

Article Information

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

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Blockchain Bites: F1 NFTs, AFP form crypto unit, Treasury's latest consultation on crypto, Celsius crypto may go to custody customers

Michael Bacina, Steven Pettigrove, 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.

Trademark filings point to F1 NFTs

In recent years, fans have paid close attention to international trademark filings to have an early opportunity to look at what their favourite brands are planning on offering. We've seen that recently with international trademark filings for [Marvel Studios movies](#) that, at the time of filing, had not been announced yet.

Now, Formula One (**F1**) has recently filed trademarks for the 2023 Las Vegas Strip Circuit Grand Prix, which cited NFTs and cryptocurrencies in a variety of potential products being offered through trademark registrations.

The trademarks were registered with the United States Patent and Trademark Office on 23 August 2022, and include the trademark and logo for the Las Vegas Strip Circuit as well as a number of specific nods to NFTs and blockchain-powered transactional facilities.

The trademarks show that any potential new NFTs would represent ownership of a wide variety of tangible items including vehicle equipment, decorative items, clothing, bags and wallets. We've seen a similar offering in the [2022 Australian Open](#), where NFTs were sold that represented a tangible piece of the playing court.

The trademarks also point towards:

downloadable computer software for managing cryptocurrency transactions using blockchain technology.

Another clause in the trademark described the facilities that were capable of covering cryptocurrency and blockchain-based payment systems:

Financial services including e-wallets and cryptocurrency; electronic transfer of crypto assets; currency exchange services; currency trading; virtual currency services; electronic funds transfer provided via blockchain technology; financial transactions via blockchain; cryptocurrency services, namely, providing a digital currency or digital token for use via a global computer network; provision of tokens; provision of non-fungible tokens.

This might be an indication that F1, as well as vendors participating in the Grand Prix, will be accepting cryptocurrency payments. Las Vegas is set to host its first F1 race in just under a year, and will become the third stop in the US for the F1 roadshow.

Australian Federal Police form crack crypto unit

The Australian Financial Review are [reporting](#) that the Australian Federal Police have formed a crack crypto investigative unit to improve police capabilities to deal with crypto-assets forming part of seized assets and to investigate money laundering and other crimes which have involved crypto-assets.

The AFP's criminal asset confiscation taskforce was established in February 2020, and since that time it has blown past its goal of seizing AUD\$600M of assets by the end of 2024, reportedly having [seized](#) to date:

[AUD]\$380 million in residential and commercial property, [AUD]\$200 million in cash and bank accounts, and [AUD]\$35 million in cars, boats, aircraft, artworks, luxury items and cryptocurrencies.

Without their own segment we don't know just how much in the way of crypto-assets have been seized, but that alone demonstrates what a small component of criminal asset seizures involve any meaningful amounts of crypto-assets (well below 5% of seized assets). Given their highly technical nature, it's only sensible that the AFP have a dedicated team which can be trained on and understand crypto, and can use leading tools like Chainalysis and Elliptic to track transactions and catch criminals foolish enough to use an immutable record of transactions for their ill gotten gains. This aligns with [Chainalysis reports](#) that only 0.15% of crypto transactions by volume involve illicit actors in 2021. This is of course around [4 times the level of illicit transactions identified in the banking system](#), a point which AUSTRAC has raised as a warning sign, but a tiny fraction of the estimated illicit transactions involving cash (which are estimated between 4-8%).

As cryptocurrencies increasingly become mainstream, driven in part by the rapid growth in the NFT space as well as a potential thawing of crypto-winter, better education amongst law-enforcement is key to ensure that criminals are brought to justice, and long tired tropes about [crypto being used only by criminals](#) is put to rest.

Treasury consults on crypto tax legislation

In June this year, Australian Treasurer, Jim Chalmers [released a media statement](#) with Assistant Treasurer, Stephen Jones, confirming that the Labour government planned to introduce legislation clarifying the existing tax treatment of digital currencies as a response, in part, to [El Salvador's decision to recognize Bitcoin as legal tender](#).

This week, the Treasury released an [exposure draft](#) of the legislation which seeks to clarify that digital currencies (except for CBDCs) will not be taxed as foreign currency under Australian law. The Treasury also released [explanatory material](#) outlining the proposed changes.

The Treasury has opened a short consultation period on the draft legislation which will close on 30 September 2022 and coincides with the deadline for responses to the [Board of Taxation's broader review](#) of the tax treatment of digital assets and transactions in Australia.

The Treasury's proposed legislation would exclude digital currencies which are legal tender but which are not issued by any Government from the definition of foreign currency for tax purposes. This means that tax payers will not be able to benefit from any preferential tax elections for foreign currency in relation to Bitcoin.

The [explanatory material](#) contains a number of interesting observations:

1. The amendments are intended to ensure that Bitcoin, which has been recognized as legal tender in El Salvador, continues to be treated as a digital currency (and not foreign currency) under tax legislation;
2. It describes Bitcoin as decentralised and not issued by or controlled by any government and the only current example where there is a potential overlap between the definition of money and digital currency under legislation.
3. The new definition of digital currency will exclude any digital currency which is issued by or under the authority of the Australian government or a foreign government agency (i.e. CBDCs including, presumably, the e-CNY, Nigeria's e-Naira and Bahamas' Sand Dollar). Accordingly, it appears that Government backed CBDCs will receive preferential tax treatment over stablecoins which will continue to be treated as digital currencies for taxation purposes.
4. The proposed amendments include a power to make regulations to provide for further exclusions from the definition of foreign currency in future to enable other digital currency-like assets to be excluded through regulation.
5. The proposed legislation is intended to take effect retrospectively for the purpose of preserving the existing tax treatment of digital currencies (excluding CBDCs) for the 2021-2022 tax year.

While Treasury's move to clarify the existing tax treatment of digital currencies is welcome, the draft legislation raises a number of interesting and unanswered policy questions as to the differential tax status afforded to different types of currencies and the impact of that status on the development of the digital economy. These questions will hopefully be addressed more broadly as part of the Board of Taxation review. Once implemented, these changes will mean that

traditional fiat backed currencies and CBDCs will be treated as foreign currency for tax purposes, while privately issued digital currencies (including stablecoins) will not be even where they are adopted as legal tender in a foreign country.

You can review the draft legislation and explanatory materials [here](#). Submissions must be filed by 30 September 2022.

Some Celsius crypto to go to custody customers?

Embattled cryptocurrency business, Celsius Network, presently under bankruptcy protection in the US, is [seeking court approval](#) in New York in order to allow a small group of custody customers to withdraw digital assets which were held in separate custody to other assets. Earlier this year [Celsius froze withdrawals, swaps and transfers](#) of customer assets before [filing for bankruptcy in July](#).

In a [filing](#) with the United States Bankruptcy Court for the Southern District of New York, Celsius moved for orders that customers' digital assets held in the Celsius Custody Program and Withhold Accounts be released to those customers.

Approximately USD50 million worth of crypto assets would be included in the proposed release. The proposed release does not include customers who held Celsius Earn and Borrow accounts. According to Celsius' lawyers, users did not maintain legal ownership of cryptocurrencies deposited in earn or loan accounts, such as the Earn and Borrow accounts.

To complicate matters further, Celsius submitted in the motion that users who transferred assets exceeding a statutory minimum from Earn or Borrow accounts to the Custody Program or a Withhold Account within 90 days of Celsius filing for bankruptcy would also not be eligible to withdraw their assets.

The treatment and protection afforded to client's cryptocurrency holdings is a key matter to be considered when a crypto business is in difficulty. We anticipate further developments in this area globally as a number of recent high profile insolvencies move through the Courts in the United States and elsewhere.

Closer to home, and relevant to this issue, when New Zealand-based crypto exchange [Cryptopia shut down in January 2019](#) and subsequently entered into liquidation, one of the questions raised was whether cryptocurrencies deposited by clients should be classified as trust property within the meaning of New Zealand's *Companies Act* and thus have to be distributed to account holders, or whether the cryptocurrencies should be deemed to be Cryptopia's assets and used to repay creditors.

In that case, the court found that the cryptocurrencies were being held on trust for the account holders and Cryptopia had no right to use the assets to repay creditors in the liquidation.