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law.MIT.edu IdeaFlow June 2021: “Human Control of Algorithmic Legal Entities”

Overview

The state of Wyoming has recently enacted a law creating a new type of legal entity known as a DAO LLC. Last month, the Wyoming legislature debated the need to ensure meaningful human control over this new “algorithmically managed” legal entity type under Wyoming state law.

There is a lot that can be done faster, cheaper, and better by algorithms but certain judgments need to be made by humans and not machines. It is important to avoid an accountability gap with AI, smart contracts, DAOs, or other algorithmic processes that are capable of managing legal entities and conducting legal transactions. In general, operating a legal entity that could be put to any purpose is a good example.

What harms could result from an algorithm having sole decision-making control over a US-based LLC? Is it always necessary for at least one human to be in command of an LLC? How would the governmental authority vested with the power to dissolve an LLC become aware that no human remains in control? If the entity were tightly restricted to only perform very narrowly scoped and appropriate tasks that are well within the demonstrated capability of the algorithm to reliably and safely conduct, would it be appropriate to eliminate requirements for meaningful human control?

Background on the need for human control of algorithmic entities

https://civics.substack.com/p/testimony-on-human-control-of-algorithmic

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About Eric Hess

- *LinkedIn*

Eric has founded Hess Legal Counsel, a cybersecurity SaaS platform and consulting company, and hosts The Encrypted Economy podcast. He has over twenty years of experience acting as senior in-house counsel, general counsel or senior management for exchanges, broker dealers, and financial services technology providers. He has a proven track record of meeting business and legal goals, including creating legal,

compliance and technology & operational risk management functions, corporate finance & governance, designing compliant technology, advocating for regulatory change, closing transactions, navigating challenging issues, managing regulatory inquiries & investigations and facilitating company growth, both organically and through strategic transactions.

As founder of Helical, Eric developed and brought to market multiple cybersecurity, privacy and business continuity related products, including assessment, IT security policy auditing, enforcement and vendor risk management tools.

The Encrypted Economy explores the business, laws, regulation, and security of digital assets and data with leading data science, cybersecurity, digital asset, and privacy innovators and experts.

Specialties: Digital assets and securities regulation, cyber security and privacy regulation; corporate finance and governance; investment adviser, broker dealer and markets regulation; technology and operations risk management; contract negotiation; technology transactions; dispute resolution; mergers & acquisitions; intellectual property; and advocacy.

Eric serves as secretary and board member of multiple digital asset trading firms and has represented clients in various onshore and offshore registrations.