



Research Article

DOCTRINAL APPROACHES AND INTERNATIONAL EXPERIENCE IN UNDERSTANDING THE DIGITAL ASSET

Submission Date: October 15, 2022, **Accepted Date:** October 25, 2022,

Published Date: October 30, 2022 |

Crossref doi: <https://doi.org/10.37547/tajpslc/Volume04Issue10-05>

Journal Website:
<https://theamericanjournals.com/index.php/tajpslc>

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ABSTRACT

The owner of digital assets considers that he has the characteristics of real property based on the fact that he can own them in the virtual space, use them and then dispose of them with material benefits. In the current legislation of the Republic of Uzbekistan, some gaps need to be eliminated in the legal regulation of digital assets. In particular, it is necessary to clarify and expand the term “digital assets” in the legislation of the Republic of Uzbekistan, to introduce a new classification that divides them into the virtual property (property rights) and virtual personal non-property benefits and rights related to property rights, and to make appropriate changes to their legal regulation. The fact that the concept of “digital assets” or “economic assets” has been expressed in several regulatory documents of foreign countries is considered a good foreign experience for us. There is no legal definition of the term “virtual property”. In addition, the concepts of “digital rights (digital asset)”, “digital object”, “virtual property”, and “virtual game property” should be distinguished from each other. The use of civil law to regulate digital assets remains fragmented, even taking into account future reforms. Shortly, even taking into account the rapid development and integration of blockchain technology, the practice of creating, implementing, and using digital financial assets based on it does not take into account all the functions that digital financial assets can perform. In this article, the author analyzes national and international legal doctrine and experience to determine the legal status of a digital asset in the legislation of Uzbekistan and offers suggestions for improving the national legislation.

KEYWORDS

Digital asset, cryptoasset, blockchain, virtual property, virtual currency, cryptocurrency, tokens.

INTRODUCTION

The Internet is becoming a place where many legal entities exercise their rights and fulfill their obligations. In these conditions, the increase in the amount of virtual property – digital assets – is becoming a common trend in the world of the Internet. However, at present, the category of new forms of digital property such as “digital asset (cryptoasset)”, and “digital financial asset” is not clearly defined in the civil law doctrine. In this regard, it seems relevant to study the legal nature of such a phenomenon as “digital assets”. In our opinion, “digital asset”, “digital financial asset”, and “cryptoasset” have the same meaning and are understood as meaningful forms of digital property within the framework of this dissertation.

The term “digital asset” is hardly observed in academic works. In civil law, digital rights and the very nature of digital currency have attracted the interest of scholars [1, p. 75-77]. Therefore, opinions were expressed that digital law can be divided into a separate field of law that regulates the relations formed in cases of the use of digital technologies and (or) the use of digital information [2, p. 450]. Later, it became clear that the concept of “digital right” is a broader concept and its components and content are multifaceted compared to its application only to digital currencies and financial assets [3, p. 28-31]. According to M.A. Rojkova, the diversity of relations regulated by digital law requires determining the method of regulation, which makes it impossible to divide digital law into sub-branches of law [4, p. 7-10].

In financial applications of digital assets, the interest of citizen scientists was initially focused on digital currency and its nature. Some researchers have commented on the similarity of the features of digital currency with money [5, p. 136-140]. However, most

researchers included digital currency in the property category [6, p. 24-26].

The following can be noted based on the different definitions of digital assets. First, the views that the concept of digital rights is diverse and cannot be tied to financial instruments alone have been confirmed by most scholars. It is a controversial issue whether the law considers the part of digital rights only related to the payment requirements or the circulation of emission papers in a certain information system. Second, the subject of digital rights implied by a digital asset can be money, or more precisely, monetary claims. However, there is no single approach to the essence of monetary demand in the literature [7, p. 28-31].

In a broad sense, it consists of an obligation to transfer a certain amount of money. In a narrow sense, monetary demand is related to the concept of debt. It is important to note that the records that the digital financial assets belong to their owner in the distributed register pass the title function and do not in themselves mean that the subject has digital rights to the material money stipulated by the digital asset recorded at any time. A payment request must be submitted to monetize a digital asset. It can be assumed that the owner of a digital asset is a creditor or a debtor concerning the participant of the transaction concluded within the information system.

It is necessary to pay attention to one more aspect. A digital asset can also be an expression of rights related to the issue of securities, and participation in the authorized capital of a non-state joint-stock company. This case is a novelty for the science of corporate law. Supplements are the previously established list of contributions that can be made to the authorized



capital of a joint-stock company. It should be noted that in practice, cases of introducing digital currency into the authorized capital of the company are widespread in foreign countries today.

One can fully agree with the following comments of N.S. Aleksandrova: “Digital currency consists of electronic data that can be accepted as a means of payment and does not have a person responsible for its owners” [7, p. 28-31]. We have to note the ambiguity of this concept. It is natural to recognize the possibility of using it as a means of payment in the legislation, bringing digital currency closer to the concept of money. It should be noted that defining the range of legal tender is the exclusive competence of the state. These issues are considered a problem that is considered within the framework of the public legal order and has a serious impact on the monetary and credit system of the state.

Therefore, in history, state control over the monetary system was created only as a result of the establishment of the monopoly of minting coins and the obligation of citizens to use them as legal tender [8, p. 16].

In addition, the definition of “digital currency” itself, more precisely, in Article 95 of the Civil Code of the Republic of Uzbekistan, “The types of property that are recognized as currency valuables and the procedure for making transactions with them are determined by a Law. The right of ownership to currency valuables is protected on general bases” is considered a fundamental basis for evaluating “digital currency” as currency assets.

As we can see, the concept of a digital asset is related to monetary claims and emission papers, and the digital asset itself can be related to the process of exchange between the participants of the information

system. Information about the participants is available in the register of the information system, which makes it possible to identify the person with the obligation. And digital currency is a property category, in which there is no person with an obligation.

Even though the possibility of digital currency circulation has been strengthened, the principles and basic criteria of such circulation have not been established by the legislator. Claims related to the circulation of digital currency can be defended in court only if the existence of the such currency is declared.

In our opinion, the problems noted in the regulation of digital currency are related to the insufficient theoretical development of the concepts of the digital environment, as well as the abstraction of international experience on the extent to which digital currency circulation can be regulated by the state.

Indeed, circulation has existed for a long time, but effective control mechanisms in the described space have not yet been proposed. The problem of regulation and control of activity is relevant for many areas of civil behavior in the context of the expansion of the digital environment [9, p. 483]. According to some researchers, the effectiveness of public administration increases in the control process precisely because of the tasks of coordination and cooperation of state authorities [10, p. 71-75].

Undoubtedly, the need to improve legislation on digital assets in Uzbekistan in the next decade is understood as a natural process. In this process, the legislator must clearly define whether digital currencies are property or an alternative to money in the future. All this is closely related to the need for protecting digital rights and their legal and effective regulation.

Currently, a single definition of the “digital assets” category has not been developed in world practice. There are few attempts to define the phenomenon of “digital assets” in the doctrine. In particular, the legal status of digital assets and the problems of their regulation were studied by M. Perrone [11], J. Beier [12], A. Waller [13], G. Lastowka [14], K. Sherry [15], J. Chambers [16], G. Ferrera [17], S. Tracy [18], D. Kirk [19], J. Farwell [20].

MATERIAL AND METHODS

The concept of “digital assets” is not defined in the legislation of the Republic of Uzbekistan. There is no definition and description of this phenomenon in the Uzbek doctrine. To understand the characteristics and nature of the phenomenon under study, it is appropriate to refer to the doctrine and legislation of European countries.

Charles Blazer [21] explains the definition of digital assets by listing their types: Documents created using Microsoft office software (such as Word, Excel, or PowerPoint); digital photos; digital video; Music on iTunes. The author combines the categories of “digital assets” and “digital property” and proposes to consider these phenomena as “virtual property”. In particular, its objects include a website, an agent’s contract proposal, a computer game character, and other intangible digital goods [22].

A general definition of digital assets is offered by N. Dosch: “any file on your computer, storage device or website and any online account or subscription” [23]. J. Conner, a supporter of a broad approach to describing this phenomenon, gave a similar definition in his research. This concept includes any digital file on the user’s computer, as well as an online account or subscription, etc. [24].

The definitions proposed by N. Dosch [25] and J. Conner [24] are abstract, but they allow us to cover the whole variety of objects included in the concept of “digital assets”.

Now let’s focus directly on the international experience related to the concept of digital assets and its legal regulation. Currently, the legislation of many countries does not have a definition of the phenomenon of “digital assets”. However, there have been attempts to define this phenomenon in some U.S. states. Let’s turn to the analysis of the legislation of individual states of the United States to study this category.

Connecticut state law does not have a definition of digital assets. Instead, it is limited to the term “email account”. These are all electronic messages sent or received by an end user of an email service provided by an email service provider, normally stored or recorded by that email service provider in the provision of said service; as well as any other electronic information, including billing and payment information, other information stored or recorded by the e-mail service provider, directly related to the e-mail services provided to the end user of the e-mail service provider” [26].

Virginia State Code [27] states that “digital assets” means analog or digital photos, any text, images, multimedia information, or other personal property stored on a server, computer, or other electronic device or electronic medium regardless of the form of ownership of the computer, device and electronic media, and whether the digital asset can be stored remotely. “Digital assets” includes any words, symbols, codes, or contractual rights necessary to access the digital assets.

Published in the State of Maine Commission on Wills and Trusts in the task for the development of non-digital assets in digital legacy. According to it, “digital assets” means information stored in electronic form, stored in any medium that allows information to be retrieved or stored in the future, including (but not limited to) documents, images, graphics, diagrams, photographs, audio recordings, images and other information or data collected” [28].

An Oregon bill of January 14, 2013, proposes a detailed, expanded definition of “digital assets” [29]. According to this bill, digital assets include (but are not limited to): text, images, multimedia information or other property stored in digital form, whether stored on a server, computer, or other physical device or electronic medium, regardless of the physical device or electronic media property on which digital assets are stored.

According to the proposed draft in this state, “digital assets” include (but are not limited to): Words, symbols, codes, or contractual rights required to access digital assets. In addition, this draft law contains the concept of a “digital account record” – “includes (but is not limited to) email, financial, personal, and other online accounts” [30]. In this bill [30], “personal property” includes all tangible and intangible property.... and a non-digital asset is expressly stated to include digital assets.

RESEARCH RESULTS AND THEIR ANALYSIS

Thus, after analyzing the different approaches to the interpretation of the category of “digital assets”, we can conclude that this phenomenon should not be limited to documents created by humans through computer programs (Microsoft Word, Excel, or PowerPoint).

As N. Dosch [31] rightly noted, this concept must include all domain names belonging to the user, any legally downloaded files (for example, MP3 music files and movies), any personal accounts created based on the Internet technologies that require entering a username and password for access (for example, social network or email accounts, as well as any accounts that store personal information (for example, a bank account for online shopping services).

Summarizing the above, it can be noted that the doctrines and laws of individual states of the United States use the term “digital assets” as well as the categories “digital property”, “virtual property”, and “intangible property”. It should also be noted that the doctrine does not develop clear criteria for the classification of digital assets. This is primarily due to the diversity and different forms of the phenomenon being studied.

If we refer to the meaning of the term “classification”, it includes the meaningful order of things, events, and their division into types according to some important signs [32, p. 786]. Therefore, it is necessary to distinguish the signs of the studied phenomenon to develop a classification.

Based on the location of digital assets, as its classification, J.C. Beier, S. Porter [33] distinguish between digital assets stored on a computer; digital assets stored on a smartphone, and digital assets uploaded to a site. These assets include music, video, medical records, tax documents, financial statements, photos stored on Shutterfly or Flickr, Dropbox, and other similar public cloud storage. Naomi R. Cahn [33] divides digital assets into the following classifications according to the field of circulation: personal, social media assets, financial, and business account records [34].



Let's focus on the analysis of some of these noted classifications. Personal assets may include digital assets stored on a computer, or smartphone or uploaded to websites such as Flickr or Shutterfly. They can include photos, videos, emails, or playlists. Photo albums can be stored on a personal hard drive or created using online systems.

In electronic form, users can store medical records and tax documents belonging to themselves and their family members. Each recorded digital asset typically requires different means of access: login, password, code words, etc.

Social media assets are assets related to interactions between users through Facebook, Twitter, and other similar websites, as well as email accounts. These websites can serve not only for communication between users, but also as a storage place for photos, videos, and other assets.

Financial assets may include payment cards connected to Internet banking, PayPal, Amazon and other accounts, eBay, Aliexpress, and other websites specializing in the sale of similar goods.

Business accounts, i.e., digital assets related to a person's professional activities, for example, eBay, and Aliexpress sellers can show their customer base or store order and payment information on a computer, or Dropbox cloud service. For example, a writer can use special virtual offices to work on his writings or run an Internet blog where he publishes all his works [34].

CONCLUSIONS

Based on international experience and doctrinal views, we can draw the following conclusions about digital assets:

First, the continuous development of information technologies and the emergence of new forms of digital assets, their trans-digital reconstruction does not allow to develop of a single definition of the category of "digital assets";

Second, most of the non-digital assets in the studied laws and bills have a dispositive nature, which allows expanding the scope of legal regulation, taking into account that digital assets are constantly changing and modernizing. This approach of the American legislator is focused on the future. The fact that the laws of some states use the comment "or may in the future" to define digital assets supports this point of view;

Third, it has been noted by scholars many times that laws on digital assets prompt amendments or additions to the U.S. state codes (Connecticut, Oklahoma, Idaho, etc.) or the Basic Laws of individual states;

Fourth, the precise systematization of digital assets into a single system is an impossible task. Digital objects can be classified on different grounds, depending on the characters that serve as the basis for the classification.

There are gaps in the current legislation of the Republic of Uzbekistan that need to be eliminated in the legal regulation of digital assets. In particular, it is necessary to clarify and expand the term "digital assets" in the legislation of the Republic of Uzbekistan, to introduce a new classification that divides them into the virtual property (property rights) and virtual personal non-property benefits and rights related to property rights, and to make appropriate changes to their legal regulation. Also, it is time to introduce the concept of "digital rights" in the virtual space into national legislation.



Fifth, we believe that it is necessary to show the following as a general definition of this concept in the research results: “digital assets – any digital file stored in any medium on which information can be placed and from which information can be retrieved or restored in the future”.

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