

# **LEGAL GEEK CONFERENCE 2024**

**16 October 2024**

## **The Digital Trading Revolution: Underpinned by Law**

### Introduction

1. I am honoured to have been invited by Legal Geek to address this large conference here at the Old Truman Brewery. It may be that you will not hear from too many judges over these two days. But I hope that I what I say will not cause you to reconsider inviting judges to future events!
2. Let me explain briefly what manner of judge I am and why I am interested in tech. I am the 98<sup>th</sup> Master of the Rolls. That office has been going some 800 years. I am still in charge of the “rolls and records of England”, which means, in modern terms, that I have responsibility under the Public Records Act 1958 for national records, which means data. I am also head of the Civil Division of the Court of Appeal, and a member of the Lawtech UK Panel and Chair of its UK Jurisdiction Taskforce since its inception in 2019.
3. I want to talk this morning about why tech and the law need to be seen together and work together. Many lawyers, excluding of course those here today, have been backward in adopting tech solutions and in understanding what tech can do for the law and what the law can do for tech.
4. In a few words this morning, I want to try to put that right. In short, the law is critical to the mainstream adoption of digital assets and digital trading, to the successful application of ADM, automated agents and AI in almost every financial, industrial and consumer sector, and to the protection of citizens and businesses from cyber-crime and cyber-fakes.

## The UKJT and digital trading

5. The UKJT has issued three influential legal statements as to the capacity of English law to recognise digital assets as property, as to the validity of the securitisation of digital property under English law, and as to the treatment of digital property in an insolvency context.
6. I believe, though, that a breakthrough is needed before we will see the wholesale adoption of digital trade and the abandonment of paper documents of title. What is needed is for all the private law systems in mainstream international commercial use, in addition to English law, to take similar steps forward and develop their private laws in complementary ways that allow for the paperless transfer of digital assets, digital money and physical goods.
7. The UKJT will be able to play a role in convening influential lawyers and judges, working alongside governments and central banks to create the harmonising changes to the most significant private law systems that will create the climate for international digital trading.
8. So, when we can expect paperless international trade to become the norm? I am not sure. It has taken longer than many people hoped and even expected. I remain optimistic.
9. My optimism is based on assumptions that, over time, it is inevitable. Global tech companies and start-ups alike have realised that that the attractions of disintermediation are short-term. The regulators eventually catch up, and the tech companies themselves need the security that legal contracts, under a recognised private law system, can provide.
10. I certainly expect that: (a) first world central banks and governments will now seriously consider the issue of central bank digital currencies and the regulation of stablecoins on which digital trade could be based, (b) all industrial, consumer and financial sectors will wish to, and I would say need to, engage in paperless electronic trade, and (c) Governments are likely to find digital trade to their advantage since it will enable them to collect direct taxes, like VAT, at the point of

transaction digitally, without the risk of evasion, or even avoidance.

11. Commercial parties will find digital trade to their advantage since it can take place instantaneously and is free of the friction that the use of any kind of paper transactions entail.

### The relevance of the law to the successful adoption of AI

12. Here again, the law is vital. I attended an important conference of the European Law Institute in Dublin last week. There, we were told that the EU's AI Act puts the human at the heart of the adoption of AI. AI can be used to **assist** human decision-making, but ultimately humans must be accountable for all decisions made.
13. In my view, however, likely developments in AI will, in reality, put that kind of regulation to the test.
14. The power of AI is growing rapidly. The LLMs of today are only the start. Much more powerful tools will soon be available. When they are, they will be able to advise on and even resolve, at least some, legal questions as well as humans, far more quickly and far more cheaply. Whilst lawyers and judges will **want** to retain complete human oversight of the use of these technologies, they will, I suspect, not actually be able, without spending masses of time and money, to check the work of the AI.
15. Citizens will surely use these AI tools in practice to get legal advice and will surely want justice delivered more speedily and efficiently by the use of them. If lawyers and judges refuse to adopt them, they will be left behind. Once the human lawyer or judge is faced with something that may take days to check – or simply be uncheckable – what choice do they have but to accept the advice or verdict of the machine?
16. This is a serious problem for the future. It will not arise due to malign use of AI, but from an inevitable commercial and perhaps human imperative to allow citizens and business to

achieve what they want and need – namely effective legal solutions – more quickly and efficiently than humans can achieve. And this problem affects every other consumer, financial and industrial sector in much the same way that it affects law, lawyers and judges.

17. This is the problem that requires our urgent attention. Even if it is illegal (as, for example, under the AI Act) for machines to decide certain questions, the humans, who are legally accountable, may be left with no economic choice but to accept the AI's work product. This creates legal, regulatory and ethical conundrums for the future. It will be for you, the lawyers to consider and help solve them.

#### The law and cyber-crime and cyber-fakes

18. I am, of course, as concerned as anyone else about cyber-crime and cyber-fakes. But I believe that the law can be part of the solution. As consumers and businesses become more savvy about AI, they will apply that familiarity to understanding its risks and dangers. This is the same as has happened with every new creative fraud over centuries. People should not be underestimated. They can learn. They will learn to spot the fakes and the dangers of automated decisions and agents.
19. And here the judges can play a part. We have great expertise in distilling issues, and, where truths differ, deciding which one prevails. Judges will apply that same expertise, in the ultimate worse case, to making the same kinds of decision about the AI space.

#### Conclusions

20. The law is critical at every level to the successful adoption of technology. The law will help AI innovators to navigate the EU's AI Act, the GDPR and other regulatory mazes. It will not be long before tech and other businesses alike will need lawyers to deal with the complexities of liabilities arising from both the use **and** non-use of artificially intelligent systems.

21. To benefit from the advantages of fully digital on-chain trading, industry will need the law to adapt, as I have sought to explain, to allow the digital paperless transfer of bills of lading, digital assets and bills of exchange.
22. Mario Draghi himself has said in his recent report on the future of European competitiveness that: “the EU’s regulatory stance towards tech companies hampers innovation: the EU now has around 100 tech-focused laws and over 270 regulators active in digital networks across all Member States. Many EU laws take a precautionary approach”. You lawyers will need to make sure that regulation supports rather than hampers innovation.
23. The law may move slowly, but it will ultimately be the most reliable foundation for the adoption of new technologies, whether those new technologies are automated assistants, automated decision-making, AI, or digital trade using crypto currencies, on-chain or off.
24. Thank you for listening.