

Article Information

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Blockchain Bites: AUSTRAC guidance for Digital Currency Exchanges, Paypal Permits Digital Currency Withdrawals, Gamestop's NFT team, NFTs: An overview

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

AUSTRAC updates and guidance for Digital Currency Exchanges

AUSTRAC has recently published updated guidance for digital currency exchanges in the following areas:

1. How to submit more effective suspicious matter reports ([SMRs](#))
2. Applicable customer identification procedures ([ACIP](#)) and ongoing customer due diligence
3. AUSTRAC's expectations of [risk-based procedures](#)

Although this is a technical update, not a change to the law, it's important digital currency exchanges keep abreast of AUSTRAC's guidance and publications. AML/CTF Programs and associated procedures should be continuously evolving and reviewed.

Registered digital currency exchanges who are developing and updating Part A of an Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Program are required to take into account any:

1. applicable guidance material disseminated or published by AUSTRAC, and
2. feedback provided by AUSTRAC in respect of their business or the DCE industry,

which is relevant to the identification, mitigation and management of the ML/TF risks arising from exchange services.

When we undertake independent reviews we often see:

1. AML/CTF Programs often state that only AUSTRAC guidance and feedback specifically provided to the entity will be incorporated into their AML/CTF program
2. AML/CTF Programs are not updated to reflect all of AUSTRAC's guidance and feedback.

If an exchange has been operating for two or more years and has not undertaken an independent review, they should do so urgently and at the least before the end of this year. This should be reported in next year's Annual Compliance Report. Otherwise, AUSTRAC may ask why these matters haven't been addressed.

AUSTRAC has recently upgraded its business profile form for digital currency exchanges which is welcome change to a web-based. Although a long-awaited upgrade, it's not without quirks. Once drafted and saved, a user needs to log-in every 3 days, otherwise the new content in the form will be lost.

Paypal Permits Digital Currency Withdrawals

Last year October PayPal rolled out a highly custodial crypto buy-and-sell product allowing users to buy digital currencies and keep it in their PayPal wallet. Now the global payments giant has announced that is taking it one step further, allowing its U.S. users to withdraw the digital currency they acquired through the platform back into to user controlled digital wallets.

"We want them to be able to take the crypto they acquired with us and take it to the destination of their choice,"

said Jose Fernandez da Ponte, Vice President and General Manager of the Blockchain, Crypto and Digital Currencies matters at PayPal.

During CoinDesk's Consensus 2021 conference, Jose [spoke](#) about Paypal's project as a way to do three things:

1. To offer choice to all consumers;
2. To encourage people to bring the digital assets to Paypal and use their digital assets for commerce; and
3. To allow its users to control their digital assets and take them where they want to.

With a move like this requiring a large amount of work on the back end, its unsurprising a completion date for this feature hasn't yet been revealed. While Paypal users aren't necessarily the usual market for digital assets, the move in effect moves Paypal a step closer to becoming a significant player in the digital currency exchange marketplace.

During the recent Australian Blockchain Week, PayPal Australia indicated this product might come to our shores in the future.

GameStop building an NFT team

With no indication of the non-fungible token (NFT) trend waning, video-game retailer, GameStop Corp (NYSE: GME), has announced it is building an NFT platform.

We recently wrote of [eBay's](#) NFT platform plans to bring NFTs to the everyday person. GameStop's name may be familiar to you as it was at the centre of a trading frenzy driven by Reddit forum WallStreetBets in January 2021.

GameStop's current priority appears to be to *"welcome exceptional engineers... designers, gamers, marketers, and community leaders"* to join the team.

GameStop's [announcement](#) also includes a link to an [Ethereum address](#) of an ERC-721 standard token, which is used to create NFTs.

Given GameStop's background, and its cryptic advertising: *"Power to the players. Power to the creators. Power to the collectors"*, we speculate that GameStop's NFTs may be gaming-based tokens for players. No doubt many fans will be keeping a close eye on GameStop's plans, and Redditors might be getting excited as well at what this could do to the GameStop share price.

Naturally, player, creators or collectors of NFTs, will only have "power" if they have a clear understanding and legal entitlement to something embodied in the NFT they buy.

What's the deal with NFTs? An overview

We're sure you've noticed the term 'NFT' scattered across your headlines lately. Boasting over [USD\\$250 million in sales](#) on 2020, and reaching even higher heights after Christie's auction house [sold a digital art piece](#) for an eye-popping \$69.3 million, the quirky digital market has driven scores of people to jump in on the action. Considering the digital asset's recent explosion in popularity we thought it may be a good time to give you some insight to exactly what all the fuss is about - perhaps some of you would just like to know what an "NFT" is in the first place. If you're a creative, a finance-related lawyer or working within a field where you want to work with NFTs, this rundown may be of particular benefit to you.

In a nutshell, a Non-Fungible Token or "NFT" is a digitally unique token which is not interchangeable (that is it is non-fungible) with other digital assets - its a unique, one of a kind, not-to-be repeated, collectible, which is why you've likely noticed, its a handy item to tie to artwork's which are by nature, equally unrepeatable. By way of comparison each Bitcoin (or part thereof) is interchangeable (or 'fungible') with any other Bitcoin (or part thereof). Get the drift?

The rights that can be attached to NFT's are broad in nature, but their use can be narrowed down to two main kinds:

1. They can be connected to a physical one of a kind item, like a physical piece of art: in which case the NFT acts as a 'certificate of authenticity equivalent' or,
2. They can be attached to a digital artefact, like a digital piece of art or a record of something (like a land title): where ownership lies in the holder of the NFT, but copies or other uses of the item automates a payment of royalties - for example.

While the way NFTs function depends on the item they represent or attach to, at the heart of it, these objects represent and enforce ownership. In some situations they are used to trace property. For instance, many supply-chain blockchains use NFTs to track individual things on their journey through a supply chain and anti-counterfeiting platforms can use NFTs to prevent products being copied ([wine](#) has been a fruitful area for this).

The NFT market globally increased by more than 299% in 2020 - and it seems like its growth is only going to continue. As [we've mentioned](#), the concept of NFT ownership has deeply penetrated the traditional and digital art market. Across the world, online NFT art auctions are increasing and now physical events showcasing NFT art are popping up - in [Sydney in particular](#).

But another area NFTs have taken a strong hold of is the electronic gaming market. Digital collectibles are not a foreign concept to gaming worlds, so its marriage with NFT's seemed natural.

On the topic of the robust economy that NFTs are creating for gaming eco-systems, Ed McCormack, Chief Executive of Dchained, a crypto education and news provider, [agreed](#) that this move towards NFTs was natural:

the practice of creating digital items that are unique and can be traded based on their utility or scarcity, has become a sizable economy in the gaming industry for years.

Nothing new- and especially as innovative, comes without teething problems or areas for improvement.

Two main legal issues that surround NFTs at present are:

1. What rights are transferring or associated with an NFT, that is what is the purchaser of the NFT actually receiving. Most art based NFTs are likely to carry a licence analogous to purchasing a print from an artist, but buyers need to be aware that any rights can be implied or set in terms of a licence. Be aware of what you're buying or, like in any upcoming trend being taken advantage of, these can lead to scams and/or an arising of the dreaded question of "Hmm, what am I actually getting here?" ;
2. Data issues are also live because an NFT on a blockchain has a publicly verifiable chain of ownership. To put it briefly: If Person B purchases an NFT from Person A, Person B will know Person A's digital wallet address and can have visibility into what transactions have occurred in Person A's digital wallet.

There are also practical issues where an NFT is used as a digital title for a real world asset as the digital title needs to be

recognised at law or it is not likely to be useful.

The way we see it, NFTs are an extension of supply chain style blockchain use cases and are only likely to continue to rise in popularity over time. Lawyers wanting to get involved should be attending meet-ups, buying NFTs themselves to understand how they work, and learning a bit of coding skills. As this year marks the beginning of their lifecycle, we have yet to see just how beneficial NFTs can truly be.