

## Article Information

Authors: Steven Pettigrove, Jade McGlynn, Jordan Markezic, Luke Misthos, Michael Bacina

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## Blockchain Bites: Burning deadline for Hirst NFT collectors, The Ethereum merge is coming, Santander's plans to offer crypto trading, SEC's next moves hinted at, UK Law Commission's property recommendation, Solana and Nomad Bridge Hack

*Michael Bacina, Steven Pettigrove, Jade McGlynn, Luke Misthos and Jordan Markezic of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.*

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### A burning deadline passes for Hirst NFT collectors

In 2016, famous UK artist [Damien Hirst](#) started created 10,000 unique dot paintings in a collaborative project with HENI known as 'The Currency'. Each has its own title, number, unique message, a microdot of Hirst and an embossed stamp.

In 2021, at the height of the NFT boom, the works were sold as part of an NFT project [for USD\\$2,000 each and purchasers were presented with a choice](#): redeem the NFT for the physical artwork by a deadline and burn the NFT, or keep the NFT and let the physical artwork burn. That deadline is now here.

The physical oil-on-paper paintings, which sell at up to [AUD\\$45,000](#) at the time of writing, will be burned starting **9 September** as part of an exhibition at the [Newport Street Gallery, London](#).

For those who chose to keep the physical paintings, their corresponding NFTs, which at the time of writing have a floor price of 5.69 ether (currently around AUD\$15,000) will be digitally burnt on the same date following a year-long redemption window which closed on July 27, 2022.

The final numbers fall slightly in favour of the physical, with 5,149 NFTs being redeemed for the physical art while 4,851 NFTs remain and the corresponding number of physical paintings will be burned. One month before the deadline, HENI [posted on Instagram](#) an update of the numbers which favored the NFTs heavily (only 1,575 physical redemptions and 8,425 choosing to keep the NFTs) but quite a few purchasers moved to obtain the physical art before the deadline.

Operating on the [energy-efficient Palm Blockchain](#), the artworks have made headlines around the world as a fascinating experiment, and in holding their value they show how NFTs are a new product which is more than just "overpriced jpegs", particularly when associated with an artist of the caliber of Hirst.

### The Ethereum Merge is nearly here

Ethereum - one of the leading blockchains - has [announced that their long process of transitioning from a proof-of-work \(POW\) consensus algorithm mechanism to proof-of-stake \(POS\)](#) is almost here. The transition signals Ethereum's goal of increased scalability and maturity.

Ethereum has earmarked [late-August, early-September](#) as the merge event. Developers have, however, been conducting final stage testing on shadow forks, devnets and merges on deprecated public testnets to clear the pathway and test for issues.

[Sepolia and Ropsten](#) - two public testnets - have already successfully implemented the merge upgrade. Goerli - the testnet associated with Beacon Chain, Prater - is yet to transition. It will be after the Goerli and Prater merge, that the Ethereum

mainnet will be next for a transition to POS.

A recent [post](#) on the Ethereum Foundation Blog, Ethereum developers confirmed that the Goerli and Prater testnets will run through the merge on 6-12 August 2022 as soon as the Bellatrix Prater upgrade becomes activated and hits a total difficulty of 10790000.

The Ethereum Foundation's [blog post](#) also addressed how mining will change post-merge:

*Post-merge, validators need to ensure that transactions in blocks that they create and attest to are valid. To do this, each beacon node must be paired with an execution layer client. Note that multiple validators can still be paired to a single beacon node & execution layer client combo. While this expands validators' responsibilities, it also gives a validator who proposes a block the right to its associated transaction priority fees (which currently go to miners).*

The Goerli merge will occur in over [a two-step process](#): the first step being the Prater upgrade (Bellatrix) on the consensus layer, and the second step being the transition of the execution layer from POW to POS – a process dubbed 'Paris.'

Post-merge, Ethereum should become considerably more energy friendly (eliminating a common complaint about permissionless blockchain systems) and bring exciting projects through which previously had been restricted in a proof-of-work world, including the [introduction of sharding](#).

The merge is one of the most ambitious and watched public blockchain upgrades and is a strong sign of the future of permissionless public blockchain infrastructure.

### **Brazil Santander Bank plans to offer crypto-trading**

Santander Bank has [announced its plans](#) to offer its Brazilian customers crypto trading services.

According to a [Folha De S.Paulo newspaper report](#), further details on the crypto related offering are likely to be revealed in the coming months around mid-October.

While the crypto markets are currently in [crypto winter/bear market](#), building continues at pace and the 2022 CEO of Santander, Mario Leao has said foreseeable and continual market demand for digital assets has driven the move:

*We recognize that it is a market that is here to stay, and it is not necessarily a reaction to competitors positioning themselves. It is simply a vision that our client has demand for this type of asset, so we have to find the most correct and most educational way to do it.*

This is not the first non-crypto Brazilian financial company to recently announce its plans to make inroads with crypto. In July, Brazilian fintech PicPay [declare](#) it would launch a stablecoin and crypto exchange as part of a drive to increase access to digital assets. During last year December, Latin America's largest e-commerce and payments system company Mercado Libre also [began allowing](#) customers to buy sell and hold cryptocurrency.

These all add up to further mainstreaming of crypto / blockchain and further signs of adoption of the technology.

### **Gensler alludes to SEC's next moves in educational video on crypto exchanges**

SEC Chair Gary Gensler has released [an "educational" video](#) on digital currency exchanges once again touting the "obvious" need to have them registered and regulated in line with traditional security exchanges. The video forms part of a recently launched video series, [Office Hours with Gary Gensler](#), where the well known (former) blockchain teacher but now crypto critic breaks down various subjects including cryptocurrencies, and digital engagement practices.

Comparing the US stock market to the crypto exchanges, the SEC chair uses the platform to repeat his longstanding view that crypto market participants can or should comply with the federal securities laws, saying:

*Crypto platforms, like stock markets, bring together buyers and sellers crypto platforms have millions sometimes tens of millions of retail customers directly buying and selling on the platform without going through a broker.*

He continues:

*With so many retail customers trading on crypto platforms we should make sure that those platforms offer similar protections so I've asked our staff to work directly with the platforms to get them registered and regulated to ensure that those crypto tokens come in as well and register where appropriate as securities.*

As it is [not uncommon](#) for the SEC to make comments in the build up to their upcoming moves, leaving market participants to try and interpret what is meant, this video clearly hints at the SEC's future plans to bring further regulation around crypto exchanges and token issuers.

Gensler highlights that many crypto trading platforms are market makers, highlighting that there is no reason to treat the crypto market differently "just because a different technology is used". This is of course entirely sensible when dealing with CeFi digital exchanges, and Australia has an ongoing consultation for a CASSPr licence regime to deal with the real risk areas which centralised exchanges pose.

Things are a bit more complicated when it comes to crypto tokens and issuers of tokens, and two burning questions remain to be addressed by regulators:

1. how projects can understand when it is 'appropriate' to approach the SEC or their home regulator to obtain clear guidance on how they can comply; and
2. how those projects can comply with the existing regulatory regime, which is not designed for a decentralised world.

Making these 'square pegs' fit into 'round holes' has been a challenging issue facing regulators and legislators around the world, including in Australia. The devil is always in the detail, and unfortunately details are yet to emerge which will help blockchain and crypto companies find more comfort in compliance.

### **UK Law Commission recommends recognition of digital assets as property**

In a [consultation paper](#) issued last week, the Law Commission of England and Wales (the **Commission**) recommended that the British Government expand the scope of recognition and legal protections currently in place for digital assets, including cryptocurrencies and non-fungible tokens (**NFTs**).

Commenting on the new proposals, Professor Sarah Green, the Law Commissioner for Commercial and Common Law, [said](#):

*Digital assets such as NFTs and other crypto-tokens have evolved and proliferated at great speed, so it's vital that our laws are adaptable enough to be able to accommodate them.*

The Commission's paper argues that digital assets do not fit neatly into the existing categories of personal property (things in possession and things in action) and recommends the implementation of a third category of personal property called "data objects", which could include a wide variety of digital assets including cryptocurrencies and NFTs.

The Commission's key [proposals](#) include:

1. providing explicit recognition of a distinct category of personal property known as "data objects" that is better able to accommodate the unique features of digital assets;
2. options on how this third category of "data objects" could be developed and implemented under the current law;
3. clarifying the law around ownership and control of digital assets; and
4. clarifying the law around transfers and transactions involving digital assets.

The Commission's proposals are intended to ensure that the law remains flexible and progressive towards new and emerging technologies. Professor Green [noted](#):

*It's important that we focus on developing the right legal foundations to support these emerging technologies, rather than rushing to impose structures that could stifle their development. By clarifying the law, England and Wales could reap the potential rewards and position itself as a global hub for digital assets.*

The Commission's recommendations are a positive step in developing a strong legal framework to support ownership of

digital assets and further innovation in this space. If adopted, the Commission's proposals could pave the way for other jurisdictions to follow suit and recognise digital assets as a unique form of property.

The [deadline](#) for public responses to the Commission's consultation paper is 4 November 2022.

### **A reminder on digital asset protection: Solana and Nomad Bridge Hack**

Nomad, a cryptocurrency bridge that lets users swap tokens between blockchains, and Solana, a leading blockchain and challenger to Ethereum, have fallen victim to two extremely damaging exploits in recent days, seeing millions in value drained from user wallets.

#### **The Nomad Hack: Copy Paste ... Theft**

An incident analysis by the crypto-security platform Certik [revealed](#) the method of the Nomad hack which saw USD\$190m drained from user wallets due to an embarrassing upgrade SNAFU:

*a routine upgrade allowed verification messages to be bypassed on Nomad.*

After an initial attacker identified the flaw in Nomad's updated system which allowed the verification process of a transaction to be bypassed, and the funds in a transaction moved to a wallet without the original wallet owner's permission, others jumped on the bandwagon by copying and pasting the original attackers transaction and replacing the destination with their own wallet address.

While this hack is a bit of a damning indictment on the honesty of people in general, the Solana hack, seems far more serious.

#### **Solana: Icarus' favoured chain?**

According to [reports](#), the Solana hack does not seem to have arisen as a result of a bug within the core source code of the blockchain but rather due to popular, and potentially malicious, software connected to a significant number of Solana wallets.

Phantom, Slope and Trust - three crypto hot-wallet providers -have [been identified](#) as being comprised, however much remains unknown at this early stage as investigations continue to discover the extent, source and nature of the exploit are still underway

Phantom [announced](#):

*We are working closely with other teams to get to the bottom of a reported vulnerability in the Solana ecosystem...At this time, the team does not believe this is a Phantom-specific issue. As soon as we gather more information, we will issue an update.*

While the Nomad and Solana hacks are unconnected, both serve as a good reminder for crypto users on the importance of taking pro-active steps to protect their crypto assets.

Decentralised systems have [a number of benefits](#) which include the increased transparency and security of transactions, but the private keys and smart contracts which support these systems do to an extent remain a point of vulnerability which should not be overlooked. That is why good privacy practice and cold storage of wallets is always recommended.

The most useful maxim remains: "not your keys, not your crypto".