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The Crypto Market of the Future Needs a Flexible Legal Framework

By Jason Gottlieb

Morrison Cohen's Jason Gottlieb calls for a dynamic federal regulations that support innovation in cryptocurrency rather than demonize an industry he says is part of a larger digital future.

As Congress once again takes up the question of legislating digital assets and the Securities and Exchange Commission launches new broadsides against major industry players, remember what's at stake in the fight over digital assets.

This fight isn't just about cryptocurrency. It's a much larger battle for the right to your digital life, and whether you actually own or control any part of it.

Everything is becoming digitized. Your emails, texts, tweets, photos, and videos are all a stream of digital encodings. Your phone calls are broken into digital pieces and conveyed in ones and zeroes. Your public persona is digital—your Facebook, Twitter, online dating profile, company webpage. Your entertainment is digital. Your Google searches. Your interactions with AI chatbots.

Your activities are all a digital record in a digital space you don't control, seen by people you don't know, subject to corporate terms and conditions that, let's admit it, you didn't read—all waiting to be repackaged and sold for targeted advertising, or to be used against you in a court of law.

Your money, of course, is digital. You might have a few paper bills, but your money in the bank is a digital ledger entry. Your securities are a digital record of your share ownership, and your 401(k) or mutual fund is a digital record of your fractional ownership of those digital records.

Even the basic, physical elements of your life—food, clothing, shelter—are all enabled by digital assets. You order food by clicking jpegs. You buy clothes online by clicking digital pictures. Your home is financed into a residential mortgage-backed security, sliced up for investors, who use digital dollars to pay for a digital representation of a digital fraction of your house.

Digital assets are the future, and the future is now.

When people hear “digital assets,” they often think “cryptocurrency.” Crypto is the most obvious example, with the unfortunate collapses of Terra, Three Arrows, and most infamously, FTX.

Despite recent unrest, cryptocurrency has enjoyed a massive amount of growth and development in the last five years. The crypto boom brought a flood of talent and ideas into digital assets—engineers, coders, designers, managers, bankers, accountants, lawyers.

Thousands of technology companies will survive this crypto bear market. Just as the death of many dot com companies in 2001 hardly affected the internet's long-term dominance, the end of a few crypto companies won't fundamentally alter the growth of blockchain technologies and digital assets.

Blockchains are still clunky and slow. They're too complex for average consumers to use. They have too many security holes. But the essential insight of a blockchain is undeniably a technological improvement. Done right, blockchain is a superior system for recording information, both in transparency and security.

It's hard to do right, and needs work. But that work continues apace, in flashy startups as well as stodgy financial institutions, all making the investments necessary—in coders and coffee—to build better systems.

What if you didn't need a bank, with all its rules, fees, and overhead, because you could always see your money and pay your bills yourself? All this is possible. At bottom, digital assets are just software, and the uses of software are as limitless as the human imagination.

But on America's current path, these transformational advances are unlikely. US regulators are cracking down on cryptocurrency of all kinds. Congress has introduced some new and thoughtful bills to govern digital assets, but congressional action can be slow, clunky, and uncertain. As a result, crypto companies are moving abroad—to Europe, the UK, Japan, the Caribbean, and elsewhere, where there are clearer legal pathways.

That's a pity, because the law of cryptocurrency is a precursor to the law of other digital assets. Money is just the first step. People immediately understand why financial security is necessary—so nobody takes your money. It's also easy to understand why financial privacy is important. You don't want anyone knowing what church you gave to, what medications you buy, where you traveled, how much you spend on flowers (and for whom). It's your business.

But today's fight over cryptocurrency is tomorrow's fight over all digital assets. Today's battle is for private and secure control of your money. Tomorrow's battle is for private and secure control of everything else. The laws and rules we create for digital assets in one area will influence the laws for all of them. Right now, you're surrounded by the digital, and right now, you own none of it.

Will we, as a society, accept that corporate intermediaries, beholden to shareholders (but not you), possess and control our most valuable and personal information? Or will we, individually and collectively, fight to control our own digital assets—our money, our entertainment, our communications, our own public persona?

The legal battles over digital assets are the battles over the direction of our collective future. With regulators determined to simply shut down cryptocurrency, we turn to Congress.

America needs, as soon as possible, a legislative framework to allow experimentation and innovation, to let our most creative minds find ways to develop privacy and security controls

over our personal assets, and to ensure that your digital assets—the lifeblood of the next century—remain personal, in your control, and not for sale for others’ profit.

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