

NFTs & Legal Concepts

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Agenda

NFT concepts

NFT use cases

Legal Foundations for NFTs

US regulation of Digital Assets and Tokens

State of Wyoming Digital Asset Regulations

State of Rhode Island Digital Asset Regulations

Liechtenstein Blockchain Laws

Conclusions

What is an NFT?

- The token represents the rights to an asset
- The asset can be digital or physical
- The asset is unique (non-fungible)

Can I own part of an NFT?

Directly? No

Indirectly? Maybe

In some localities, an organization can own the NFT and issue shares in the organization

An NFT allows pursuit of legal remedies where those rights are violated

The rights included in the NFT can include:

- Control
- Access
- Ownership
- Possession
- Transformation
- Transfer
- Usage
- Naming
- Legal Custody

Why do I need an NFT?

The rights an NFT confers for the related unique asset are often managed today in other ways both in software and the physical world.

Contract Law

contract ----->> asset
fees
rights

NFT adds

NFT ----->> contract ----->> asset
fees
rights

What does the NFT add?

easier to authenticate, protect, track, trade
rights to the related asset

Some potential NFT use cases

Any type of art

Right to name a stadium for a year

Land Titles

Jim's bad jokes (very low value)

Carbon offsets and Jim's certified tree farm

Some more use cases

<https://hackernoon.com/unique-nft-use-cases-whats-beyond-nft-art-m51e34lk>.

Dividends programs

Lifetime memberships

Academic credentials

Ticketing industry

Domain name ownership

Land registry (virtual and physical)

Coca Cola and others create NFTs

Coca Cola

<https://www.ledgerinsights.com/coca-cola-to-launch-nfts-in-decentraland/>

Avatar developer Tafi has partnered with Coca-Cola to launch branded virtual wearables as non-fungible tokens (NFTs), including a 'wearable' jacket for avatars in the Decentraland metaverse. This will be Coca-Cola's first NFT collection and is a celebration of International Friendship Day. Proceeds of the auction will go towards the Special Olympics.

The NFT is a "Coca-Cola Friendship Box" inspired by vending machines. Inside the box there are three unique NFTs: a branded bubble jacket, a sound visualizer (such as the sound of a bottle opening or a beverage being poured over ice), and friendship card inspired by the collectible trading cards launched by Coca-Cola in the 1940s. The boxes include additional prizes to be unveiled when opened.

One feature specific to this NFT launch is that the digital assets can be worn within the virtual world Decentraland. Coca-Cola will even host a "Rooftop Party" on the platform to celebrate the launch.

NFT art = \$\$\$\$

a 12-Year-Old Made Over \$160,000 in
Ethereum on NFTs in One Day

Tweens love the blockchain: 12-year-old
Benyamin Ahmed's Weird Whale NFTs
sold out in less than 24 hours.

The NFT collection is Weird Whales—a
set of pixelated whale icons inspired by a
stock image

<https://decrypt.co/76759/weird-whales-nfts-12-year-old-ethereum>



Legal Foundations for NFTs

Legislation is by jurisdiction

Like the US, many locations have
Federal and State law (see EU etc)

What about cross jurisdiction issues?

Buyer in country A, seller in country B

Application law depends on token type
(see GDPR example)

Key legal foundations:

Contract law

Digital Assets defined

Ownership rights for digital assets

Digital Asset custody

DAO - Decentralized Autonomous Org

Blockchain as a legal, trusted store

Utility tokens as a representation of rights

Token taxonomy defines applicable laws

Banking and currency regulation in US

- US allows States to regulate banking and insurance
- States have both banking commissions and insurance commissions for governance
- Exception is any Federal Law overriding State Law
- States compete with each other for investment banking business
- Delaware is still the corporate registration “capital” of US for it’s laws
- Wyoming is becoming the digital banking “capital” of US

“The only consistency in US regulation of digital assets is inconsistency

- could it be anymore complex on legislation and interpretation?”

UniformLaws.org

Voluntary organization works to focus on consistency on State Laws, especially banking and insurance to improve commerce

US Federal Regulators

Fed:

Federal Reserve System is the central banking system of the United States of America. It was created on December 23, 1913, with the enactment of the Federal Reserve Act, after a series of financial panics led to the desire for central control of the monetary system in order to alleviate financial crises.

Set overnight lending rates from Fed to banks

Set reserve requirements for banks

Controls money supply through purchases and sales

FDIC:

Federal Deposit Insurance Corporation is one of two agencies that provide deposit insurance to depositors in American depository institutions, the other being the

NCUA:

National Credit Union Administration, which regulates and insures credit unions.

US Treasury

Buys and sells US debt in the market affecting the money supply and the economy

Crypto Regulation in US

For cryptocurrencies, Federal regulatory bodies include:

SEC - Securities Exchange Commission

CFTC - Commodities Future Trade Commission

The SEC has made it clear that cryptocurrencies and tokens offered through Initial Coin Offerings (ICOs) are “*securities*,” and therefore **illegal unless registered through the SEC.**

A judge backed the U.S. Commodity Future Trading Commission in defining cryptocurrencies as “commodities.” Judge Jack Weinstein from a district court in New York ruled that, “virtual currencies can be regulated by the CFTC as a commodity.”

Case law: the Howey Test: is an asset a security?

Since 1946, [the Howey Test](#) has determined whether an asset was a security or a currency.

Under these Acts of 1933, 1934, a security includes many familiar investment instruments such as notes, stocks, bonds, and investment contracts. Under the Howey Test, a transaction is an investment contract if:

1. It is an investment of money
2. There is an expectation of profits from the investment
3. The investment of money is in a common enterprise
4. Any profit comes from the efforts of a promoter or third party

Is Bitcoin a security? Maybe under these rules

Key regulations in the State of Wyoming

Wyoming has now enacted a total of 13 blockchain-enabling laws, making it the only US state to provide a comprehensive, welcoming legal framework that enables blockchain technology to flourish, both for individuals and companies.

SF0125 - Digital assets-existing law

<https://www.wyoleg.gov/Legislation/2019/sf0125>

classifying digital assets within existing laws; specifying that digital assets are property within the Uniform Commercial Code; authorizing security interests in digital assets; establishing an opt-in framework for banks to provide custodial services for digital asset property as custodians; specifying standards and procedures for custodial services under this act; clarifying the jurisdiction of Wyoming courts relating to digital assets; authorizing a supervision fee; making an appropriation; authorizing positions; specifying applicability; authorizing the promulgation of rules; and providing for an effective date.

"Digital security" means a digital asset which constitutes a security, as defined in W.S. 17-4-102(a)(xxviii), but shall exclude digital consumer assets and virtual currency.

HB0070 Open blockchain tokens-exemptions.

<https://wyoleg.gov/2018/Engross/HB0070.pdf>

providing that a person who develops, sells or facilitates the exchange of an open blockchain token is not subject to specified securities and money transmission laws; making conforming amendments; and providing for an effective date.

A token is not a security IF:

- (i) The token has not been marketed by the developer or seller as an investment;
- (ii) The token is exchangeable for goods or services; and
- (iii) The developer or seller of the token has not entered into a repurchase agreement of any kind or entered into an agreement to locate a buyer for the token

State of Rhode Island Regulations

Rhode Island Economic Growth Blockchain Act

<https://legiscan.com/RI/bill/H5425/2021>

Died in committee

Establishes an economic growth blockchain act, set regulations for the sale of hemp, regulate virtual and digital assets and establish depository banks for these purposes.

Liechtenstein

Principality next to Switzerland

Population 40,000+ .

Financial Innovation Leader



Liechtenstein Digital Laws: Token Container Model

<https://impuls-liechtenstein.li/en/2020/10/27/one-model-to-regulate-all-tokens/>

Token and TT Service Provider Act (TVTG), and especially on the development of a new token model called The Token Container Model.

the new act technical neutral and as independent as possible of changing technologies.

“transaction systems based on trustworthy technologies (TT Systems)” is used for blockchain systems in this law.

Liechtenstein act operates with a relatively high-level and abstract token definition that a token is:

“a piece of information on a TT System which: 1) can represent claims or rights of memberships against a person, rights to property, or other absolute or relative rights; and 2) is assigned to one or more TT Identifiers.”

The regulation applying on a given token depends on the claims or rights that are attached to the token. To make that individual legal judgement of a specific token, Liechtenstein has developed a model called the Token Container Model which allows for any existing kind of token as well as tokens that haven't even been created yet to be analysed and evaluated.

the innovation part: with the basic token definition, the container can be filled with any claims and/or rights. This means that if a security is represented in a token, security laws apply. If a financial instrument is represented in a token, financial market laws may apply , and so on.”

Conclusions on NFT regulations

Legislation is in draft process in many States

Wyoming specifically defines NFTs as a utility token that is NOT a security for registration and management purposes if it meets the tests defined

Multi-jurisdiction issues will exist in the US.
some rules based on treaties or legal supercession maybe defined

Most countries and states move very slowly

Smaller countries, states have succeeded faster

Wyoming and Liechtenstein provide a legal framework to create NFTs for a carbon management tree farm

Wyoming is much cheaper to buy a tree farm
Move to Wyoming and get rich selling carbon offsets.

Thank you !

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