

## **Article Information**

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## **Blockchain Bites: Ripple's defence in SEC prosecution, Visa values digital currency, AUSTRAC DCE Roundtable, Craig Wright's copyright crusade, India's plans for digital Rupee, Israel: "utility tokens" are securities**

**Michael Bacina, Barbara Vrettos and Jade McGlynn of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.**

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## Ripple returns fire in SEC prosecution

In a bold reply to the [SEC lawsuit](#), Ripple Labs has [issued a reply](#) which opens with an assertion that:

The Complaint filed by the SEC advances an unprecedented and ill-conceived legal theory - with neither statutory mandate nor congressional authorization - that Ripple's distributions of the virtual currency XRP constitute "investment contract[s]" and thus "securit[ies]" subject to registration under Section 5 of the Securities Act of 1993.

In brief, Ripple's argument includes that:

1. XRP has different functions to a security: Specifically that XRP has features and functions that are different to those of a typical security, for example, it operates as a store of value and medium of exchange rather than in a way similar to a share in the companies' profits
2. Regulation as a security would hinder XRP's use: International regulators have not treated XRP or other digital currencies as a security, which is appropriate to ensure XRP's function as a payment mechanism is not impaired.
3. It might be too little too late: Ripple Labs drew attention to the timeline of XRP's availability and stated that to regulate it as a security now was inconsistent with their approach over the past eight years.

As the lawsuit continues, and investors continue to feel the ripple effects through markets, the SEC's response will be closely watched for possible application to digital currencies with similar features to XRP.

## Digital currencies valuable to Visa's vision

During a recent [Q1 Earnings Call](#), Visa's Chairman and CEO Alfred Kelly took the opportunity to clarify Visa's approach to digital currencies, saying that Visa recognises the value that Visa's payment knowledge can add to the digital currency space.

Kelly described digital currencies as falling into two types:

1. Digital currencies representing new assets e.g., Bitcoin which Kelly likened to "*Digital Gold*"; and
2. Digital currencies that are backed by existing fiat currencies such as stable coins.

Kelly sees opportunities for Visa in both kinds of currencies, with Visa's payment platforms assisting with "new assets" like Bitcoin to increase the ease of payments given they "*are not used as a form of payment in a significant way.*" This seems code for Visa following Paypal in permitting users to purchase Bitcoin and use it to fund purchases via Visa products.

As such a large payment provider operating in a highly regulated area Visa's nod of approval for digital currencies may help suspicious regulators and members of parliament who continue to cite years old and out of date statistics on money laundering and the use of digital currency for illicit activities to understand the power of increasing efficiency and automation in payments via digital currencies.

## AUSTRAC Digital Currency Exchange Roundtable

On **February 17 at 2pm** [AUSTRAC](#) will hold a roundtable discussion with Digital Currency Exchanges.

The event is restricted to Australian registered DCE's and is not open to the general public.

If you are a DCE and would like more information you can email Blockchain Australia [members@blockchainaustralia.org](mailto:members@blockchainaustralia.org).

## Craig Wright's cryptocurrency copyright crusade

Dr Craig Wright, the Australian who claims to be Satoshi Nakamoto and the inventor of Bitcoin, has had legal letters sent to both [Bitcoin.org](https://bitcoin.org) and [Bitcoincore.org](https://bitcoincore.org) claiming that they are infringing Dr Wright's alleged copyright in the original bitcoin whitepaper.

[A statement](#) from [Bitcoin.org](https://bitcoin.org) reads:

In this letter, they claim [Dr Wright] owns the copyright to the paper, the Bitcoin name, and ownership of bitcoin.org. They also claim he is Satoshi Nakamoto, the pseudonymous creator of Bitcoin, and the original owner of bitcoin.org. Bitcoin.org and Bitcoincore.org were both asked to take down the whitepaper.

The identity of Satoshi Nakamoto, author of the bitcoin whitepaper, has been subject of considerable speculation since the whitepaper's release in 2008. Dr Wright's ownership claim has been rejected by most in the community given his inability to prove his claim.

### **India intending to innovate with digital Rupee**

Following on from indications that India was [warming up to a Central Bank Digital Currency](#), the Indian legislature has published an agenda to ban private digital currencies and provide [a framework for its own central bank digital currency](#).

[Rahul Pagidipati, CEO of Zebpay, a digital currency exchange, said:](#)

(the Bill's) success will depend on the details, particularly the definition of what the bill calls 'private cryptocurrencies'. This is not a common term.

He continued:

Bitcoin is not privately owned by anyone. It is a public good, like the internet. Bitcoin and most crypto assets are more like gold and not an alternative to government-issued legal tender... [digital] assets and digital government currency can coexist and together, they can bring tremendous benefits to the Indian economy.

Given the practical difficulties of blocking a technology which is specifically designed to be censorship resistant, it remains to be seen how India plans to criminalize digital currencies while introducing users to its own form of government issued digital currency.

### **Israel Securities Authority: "utility tokens" are securities**

[The Israel Securities Authorities](#) has recently declared that as far digital tokens planned to be issued by [Israel tech startup Kirobo](#) are securities and not assets subject to the Israeli Securities Law. The [ISA's decision](#) follows the company's request for the authority to make an advance ruling on the nature of its planned token issuance, which [the company argued](#) was "*cryptocurrency...meant to be used only in connection with its services, ...(and) ought to be deemed a Utility Token.*"

[In brief](#), Kirobo:

develops and operates a technology that allows users to cancel transactions made in digital currency. The company then charges a commission from the user" (which can be) paid in the same currency as the transaction or in the company's cryptocurrency.

It's on this basis - that the token can be used to access Kirobo's services, that Kirobo believes their tokens should be treated as a "utility token" and not a security. But the ISA disagrees.

Rejecting the company's position, the ISA believes the use and functionality of digital currency is what distinguishes a simple "utility token" from a security. They say that while the token may be purchased to use Kirobo's services, users may also choose to purchase for financial purposes, which has seemed to make all the difference. It says:

There is a probability that there will be investors who will purchase the token for financial purposes and out of the expectation that the value will rise which characterizes investments in securities.

Despite the [ISA's ruling](#) two themes emerge:

1. That the use of the digital currency is pertinent to its classification, that is what is done with the technology, as distinct from the use of the technology per se, is what is important; and,
2. Financial regulators are still assessing how they should regulate cryptocurrencies like bitcoin and its rivals.