

**Opening Remarks for
Emerging Commercial and Litigation Trends in
Data Sovereignty and Digital Assets**

1. Good afternoon everyone, and a very warm welcome to this afternoon's seminar on Data Sovereignty and Digital Assets. This is a subject of immense importance.
2. I am delighted to be able to welcome you in person. Occasions such as these offer the opportunity to solidify existing relationships and make meaningful new ones, and to share ideas and exchange views.
3. I must start by saying a few words about the Specialist Accreditation Scheme, before I touch on the topic of the seminar this afternoon. The Scheme is an important initiative. Accreditation recognizes expertise and experience in specialized areas of legal practice. It is an endorsement of proficiency and standing. Since the Scheme's inception, over 70 Specialists and Senior Specialists in Building and Construction Law and Maritime and Shipping Law, have received accreditation. As we must, the Specialist Accreditation Board ("the Board") continues to explore accreditation in new areas. Data and Digital Economy Law (or D2E) is one such area.
4. I am therefore delighted to announce the accreditation of 24 D2E specialists in Data and Digital Economy Law.
5. Data and Digital Economy Law is the latest practice area to be introduced for accreditation following two years of intense study by the D2E subcommittee convened by the Board. I must acknowledge the work of the sub-committee. The members have committed valuable time and made an invaluable contribution. We are therefore grateful to the Co-chairs, Mr Rajesh Sreenivasan and Mr Joey Pang, and to the members:
Mr Ken Chia
Mr Josh Lee
Mr Lim How Khang
Mr Lim Seng Siew
Mr Ivan Rawter
Mr Michael Tan
6. Thank you very much for your work and commitment to SAL.
7. Why was the subcommittee's work important? Digitalisation is an area of growing importance in the law. This has not escaped the attention of the Board. Data and digital trade are borderless. Constraining them in jurisdictional silos is not possible. The consequent impact on global economic activity is real and transformative. This is the reality we must grapple with.
8. "Technology, Media and Telecommunications" is the nomenclature of the past that has been used to describe the advent of technology and the practice of technology law. But the digitalisation of trade and physical goods and the resultant data raise the question of whether the term "data and digital economy" (or D2E) is a more apposite description. The legal issues that arise from D2E are no longer confined to technology law. They are multi-sectorial cutting across different sectors from

banking and finance to media and shipping. The issues are complex and regulatory intervention is often behind the curve of technological advancement.

9. Therefore, the need to establish and grow a D2E specialist group of practitioners to support the burgeoning market for legal services in this area was imperative. It is thus fitting that some of the Senior D2E Specialists will share their thoughts today on the emerging legal and regulatory issues that we can expect in this space. This brings me to the topic for this afternoon's seminar - digital assets and data sovereignty. There are five aspects I shall touch on briefly.

Digital economy

10. I start with the digital economy. The digital economy is here to stay. Digitalisation of trade has seen global eCommerce revenue reach US\$3,784 trillion in 2022.¹ Singapore's digital economy alone contributed US\$18 billion in 2022 and is expected to reach US\$30 billion by 2025.² This is notwithstanding ecommerce activity tapering off as supply chains are disrupted and consumers return to off-site consumption of goods and services with the pandemic becoming endemic and Covid restrictions being lifted. Nevertheless, the convenience of being able to order that new monitor, webcam or gaming chair remains fresh in the mind. I am sure we will see the continued growth of the digital economy. Hence, the need to address the questions it poses.

Digital assets

11. Second, digital assets. Digitalisation has not only transferred economic activity online, it has also de-materialised everyday physical objects. Movies, recorded music, books, games and art can now be digitised and sold or traded online as digital assets. This opens the possibility to new opportunities for the creative industries.
12. Through blockchain and distributed ledger technologies, digital assets such as crypto assets, crypto currencies and NFTs can be minted, stored and traded using crypto-tokens via marketplaces and exchanges.
13. Novel legal questions consequently arise. For example, are digital assets property and if so of what variety?
14. Jurisprudence suggests that digital assets might have the characteristics of intangible property. In *Quoine Pte Ltd v B2C2 Ltd*,³ the Court of Appeal noted in *obiter* in relation to crypto assets that "There may be much to commend the view that cryptocurrencies should be capable of assimilation into the general concepts of property. There are, however, difficult questions as to the type of property that is involved. It is not necessary for us to come to a final position on this question in the present case."⁴ While indicating a tentative view that crypto currencies were

¹ Statista, "Retail E-Commerce Sales Worldwide from 2014 to 2026"

<<https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/>> (accessed 6 February 2023);

Martin Armstrong, "E-Commerce Revenue to Shrink for the First Time Ever", World Economic Forum

<<https://www.weforum.org/agenda/2022/08/e-commerce-revenue-shrink/>> (accessed 6 February 2023).

² Google, Temasek and Bain & Company, "e-Conomy SEA 2022, Through the Waves, towards a Sea of Opportunity" <<https://economysea.withgoogle.com/home/>> (accessed 6 February 2023).

³ [2020] 2 SLR 20.

⁴ [2019] SGHC(1) 3 at [142].

property, the Court of Appeal left open the question of the type of property they were.

15. In *Janesh s/o Rajkumar v Unknown Person (“CHEFPIERRE”)*⁵ the High Court arrived at the view that NFTs bore the characteristics of property.
16. Many jurisdictions have reached the conclusion that cryptocurrencies are property.⁶ For example, English courts have been prepared to issue proprietary relief over cryptocurrency assets.⁷ Whether the view that ultimately prevails is that crypto assets are property of a certain variety will be interesting to see in light of the recent failures of crypto-related entities and the increasing regulatory oversight.
17. There are other challenging issues that confront digital assets. Without being comprehensive, I name four:
 - a. Are digital assets actual tokens?
 - b. Do the legal concepts of division/fractionalisation apply to digital and crypto assets?
 - c. How is title to digital and crypto assets transferred and how can the method of transfer satisfy existing requirements for the transfer of assets?
 - d. Are present techniques fit for purpose in valuing digital and crypto assets? This could have serious ramifications in the valuation of failed businesses that hold a significant portion of their balance sheet in digital assets.
18. I will leave these issues in the capable hands of the panel and you to dissect and shine the light on.

Data Sovereignty

19. Third, data sovereignty. Like digital assets, data has its own dedicated and distinctive economy with attached value. While goods and services have traditionally been transported physically using various modes of transport, data is naturally different. Data is delivered in data packets through fibre-optic cables and satellites. Data flows now underpin and facilitate the movement of physical objects and the delivery of services. It is apparent that data is the raw material from which new services, business models and value are created.
20. Data sovereignty and localisation are now buzzwords in attempts by regulators to manage the use and export of data through domestic regulation, bilateral and multilateral trade agreements,⁸ and the convergence of international standards.⁹ These attempts face challenges. I highlight enforcement as one such challenge.

⁵ [2022] SGHC 264.

⁶ *Ruscoe v Cryptopia Ltd (in liquidation)* [2020] NZHC 728.

⁷ *Vorotyntseva v Money-4 Limited t/a Nebeus.com & Ors* [2018] EWHC 2596.

⁸ For example, Digital Economy Partnership Agreements (DEPA) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

⁹ For example, UNCITRAL Model Laws.

21. The enforcement of data sovereignty regulations faces several difficulties. I will mention just two:¹⁰
 - a. In 2022, the volume of data created, captured, copied, and consumed worldwide was expected to hit 97 zettabytes, doubling to 197 zettabytes in 2025.¹¹ The scale is mind boggling. The more data an owner has, the greater is the challenge for enforcement and the identification of the applicable laws.
 - b. Cloud computing services are at their most efficient when data is free to flow between national borders. However, the very nature of cloud computing poses data sovereignty issues due to the dispersed nature of its infrastructure. There is a further complication. The architecture of cloud arrangement places the responsibility to maintain data sovereignty on the end user and not the cloud provider, further complicating enforcement.¹²

Data Localisation

22. Fourth, data localisation. Data localisation is used by corporations and governments to assert data sovereignty. This raises difficult questions on where data is to be stored and the conditions that apply to its transfer between jurisdictions. For example, India's Digital Data Protection Bill 2022 stipulates that transferring data outside the country is permitted only if certain conditions are met by the transferee and/or by the recipient country.
23. Some of these conditions include:¹³
 - i. Whether the recipient country has in place a level of protection for personal data considered adequate by the transferor regulator.
 - ii. Whether the data subjects have given explicit consent to the transfer.
 - iii. Whether contractual provisions necessitate the transfer.

The issues are apparent.

24. I have given just a snapshot. Talking points remain:
 - a. What is the impact of the myriad of multi-jurisdictional regulations on risk and compliance?

¹⁰ "Data Sovereignty Around the World: Exploring Regulations in Canada, U.S., U.K., E.U., Brazil and Japan" White Paper, Acronis <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://dl.acronis.com/u/rc/White-Paper-Acronis-Cyber-Protect-Cloud-Data-Sovereignty-Around-the-World-EN-US.pdf> (accessed 9 February 2023).

¹¹ Statista, "Volume of Data/Information Created, Captured, Copied, and Consumed Worldwide from 2010 to 2020, with Forecasts from 2021 to 2025" <https://www.statista.com/statistics/871513/worldwide-data-created/> (accessed 6 February 2023); Marília Maciel, "E-Commerce and Trade" digwatch <https://dig.watch/topics/e-commerce-and-trade> (accessed 6 February 2023).

¹² In Singapore, the *Multi-Tier Cloud Security (MTCS) Singapore Standard (SS) 584* certification indicates that cloud service provider is qualified to handle highly sensitive data.

¹³ EU's GDPR, Brazil's Lei Geral de Proteção de Dados Pessoais (General Personal Data Protection Law); Canada's Personal Information Protection and Electronic Documents Act.

- b. Are economic decoupling and trade barriers obstacles to the free flow of information?
 - c. Is harmonization or convergence of data sovereignty laws possible?
 - d. Does data localisation truly achieve greater data control and security?
25. These points are grist for the mill for the panel. Singapore, as one of the advanced digitalised countries, must confront the legal challenges and find suitable solutions. It is a brave new world that demands brave new solutions.
26. Before I take my leave, on behalf of the Board I would like to express my congratulations to all the specialists who will be receiving their Certificates of Accreditation. For them, it is the start of a new journey. They must sharpen their knowledge and skills, and provide the thought leadership that this exciting and exacting area of the law and commerce demands.
27. My very best wishes for a fruitful discussion this afternoon.

Thank you.

Justice Kannan Ramesh
Judge of the Appellate Division
Supreme Court of Singapore
13 February 2023