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# Private International Law Aspects of the Digital Economy: Report

## I. Introduction

- 1 At its March 2024 meeting, the Council on General Affairs and Policy (CGAP) mandated the Permanent Bureau (PB) to continue, subject to available resources:
  - a. monitoring developments with respect to digital platforms, artificial intelligence and automated contracting, and immersive technologies, including in partnership with subject-matter experts and with UNCITRAL;
  - b. working with UNCITRAL and other organisations with relevant expertise on matters relating to the PIL aspects of the digital economy;
  - c. monitoring developments with respect to the digital economy, with a view to identifying PIL issues for potential future work; and
  - d. developing activities concerning topics falling under the purview of the HCCH International Commercial, Digital and Financial Law Division.<sup>1</sup>
- 2 The work following on these mandates (the “Digital Economy Project”) focuses on two aspects, subject to available resources: a general monitoring of developments ongoing in the digital economy as a whole for issues relating to private international law (PIL), and responses to requests for the PB’s input on PIL-related issues arising in the work of sister and partner organisations in the digital economy. Work in the Digital Economy Project is executed keeping in mind the limited resources available at the PB. Resource allocation to the Digital Economy Project takes into account the higher prioritisation of other work carried out under the purview of the International Commercial, Digital and Financial Law Division, in particular the Experts’ Group on Central Bank Digital Currencies (EG on CBDCs),<sup>2</sup> the Digital Tokens Project,<sup>3</sup> and the work on carbon markets.<sup>4</sup> This Preliminary Document (Prel. Doc.) reports on the monitoring of developments carried out over the last year in the Digital Economy Project.

## II. PIL Aspects of the Digital Economy

### A. Immersive Technologies

- 3 Immersive technologies and metaverses refer to multi-purpose environments and systems in which actors use virtual reality and augmented reality technologies to interact and to transact in digital as well as real-world items. As discussed at CGAP 2024, PIL questions arise in immersive technologies based on the nature of the networked platforms on which these technologies operate, and from the seamless connection between digital and real-world objects.<sup>5</sup> If the system is designed according to principles of decentralisation, challenges may further arise due to the diffuse nature of the network and the pseudonymity of users.<sup>6</sup>

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<sup>1</sup> “Conclusions and Decisions of the Council on General Affairs and Policy of the Conference (5-8 March 2024)”, C&D No 11, available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Governance” then “Council on General Affairs and Policy” and “Archive (2000-2024)”.

<sup>2</sup> “Experts’ Group on Central Bank Digital Currencies (CBDCs): Report of 2025”, Prel. Doc. No 3 of December 2024, available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Governance” then “Council on General Affairs and Policy”.

<sup>3</sup> “Report on Exploratory Work: Digital Tokens Project”, Prel. Doc. No 4 of November 2024, available on the HCCH website at [www.hcch.net](http://www.hcch.net) (see path indicated in note 2).

<sup>4</sup> “Report: Private International Law Issues related to Voluntary Carbon Markets Representation at the HCCH”, Prel. Doc. No 6 of November 2024, available on the HCCH website at [www.hcch.net](http://www.hcch.net) (see path indicated in note 2).

<sup>5</sup> “Private International Law Aspects of the Digital Economy: Report”, Prel. Doc. No 5A of February 2024, para. 13, available on the HCCH website at [www.hcch.net](http://www.hcch.net) (see path indicated in note 1).

<sup>6</sup> Prel. Doc. No 4 of November 2024, paras 9-10.

**a. Challenges to the determination of jurisdiction and the applicable law**

- 4 A European Parliament resolution of 17 January 2024 on “policy implications of the development of virtual worlds – civil, company, commercial and intellectual property law issues” highlighted jurisdictional challenges arising from the ability of users worldwide to access virtual worlds (European Parliament virtual worlds resolution).<sup>7</sup> The report called on the European Commission to, among other actions, assess the appropriateness of the existing provisions of PIL applicable in the European Union (EU), proposing appropriate amendments, where necessary, to guarantee that citizens and businesses could access suitable fora to enforce their rights and bearing in mind the risk of forum shopping by non-EU companies.<sup>8</sup> The European Parliament virtual worlds resolution noted that reform of the Brussels I Regulation<sup>9</sup> may be necessary due to the global and decentralised nature of virtual worlds, and how the Directive may apply to disputes involving a metaverse.<sup>10</sup> The framework of Brussels I Regulation is based on a definition of “consumer” which requires an exact contractual relationship, which may not be present when the purchaser of a token on the secondary market must engage in a dispute with the issuer; the final purchaser would be deprived of the jurisdictional treatment that Brussels I Regulation grants to consumers.<sup>11</sup>
- 5 Related to the matter of torts, an expert testifying to the European Parliament Committee on Legal Affairs (Metaverse Hearing) noted, in cases in which territorial principles typically require the plaintiff to litigate at the place where the harmful event occurred, case law of the Court of Justice of the European Union (CJEU) dealing with Internet harms has developed the “mosaic criterion” allowing the injured party to seek a portion of compensation from every court where a part of the harm is being suffered. Such an approach would be untenable in a metaverse-related dispute. The expert suggested that the CJEU should codify a “centre of main interests” approach where an injured party may litigate where their personal life is centred. Noting that this legal test exists alongside but has not replaced the mosaic criterion approach, it was suggested that such a test also specify what criteria are involved in determining the centre of main interests.<sup>12</sup>
- 6 On the matter of determining the applicable law, the expert testifying in the Metaverse Hearing noted that it is unclear under the Rome I Regulation<sup>13</sup> whether people in a metaverse can choose their own law to govern their contractual relationships – including the choice of non-State law developed within the metaverse itself.<sup>14</sup>
- 7 Along the same lines, the International Trademarks Association (INTA) published a white paper highlighting that challenges may arise concerning choice of venue clauses in agreements in a metaverse, leading to uncertainty for courts ruling on the formation and validity of such clauses. The INTA noted the *situs*-rooted challenge for multijurisdictional enforcement initiatives in the

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<sup>7</sup> European Parliament resolution of 17 January 2024 on policy implications of the development of virtual worlds – civil, company, commercial and intellectual property law issues (European Parliament virtual worlds resolution), para. 13, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C\\_202405720](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202405720).

<sup>8</sup> *Ibid.*, para. 16.

<sup>9</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Brussels I Regulation), OJ L 351, 20 December 2012, p. 1.

<sup>10</sup> *Ibid.*, para. 15.

<sup>11</sup> *Ibid.*

<sup>12</sup> P. Ortolani, “Regulatory challenges in the Metaverse”, a hearing of the European Parliament Committee on Legal Affairs on 24 April 2023. Video timestamps 17:35:47 to 17:46:31, available at [https://multimedia.europarl.europa.eu/en/webstreaming/juri-committee-meeting\\_20230424-1500-COMMITTEE-JURI](https://multimedia.europarl.europa.eu/en/webstreaming/juri-committee-meeting_20230424-1500-COMMITTEE-JURI) (Ortolani Testimony). For further information on the mosaic approach, see Gtflix Tv, C-251/20, discussed by <https://conflictoflaws.net/2021/cjeu-on-mosaic-approach-and-jurisdiction-for-action-on-compensation-for-damage-resulting-from-an-online-publication-under-article-72-of-the-brussels-i-bis-regulation-in-the-case-gtflix-tv-c-251-20/> and <https://www.europeanpapers.eu/en/europeanforum/jurisdiction-concerning-actions-by-legal-person-for-disparaging-statements-on-internet-mosaic-approach>.

<sup>13</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I Regulation), OJ L 177, 4 July 2008, p. 6.

<sup>14</sup> Ortolani Testimony.

metaverse: “the concepts of habitual residence, place of business, and real estate property location, upon which legal systems are generally based, may become meaningless in the context of the metaverse [...]. The same complications that arise when multiple jurisdictions assert an ability to hear a particular dispute related to website, domain name, and Internet-related infringements are likely to emerge in the metaverse as well”.<sup>15</sup> The INTA noted that coordination with the United Nations Commission on International Trade Law (UNCITRAL) and the HCCH, among others, might be warranted to establish consistent recommendations to States.<sup>16</sup>

### **b. Challenges to intellectual property (IP) protection**

- 8 Recent legislative and policy responses to immersive technologies have also focused on the applicability of existing IP frameworks in new digital environments.
- 9 The Heads of Intellectual Property Offices of the Group of Seven issued a joint statement following discussions (held in a metaverse environment) focused on IP-related matters within digital contexts, which “recognise[d] that an effective international IP ecosystem is necessary to incentivize innovation and creativity, which drive social and economic development worldwide”.<sup>17</sup> The statement also expressed a commitment to address IP issues arising in new digital contexts such as the metaverse, and to raise consumers’ awareness on risks related to purchase of IP-infringing products such as counterfeits in new digital contexts.<sup>18</sup>
- 10 The European Parliament virtual worlds resolution noted that virtual worlds accessible in the EU should respect IP protections and other fundamental principles relating to privacy, security, consumers’ and child protection, and the prevention of online abuse and fraud, noting the applicability of existing regulations to the same subject matter in virtual worlds.<sup>19</sup>

### **c. Disputes arising from avatars**

- 11 PIL solutions may be required to harmonise possible differing approaches to the treatment of avatars, and legal frameworks may be needed for situations where an avatar is able to act autonomously, in particular as tort liability may attach to the underlying user. Clarity is needed on determining whether the avatar is an agent rather than a mere device deployed by the user; identifying the controller of the avatar; and determining if the avatar has distinct legal personality.<sup>20</sup>
- 12 Hardware connecting the user’s physical senses to the avatar, including haptic feedback devices and suits, have a long history in the video and arcade game industry; devices that simulate resistance or force in the user’s controller have existed in various iterations since the 1970s.<sup>21</sup> More recently, as such features have become standard, attention has turned to improvements in immersion through the use of motion controllers, virtual reality headsets, augmented reality displays, and haptic feedback suits. Such equipment may simulate real-life contact between users, leading to challenges concerning the treatment of un-consented or hostile contact in immersive environments. For example, in December 2021, a beta tester of the platform Horizon Worlds

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<sup>15</sup> International Trademark Association, White Paper: Trademarks in the Metaverse (April 2023), pp. 51-52, available at [https://www.inta.org/wp-content/uploads/public-files/perspectives/industry-research/METAVVERSE\\_REPORT-070323.pdf](https://www.inta.org/wp-content/uploads/public-files/perspectives/industry-research/METAVVERSE_REPORT-070323.pdf).

<sup>16</sup> *Ibid.*, pp. 56-57.

<sup>17</sup> JPO Hosts the G7 Heads of IP Office Conversation in the Metaverse, Press Release (18 December 2023), available at [https://www.dpma.de/english/services/public\\_relations/press\\_releases/15122023/index.html](https://www.dpma.de/english/services/public_relations/press_releases/15122023/index.html).

<sup>18</sup> G7 Heads of IP Office Conversation, Joint Statement, available at <https://www.meti.go.jp/english/press/2023/pdf/20231218001-1eng.pdf>.

<sup>19</sup> European Parliament virtual worlds resolution, para. 4.

<sup>20</sup> S. Kozuka, “The avatar law and (cyber) transnational contracts”, *Uniform Law Review*, Vol. 28, pp. 281-292 (2023).

<sup>21</sup> History of Haptic Technology in Video Game Industry, <https://teslasuit.io/blog/history-haptic-technology/>.

revealed that she experienced virtual harassment, assault, and groping in a virtual reality meeting space.<sup>22</sup>

- 13 Complex issues also may arise with respect to avatars simulating the real-life appearance and features of natural persons, particularly through holographic representations and artificial intelligence (AI) voice generators.<sup>23</sup> With these technologies, a true-to-life version of a person may be broadcast in a metaverse space or in a live venue, raising intersecting concerns of IP protection, rights of publicity, and public policy matters including free speech and parody.<sup>24</sup>

## B. AI and Automated Contracting

### a. Update on UNCITRAL Working Group IV: Electronic Commerce

- 14 During its 66<sup>th</sup> session, UNCITRAL Working Group IV (WG IV) considered a revised set of draft principles on automated contracting, including accompanying remarks which drew on earlier reports of the WG and notes by the Secretariat with a view to preparing explanatory material on the eventual output of the project.<sup>25</sup> The principles seek to provide definitions on key terminology including an “automated system”; the effects of using an automated system on legal recognition of a contract’s formation; attribution of the system’s outputs; and the effect of an automated system on knowledge and intention elements in the formation of contracts, among other matters.<sup>26</sup> Broad support was expressed for the UNCITRAL Secretariat to proceed with recasting the principles as model legislative provisions – the Model Law on Automated Contracting – and providing a guide to enactment.<sup>27</sup> The UNCITRAL Commission agreed to approve the guide to enactment in principle, and to request the Secretariat to finalise it to reflect the decisions of the Commission.<sup>28</sup> The PB sits as an Observer of the work of WG IV, subject to available resources. At its 67<sup>th</sup> session from 18 to 22 November 2024, WG IV completed its review of the guide to enactment of the Model Law on Automated Contracting.<sup>29</sup>

### b. Relevant AI legal frameworks

- 15 The PB has continued to monitor PIL developments in relation to AI and automated contracting, including developments in legislation and jurisprudence in the field.
- 16 The EU Artificial Intelligence Act (AI Act) is the world’s first comprehensive regulatory framework for AI. The AI Act sets requirements for systems deemed to be high risk,<sup>30</sup> and designates the following

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<sup>22</sup> MIT Technology Review, “The metaverse has a groping problem already”, available at <https://www.technologyreview.com/2021/12/16/1042516/the-metaverse-has-a-groping-problem/>.

<sup>23</sup> See, e.g., the use of devices that may project pre-recorded or live holograms: <https://edition.cnn.com/2024/09/27/tech/proto-hologram-boxes-3d-video-spc/index.html>; holograms being used to deliver performances of deceased entertainers: <https://blog.kitcast.tv/the-rise-of-a-concert-hologram-6-examples/>; and the use of artificial intelligence to construct a verse in the voice of the deceased Tupac Shakur, a flashpoint in a recent feud between two rappers: <https://www.npr.org/sections/money/2024/05/14/1250578295/it-was-a-classic-rap-beef-then-drake-revived-tupac-with-ai-and-congress-got-into>.

<sup>24</sup> A.C. Heugas, “Protecting image rights in the face of digitalization: A United States and European analysis”, available at <https://onlinelibrary.wiley.com/doi/full/10.1111/jwip.12194>.

<sup>25</sup> Report of Working Group IV (Electronic Commerce) on the work of its sixty-sixth session, A/CN.9/1162, para. 13, available at <https://documents.un.org/doc/undoc/gen/v23/083/23/pdf/v2308323.pdf>.

<sup>26</sup> “Draft Provisions on Automated Contracting”, A/CN.9/WG.IV/WP.182, available at <https://documents.un.org/doc/undoc/ltd/v23/063/84/pdf/v2306384.pdf>.

<sup>27</sup> *Supra* note 25, para. 93.

<sup>28</sup> Report of the United Nations Commission on International Trade Law, Fifty-seventh session, A/79/17, para. 237, available at <https://documents.un.org/doc/undoc/gen/v24/055/72/pdf/v2405572.pdf>.

<sup>29</sup> Annotated provisional agenda of the Working Group IV (Electronic Commerce) sixty-seventh session, A/CN.9/WG.IV/WP.184, available at <https://documents.un.org/doc/undoc/ltd/v24/061/00/pdf/v2406100.pdf>.

<sup>30</sup> Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), Art. 6, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689>.

as systems which are *per se* high risk: those used in the administration of justice, such as those intended to be used by a judicial authority; those used for evaluation of creditworthiness of natural persons; and those used for risk assessment and pricing in relation to life and health insurance.<sup>31</sup> It remains to be seen how AI tools for other purposes linked to commerce and finance are likely to be classified, and thus whether they are subject to heightened transparency requirements.

- 17 The Council of Europe Framework Convention on Artificial Intelligence is the world's first legally binding international treaty on the responsible use of AI.<sup>32</sup> The Convention also provides guidance on determining liability when AI systems cause harm or are used to infringe upon privacy and consumer protection rights.
- 18 The European Law Institute (ELI) has studied automated decision-making (ADM), which refers to the use of digital technologies to automate decision-making processes that would otherwise be performed by humans. In particular, the project focuses on use of digital assistants, defined as AI-driven ADM applications allowing consumers to automate steps toward concluding a legally binding contract.<sup>33</sup> The ELI has proposed principles for guiding how digital assistants used in a business-to-consumer (B2C) context by the business, consumer, or both can be aligned with EU consumer law. For example, Principle 1 concerns the requirements for when the actions of a digital assistant are legally attributable to the user, and Principle 2 provides that all consumer legislation remains applicable to a contract negotiated and / or concluded or performed with the use of a digital assistant. Thus, even with the use of digital assistants, existing consumer law applies to contract arrangements in the B2C context.<sup>34</sup>

### c. Smart contracts

- 19 Within the framework of the second working meeting of the EG on CBDCs,<sup>35</sup> a presentation was made by the Bank of International Settlements (BIS) on cross-border payments using tokenised deposits. In this presentation, PIL challenges relating to the legal status of smart contracts were discussed. The presenter noted various types of smart contracts, including those that are legal contracts; those that are mere code without an underlying agreement; those that are tools to execute a legal contract; and those that are merged with a legal agreement. The presenter discussed whether smart contracts should be submitted to the rules of PIL that would normally apply to an equivalent legal contract outside the blockchain by using the functional method for its characterisation.<sup>36</sup>

## C. Digital Platforms

- 20 The PB has continued to monitor developments in the use of digital platforms. In 2023, UNCITRAL published a taxonomy addressing specific legal issues related to the digital economy, including

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<sup>31</sup> *Ibid.*, Annex III.

<sup>32</sup> The EU Parliament adopted the Artificial Intelligence Act in March 2024 and the Council followed with its approval in May 2024. It will be fully applicable 24 months after entry into force.

<sup>33</sup> ELI Report on EU Consumer Law and Automated Decision-Making (ADM): Is EU Consumer Law Ready for ADM? (ELI ADM Report), p. 18, available at [https://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/ELI\\_Interim\\_Report\\_on\\_EU\\_Consumer\\_Law\\_and\\_Automated\\_Decision-Making.pdf](https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Interim_Report_on_EU_Consumer_Law_and_Automated_Decision-Making.pdf).

<sup>34</sup> *Ibid.*, pp. 23-26.

<sup>35</sup> See Annex IV of "Experts' Group on Central Bank Digital Currencies (CBDCs): Report of 2025", Prel. Doc. No 3 of December 2024, available on the HCCH website at [www.hcch.net](http://www.hcch.net) (see path indicated in note 2).

<sup>36</sup> Presentation of M. Vollenweider, BIS, at the Technical Roundtable event adjacent to the second working meeting of the EG on CBDCs, on file with the PB.

digital platforms.<sup>37</sup> This taxonomy offers useful insights into a working definition of digital platforms<sup>38</sup> and certain PIL issues arising from such platforms.<sup>39</sup>

- 21 The UNCITRAL taxonomy identifies a digital platform as “a service that (i) is provided via the Internet or some other communications network by electronic means (*i.e.* an online service) and (ii) facilitates interactions between persons who interact using the service”.<sup>40</sup> This working definition thus covers platforms for purposes including e-commerce, dispute resolution, and supply chain management, employing a range of systems and technologies such as the use of interactive applications, distributed ledger technology, and the deployment of AI and other automated systems.<sup>41</sup>
- 22 Based on this broad conception of a platform, PIL matters may arise in various circumstances and among different parties.<sup>42</sup> For instance, determining whether a contract falls within the scope of a “consumer contract” may be significant in terms of PIL and alignment with existing HCCH instruments.<sup>43</sup> Cases have also addressed the relationship between platforms and their users, and the existence and nature of a consumer contract between them, and whether such a contract’s applicable law and jurisdiction provisions are controlling.<sup>44</sup> Based on a previous analysis conducted by the World Intellectual Property Organization (WIPO), PIL questions arising with regard to online infringement in IP rights are “arguably the most challenging scenario for application of PIL rules to IP, given that it provides the potential for ‘ubiquitous infringement’ particularly with regard to copyrights and trademarks”.<sup>45</sup>
- 23 The use of AI on digital platforms is rapidly increasing and touches on multiple facets of the consumer’s experience of a platform. In one survey on business uses of AI, the most popular applications include customer service (56% of respondents) and cybersecurity and fraud management (51% of respondents);<sup>46</sup> conversely, in a survey of consumers with respect to use of AI by businesses, respondents expressed the highest concern for AI affecting product descriptions (70% “concerned”) and personalised advertising (64% “concerned”).<sup>47</sup>
- 24 At the working meetings of the Digital Tokens Project of the HCCH in 2024, issues regarding digital platforms and decentralisation were briefly addressed. Participants of these meetings discussed whether analysis at the level of the digital platform may resolve PIL matters pertaining to tokens. Participants noted that such answers may depend on the contractual arrangements between the

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<sup>37</sup> Taxonomy of legal issues related to the digital economy, available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/digitaleconomytaxonomy.pdf>.

<sup>38</sup> *Ibid.*, paras 119 *et seq.*

<sup>39</sup> *Ibid.*, para. 152.

<sup>40</sup> *Ibid.*, para. 119.

<sup>41</sup> *Ibid.*, paras 121-122.

<sup>42</sup> Prel. Doc. No 5A of February 2024, paras 6-7, available on the HCCH website at [www.hcch.net](http://www.hcch.net), (see path indicated in note 1).

<sup>43</sup> See, Art. 2(1)(a) of the *Convention of 30 June 2005 on Choice of Court Agreements*; Art. 1(1) of the *Principles on Choice of Law in International Commercial Contracts* (approved on 19 March 2015); and Art. 2(2) of the *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*.

<sup>44</sup> *Plaintiffs v. Google Inc.*, Supreme Court of Korea, Decision of 13 April 2023, 2017Da219232, available at [Decisions \(scourt.go.kr\)](https://scourt.go.kr); *Case C-191/15 Verein für Konsumenteninformation v Amazon EU Sàrl* [2016] EU:C:2016:612.

<sup>45</sup> See, A.F. Christie, *Private International Law Issues in Online Intellectual Property Infringement Disputes with Cross-Border Elements: An Analysis Of National Approaches* (Sept. 2015), available at [http://www.wipo.int/edocs/pubdocs/en/wipo\\_rep\\_rfip\\_2015\\_1.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_rep_rfip_2015_1.pdf). Of the cases discussed in the report, the author identified that cases of online infringement fall into one of three general types: online marketing using either a registered trademark or an unregistered mark in which a reputation exists; online distribution of copyright or related rights material; and registration and / or use of a domain name containing either a registered trademark or an unregistered mark in which a reputation exists.

<sup>46</sup> Forbes.com, *How Businesses Are Using Artificial Intelligence In 2024*, available at <https://www.forbes.com/advisor/business/software/ai-in-business/>.

<sup>47</sup> Forbes.com, *22 Top AI Statistics And Trends In 2024*, available at <https://www.forbes.com/advisor/business/ai-statistics/>.



platform and its users, and the degree of centralised control that was implemented on the platform.<sup>48</sup>

25 In light of these developments, disputes arising through the use of AI, metaverses and other immersive technologies, described above, may also be analysed through the lens of digital platforms.

#### **D. Decentralised Autonomous Organisations (DAOs)**

26 Until this year’s work cycle, developments in PIL issues relating to DAOs have been monitored at the PB within the workstream related to post-Convention work on the HCCH *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition*.<sup>49</sup> Given the broad challenges to PIL that transcend the question of whether DAOs could be considered an institution analogous to a trust, and considering the limited resources available to study the topic, the monitoring of developments in relation to PIL aspects raised by DAOs has been re-allocated to this project, which monitors developments in the digital economy as a whole.

27 DAOs may either be “regulated” or “maverick” DAOs.<sup>50</sup> Regulated DAOs are created and incorporated under the laws of a State, while maverick DAOs are not. There are PIL implications for each, as the legal framework of a DAO affects whether and how rules of jurisdiction, applicable law, and recognition and enforcement can be devised. In particular, the determination of which grounds would be determinative of the competent forum, and which connecting factors can be used to determine the applicable law, would depend on the legal framework of the DAO.

28 While some solutions exist for the legal recognition of DAOs,<sup>51</sup> these are not uniform across jurisdictions, and harmonised PIL rules are needed, for example, to allow for the determination of the law applicable to DAOs established in foreign jurisdictions, the grounds on which particular fora would have jurisdiction over DAOs, and how decisions relating to DAOs may be recognised and enforced across borders (especially where, practically speaking, this would mean courts cannot practically compel payment in cryptocurrencies or other on-chain actions unless the majority of the DAO’s members agree to it).

### **III. Proposal for CGAP**

29 The PB invites CGAP to note the issues described in this Prel. Doc., and proposes the following Conclusions and Decisions for CGAP’s consideration:

- CGAP mandated the PB to continue, subject to available resources:
  - a. monitoring developments with respect to the digital economy, including digital platforms, AI and automated contracting, immersive technologies, and decentralised autonomous organisations, with a view to identifying PIL issues for potential future work; and

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<sup>48</sup> See Annex II of Prel. Doc. No 4 of November 2024.

<sup>49</sup> See “1985 Trusts Convention: Update”, Prel. Doc. No 13A of January 2025, available on the HCCH website at [www.hcch.net](http://www.hcch.net) (see path indicated in note 2).

<sup>50</sup> F. Guillaume, “Decentralized Autonomous Organizations (DAOs) Before State Courts. How can private international law keep up with global digital entities?”, in Perestrelo de Oliveira/Garcia Rolo (eds.), *Decentralised Autonomous Organization (DAO) Regulation: Principles and Perspectives for the Future*, Tübingen 2024, pp. 135-168.

<sup>51</sup> Examples of DAO legal frameworks exist in the COALA Model Law for DAOs or the laws of Malta, Wyoming, and Vermont. For more information about the COALA Model Law for DAOs, see <https://coala.global/daomodellaw/>. For the laws of Malta, see: Chapter 592, Innovative Technology Arrangements and Services Act, available at: <https://legislation.mt/eli/cap/592/eng/pdf>. For the laws of Wyoming, see: Wyoming Act No 73 (SF0038), Wyoming Decentralized Autonomous Organization Supplement <https://legiscan.com/WY/text/SF0038/id/2359146>. For the laws of Vermont, see Vermont Act No 205 (S.269), An act relating to blockchain business development <https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT205/ACT205%20As%20Enacted.pdf>.

- b. working with relevant organisations on matters relating to the PIL aspects of the digital economy.
- The PB will report to CGAP 2026. If the report identifies work that would extend beyond monitoring, including the possible development of a PIL framework, CGAP will decide whether such work shall be conducted, with due consideration of resource implications. If CGAP decides that such work is to be conducted, it shall be reflected expressly in the HCCH's Work Programme.