chechetkin v Payward Ltd and others* [2022] EWHC 3057 (Ch), accepted jurisdiction to consider a consumer claim for repayment of sums lost trading crypto assets, despite the fact that the Claimant had signed up for arbitration, arbitration proceedings had already concluded and the tribunal had already issued a final award dismissing the claims.
- ⁹⁵ <https://kleros.io/>
- ⁹⁶ <https://court.aragon.org/#/dashboard>
- ⁹⁷ <https://jur.io/>
- ⁹⁸ Decentralized Justice: A Comparative Analysis of Blockchain Online Dispute Resolution Projects (16 March 2021). Accessible at: <https://www.frontiersin.org/articles/10.3389/fbloc.2021.564551/full>
- ⁹⁹ See, Kleros' White Paper (September 2019) Accessible at: https://kleros.io/static/whitepaper_en-8bd3a0480b45c39899787e17049ded26.pdf
- ¹⁰⁰ Decentralized Justice: A Comparative Analysis of Blockchain Online Dispute Resolution Projects (16 March 2021) Accessible at: <https://www.frontiersin.org/articles/10.3389/fbloc.2021.564551/full>
- ¹⁰¹ The claimants are pursuing claims against a handful of celebrities, athletes and the Golden State Warriors for their roles in partnering with FTX as brand ambassadors and promoting the platform on social media accounts and participating in marketing campaigns. *Garrison v. Bankman-Fried et al* (Case no: 1:22-cv-23753). Also, see <https://www.jdsupra.com/legalnews/the-first-ftx-lawsuit-class-action-6927662/>
- ¹⁰² *Crypto Litigation: An Empirical View*, Farshad Ghodoosi, Oxford Business Law Blog Accessible at: <https://blogs.law.ox.ac.uk/blog-post/2023/03/crypto-litigation-empirical-view>
- ¹⁰³ *Crypto Litigation: An Empirical View*, Farshad Ghodoosi, Oxford Business Law Blog Accessible at: <https://blogs.law.ox.ac.uk/blog-post/2023/03/crypto-litigation-empirical-view>
- ¹⁰⁴ Crypto Lawyers Bet Big on Class Action Lawsuits as Market Slides (1) (21 September 2022) Accessible at: <https://news.bloomberglaw.com/business-and-practice/crypto-lawyers-bet-big-on-class-action-lawsuits-as-market-slides>
- ¹⁰⁵ *JD Anderson and Ors. v. Binance, Changpeng Zhao and Ors.*, US Dist. Court S.D.N.Y., No. 20-cv-02803-ALC
- ¹⁰⁶ *Leidel and Ors. v. Coinbase Inc*, US Court of Appeal, 11th Cir., 729 Fed. Appx. 883
- ¹⁰⁷ *Chase Williams, et. al. v. Block One, et. al*, 20-cv-2809 (LAK) and *Crypto Assets Opportunity Funds LLC, et. al., v. Block One et., 20-cv-3829 (LAK)* US Dist. Court, S.D.N.Y.
- ¹⁰⁸ Federal Court Orders BitMEX to Pay \$100 Million for Illegally Operating a Cryptocurrency Trading Platform and Anti-Money Laundering Violations, Release No. 8412-21 Accessible at: <https://www.cftc.gov/PressRoom/PressReleases/8412-21>
- ¹⁰⁹ Class-action lawsuits filed against 11 crypto companies (11 April 2020) Accessible at: <https://decrypt.co/es/24532/class-action-lawsuits-filed-against-7-bitcoin-companies?amp=1>



¹¹⁰ UK Launches First Crypto Competition Class Action Claim (4 August 2022) Accessible at: <https://www.competitionpolicyinternational.com/uk-launches-first-crypto-competition-class-action-claim/>

¹¹¹ See including, *Friel v. Dapper Labs, Inc. et al*, 1:21-cv-05837 (S.D.N.Y.)

¹¹² See including, against bZx DAO [*Sarcuni et al v. bZx DAO et al.* (S. D. Cal., May 2, 2022)] and against MakerDao [*Johnson v. Maker Ecosystem Growth Holdings*, Case No. 20-cv-02569-MMC (N.D. Cal. Jan. 4, 2021)]

¹¹³ For example, see user agreements of Gemini, Binance, OpenSea, Coinbase NFT, and Bakkt which include provisions of class action waivers.

¹¹⁴ See including *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

¹¹⁵ <https://www.nasdaq.com/articles/how-failures-at-silvergate-svb-and-signature-bank-impact-bitcoin-investment>

¹¹⁶ The Collapse of FTX (<https://www.forbes.com/sites/forbesstaff/article/the-fall-of-ftx/?sh=66dc4f7a7d0c>)

¹¹⁷ *In re: Celsius Network, LLC, et al.*, Case No. 22-10964 (MG), US Bankruptcy Court, S.D.N.Y.

¹¹⁸ [2020] NZHC 728

¹¹⁹ Open Exchange - Crypto Exchange for Claims, Bitcoin, Ethereum Accessible at: <https://opnx.com/>

¹²⁰ A Three Arrows Capital Founder Talks About His New Crypto Bankruptcy Exchange (24 March 2023) Accessible at: <https://markets.businessinsider.com/news/currencies/a-three-arrows-capital-founder-talks-about-his-new-crypto-bankruptcy-exchange-1032191381>

¹²¹ Enforcement Actions for Failure to Register as a Money Services Business (FinCEN) Accessible at: <https://www.fincen.gov/enforcement-actions-failure-register-money-services-business>

¹²² *BTC-E a/k/a Canton Business Corporation*) and *Alexander Vinnik* (Number 2017-03). Also see, Attorney General James Continues Crackdown on Unregistered Cryptocurrency Platforms (9 March 2023). Accessible at <https://ag.ny.gov/press-release/2023/attorney-general-james-continues-crackdown-unregistered-cryptocurrency-platforms>

¹²³ Crypto Assets and Cyber Enforcement Actions (SEC) Accessible at: <https://www.sec.gov/spotlight/cybersecurity-enforcement-actions>

¹²⁴ FCA takes action against unregistered crypto ATM operators in Leeds (14 February 2023). Accessible at [fca.org.uk/news/press-releases/fca-takes-action-against-unregistered-crypto-atm-operators-leeds](https://www.fca.org.uk/news/press-releases/fca-takes-action-against-unregistered-crypto-atm-operators-leeds)

¹²⁵ See e.g., SEC Charges Wells Fargo Advisors With Anti-Money Laundering Related Violations (20 May 2022) Accessible at: <https://www.sec.gov/news/press-release/2022-85>. Also see FinCEN's actions in *BTC-E a/k/a Canton Business Corporation*) and *Alexander Vinnik* (Number 2017-03) and *Eric Powers*, Kern County, California (Number 2019-01)

¹²⁶ U.S. Treasury Sanctions Notorious Virtual Currency Mixer Tornado Cash (8 August 2022). Accessible at <https://home.treasury.gov/news/press-releases/jy0916> Also see e.g., First Bitcoin "Mixer" Penalized by FinCEN for Violating Anti-Money Laundering Laws (19 October 2020) Accessible at: <https://www.fincen.gov/news/news-releases/first-bitcoin-mixer-penalized-fincen-violating-anti-money-laundering-laws>

¹²⁷ See e.g., *SEC v. Paul A, Garcia*, 1:22-cv-00118 (D. Colo.)

¹²⁸ See e.g., Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations of Privacy Violations and Unwanted Charges (19 December 2022) Accessible at: <https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>

¹²⁹ See including, Exercise Caution with Crypto Asset Securities: Investor Alert (23 March 2023) Accessible at: <https://www.sec.gov/oiea/investor-alerts-and-bulletins/exercise-caution-crypto-asset-securities-investor-alert>; <https://www.bsc.bc.ca/enforcement/early-intervention/investment-caution-list>; <https://www.fca.org.uk/consumers/warning-list-unauthorised-firms>;

¹³⁰ Turkish authorities issue warrant for crypto exchange boss (23 April 2021). Accessible at <https://www.ft.com/content/246820fb-0848-4cd5-81a2-aa6d29424fd3>. Prosecutors issued a red notice to Interpol for the arrest of Thodex's (cryptocurrency exchange) CEO Faruk Fatih Ozer in connection with allegations of fraud. Also, see *In the matter of Larry Dean Harmon d/b/a Helix*, US FinCEN Dept. of Treasury, Number 2020-2. Accessible at https://www.fincen.gov/sites/default/files/enforcement_action/2020-10-19/HarmonHelix%20Assessment%20and%20SoF_508_101920.pdf

¹³¹ see including SEC Charges Kim Kardashian for Unlawfully Touting Crypto Security (3 October 2022) Accessible at: <https://www.sec.gov/news/press-release/2022-183>; Also, in August 2022, US consumer watchdog group Truth in Advertising (TINA) put seventeen high-profile celebrities on notice for allegedly promoting NFTs without appropriate disclosures. Those named included Gwyneth Paltrow, Eva Longoria, Floyd Mayweather, Tom Brady, DJ Khaled, Snoop Dogg, and Paris Hilton. See <https://truthinadvertising.org/industries/celebrities-promoting-nfts/>



¹³² British tax authorities seized three nonfungible tokens (NFTs) as part of a suspected case of value-added tax fraud worth 1.4 million pounds (\$2.55 million), as reported by The Straits Times. Accessible at <https://www.straitstimes.com/tech/tech-news/uk-makes-first-ever-nft-seizure-in-crackdown-on-tax-fraud>

¹³³ Two Defendants Charged In Non-Fungible Token (“NFT”) Fraud And Money Laundering Scheme (24 March 2022) Accessible at: <https://www.justice.gov/usao-sdny/pr/two-defendants-charged-non-fungible-token-nft-fraud-and-money-laundering-scheme-0>

¹³⁴ CFTC Releases Annual Enforcement Results, Release No. 8613-22 (20 October 2022) Accessible at: <https://www.cftc.gov/PressRoom/PressReleases/8613-22>

¹³⁵ See e.g., India Accessible at: <https://indianexpress.com/article/explained/explained-economics/crypto-assets-pmla-explained-8486629/>; United States Accessible at: <https://www.fincen.gov/sites/default/files/advisory/2019-05-10/FinCEN%20Advisory%20CVC%20FINAL%20508.pdf>; UAE Accessible at: <https://cointelegraph.com/learn/cryptocurrency-regulation-in-the-uae-and-the-dubai-virtual-assets-law>; Singapore Accessible at: <https://www.mas.gov.sg/news/media-releases/2014/mas-to-regulate-virtual-currency-intermediaries-for-money-laundering-and-terrorist-financing-risks>

¹³⁶ See e.g., New French Bill Could Give Authorities Powers to Seize Crypto Assets (9 September 2022) Accessible at: <https://www.coindesk.com/policy/2022/09/09/new-french-bill-could-give-authorities-powers-to-seize-crypto-assets/>

¹³⁷ *Ion Science Ltd v Persons Unknown* (unreported, 28 January 2022) Accessible at: https://files.lbr.cloud/public/2022-02/Judgment_0.pdf

¹³⁸ ADGM Courts put justice on the blockchain (15 November 2022) Accessible at: <https://www.adgm.com/media/announcements/adgm-courts-put-justice-on-the-blockchain>

¹³⁹ NFTs and Copyright: Some Burning Issues, Kluwer Copyright Blog (21 July 2022) Accessible at: <https://copyrightblog.kluweriplaw.com/2022/07/21/nfts-and-copyright-some-burning-issues/>

¹⁴⁰ See, Shenzhen Intermediate People's Court's judgment in (2018) Yue 03 Min Te No. 719 or (2018) 粤03民特719号 Accessible at: <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=66c48a7f946c4ba6b74bac0800a40ac6>. Also, a number of States have banned cryptocurrencies, including Bangladesh and Qatar. The US. Department of Treasury issued a stark warning, stating that the rise of decentralized cryptocurrency markets poses a significant threat with respect to concerns ranging from illicit activities to financial stability risks (<https://home.treasury.gov/news/press-releases/jy1391>)

¹⁴¹ Bitcoin And Public Policy In International Arbitration Enforcement (13 June 2022) Accessible at: <https://www.marketscreener.com/quote/stock/PUBLIC-POLICY-HOLDING-COM-130670778/news/Bitcoin-And-Public-Policy-In-International-Arbitration-Enforcement-40711447/>

¹⁴² <https://www.bitcoinsv.com/blacklist-manager>

¹⁴³ *Tulip Trading Limited v Wladimir van der Laan and ors* [2023] EWCA Civ 83, at [83].

¹⁴⁴ *Jing v. Sun*, 21-2350 (GRB)(AYS), 2022 U.S. Dist. LEXIS 1902 (E.D.N.Y. Jan. 4, 2022)

¹⁴⁵ [2019] SGHC(I) 03.

¹⁴⁶ *Diamond Fortress Techs. v. Everid, Inc.* (C. A. N21C-05-048 PRW CCLD) Superior Court of Delaware.

¹⁴⁷ UK Law Commission's Digital Assets Consultation Paper, July 2022 Accessible at: <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2022/07/Digital-Assets-Consultation-Paper-Law-Commission-1.pdf>

¹⁴⁸ *GBM Global Holding Company Limited v. Ivan Romanov and Others*, Award dated 2 May 2022 (AAA Case No. 01-21-0016-1249)

¹⁴⁹ Ryval - Fight on Accessible at: <https://ryval.market/>

¹⁵⁰ *Apothio, LLC v. Kern Cnty.*, 1:20-cv-00522-JLT-BAK (EPG) (E.D. Cal. Apr. 22, 2022)

¹⁵¹ Initial Litigation Offerings to Bring \$10B Asset Class to Avalanche and Retail Investors for the First Time (14 December 2020) Accessible at: <https://medium.com/avalancheavax/initial-litigation-offerings-to-bring-10b-asset-class-to-avalanche-blockchain-retail-investors-2aff880fa641>



ABOUT US

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- b. Legal 500 - Tier 2 Dispute resolution: Arbitration (2023)
- c. Asian Legal Business - Fast 30: Fastest & fierce growing law firms (2022)
- d. AsiaLaw Profiles - Notable Firm (2022)
- e. Benchmark Litigation (India) - Recognised for Commercials & Transactions; Construction; International Arbitration; White Collar Crime practice areas (2023); Top 6 Boutique Firms in Asia-Pacific for dispute resolution; Tier 3 in India for international arbitration (2021);
- f. Leaders' League - Best Law Firm in India for international arbitration & white-collar crime (2021)
- g. Financial Times - Recognised for moving the litigation finance market forward (2021); Top 5 in Asia-Pacific for innovation in dispute resolution (2020)
- h. Forbes India - Top Law Firm in India for White Collar Crime and Arbitration practice (2021)
- i. BusinessWorld - Oil & Gas Law Firm of the Year (2021)

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- Investigation on the Indonesian coal mining and logistic operations of a Singapore Company for fraud and diversion of business, and representing them in civil and criminal litigations arising from the investigations.
- Investigation on the oil and gas operations of a Singapore Company for fraud and diversion of business, and representing in them SIAC arbitration arising from the investigations.



- Investigations on a technology park for fraud and oppression on behalf of the minority shareholders.
- Investigations on an online-jewellery business and its promoter on behalf of the angel investors.

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- Representing an energy company to raise finance for a billion-dollar dispute against a state-owned entity.
- Representing an Indian company to raise finance for a multi-million-dollar dispute.
- Advising a litigation funder on entry strategies into and structures for the Indian market.
- Representing a leading global litigation funder for its investment in a portfolio concerning 2 mega infrastructure projects in Saudi Arabia.

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