Article Information

Authors: Steven Pettigrove, Jordan Markezic, Lola Hickey, Luke Misthos, Michael Bacina, Tim Masters
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Blockchain Bites: The path of the righteous man... leads to collaboration??, The R word: Calls for regulation at AusCryptoConvention, Senator Bragg releases draft bill on Digital Assets regulation, SWIFT moving slowly to Blockchain tech, FAQ launched by OFAC into the Tornado Cash storm

Michael Bacina, Steven Pettigrove, Tim Masters, Luke Misthos, Jordan Markezic and Lola Hickey of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

The path of the righteous man... leads to collaboration??

Cinema hero Quentin Tarantino has settled his NFT lawsuit with film production company, Miramax, according to a ruling filed in the United Stated District Court in the Central District of California earlier this week.

In 2021, Miramax sued Tarantino for breach of contract, copyright infringement after the director announced that he was looking to capitalise on the NFT market and offer scenes that were left on the cutting room floor in 1994 when Pulp Fiction was released.

Tarantino's position throughout the entire matter was that his contract with Miramax was clear and that:

> *he has the right to sell NFTs of his hand-written script for Pulp Fiction and this ham-fisted attempt to prevent him from doing so will fail.*

In a joint statement released after filing the settlement, Tarantino and Miramax said:

> *The parties have agreed to put this matter behind them and look forward to collaborating with each other on future projects, including possible NFTs.*

The terms of the settlement have not, at the time of writing, been disclosed by either party. Indicative of what the settlement figure was, in January of this year the first NFT drop from Tarantino's collection sold for over USD$1 million at auction.

Crypto-analysists and market commentators have viewed the Miramax action as a typical example of Web2 copyright laws being applied in a Web3 environment. Critical to Tarantino's argument was the notion that, as NFTs did not exist – nor were even in contemplation – in 1994, they were not captured by the contractual provisions relating to restrictions on the mediums for redistribution or adaptation of his films.

The allusion in the joint statement about potential future artistic collaboration is interesting, leading to the obvious inference that Tarantino and Miramax are 'cool' at this moment 'like [two] little Fonzies…' (with apologies to Samuel L

Jackson).

The R word: Calls for regulation at AusCryptoConvention

Regulation was the word on everyone's lips at the first Australia Crypto Convention on the Gold Coast this weekend.

Attendees were welcomed by a queue stretching the length of the Gold Coast Convention Centre and packed theatres as people clamored to hear more about Web3 and the state of crypto regulation in Australia. It was standing room only for many sessions. Some even lined up outside to hear speakers discuss and speculate on the future direction of Government regulation.

Despite the recent change in Government in Australia, the appetite for a regulatory regime for digital assets that would facilitate innovation and better protect consumers remains strong. A broad diversity of speakers weighed in to voice their support for regulation.

Dimitri Baveas at Independent Reserve, a leading Australian cryptocurrency exchange, identified three factors holding back institutional adoption of digital assets:

1. Regulation including a robust framework to further consumer protection and innovation
2. Research and education
3. ESG

In a session on the road to mainstream adoption, Mark Monfort from the Australian DeFi Association commented that 3 years is too long to wait for regulation.

A legal panel on the future of crypto regulation addressed the difficulties posed by gaps in the existing regulatory framework including the recognition of digital assets as a form of property, the financial product regime and taxation relief for token grants to employees.

Jamie Kennedy, Country Director for FTX, addressed the Government's planned token mapping consultation and reiterated the need for urgency in establishing the right policy settings in advance of the next bull run.

Senator Andrew Bragg lamented the new Government's decision to pivot to a token mapping exercise rather than push forward with the Liberal Government's proposal for a licensing regime for cryptocurrency exchanges. He then announced his attempt to drive the debate forward by releasing today his own draft crypto bill covering a broad sweep of issues considered by last year's Senate inquiry including licensing, custody, stablecoins and aspects of CBDCs. Senator Bragg will be seeking broader industry and public feedback on the proposal. More details will follow today.

The strong attendance and high quality conversations at this year's Convention demonstrated the continued high level of interest in Web3 and digital assets despite the onset of crypto winter. The appetite for a broadly based regulatory regime to unlock that future also remains strong.

Senator Bragg releases draft bill on Digital Assets regulation

Following Treasury Consultation over the proposed shape of a centralised exchange licensing regime, Liberal Senator Andrew Bragg has pressed the legislative agenda ahead by publishing a draft *Digital Assets (Market Regulation) Bill 2022* which proposes a new licensing regime and reporting requirements for digital asset exchanges.

Bragg, a champion of sensible crypto regulatory reform and Chair of last year's bipartisan parliamentary inquiry that produced a 168 page final report outlining a number of recommendations to regulate the industry, sees progress as stalling under a Labor government, having previously accused it of not moving to prepare it's own bill, and is urgently pressing for legislation.

Australia must keep pace with the global race for regulation of digital assets.

Bragg states in 19 September's media release.

> *Australia is falling behind on consumer protection and investment promotion.*

In a speech to the British Blockchain Association Bragg further said:

> *The Senate Select Committee I chaired last year was bi-partisan and the Treasury consultation is a non-partisan departmental process.*

The draft *Digital Assets (Market Regulation) Bill 2022* introduces a licensing regime for:

- Digital Asset Exchanges; and
- Digital Asset Custody services, and
- Stablecoin Issuers (which includes requirements for frequent reporting and Australian or foreign currency to be held in reserve in an Australian bank account).

On licensing, Bragg said:

> *The rationale for these licences is two fold. Firstly, by providing a standards based regime, we give confidence to the consumer that risk exposure is managed, and on par with other financial services and products.*
>
> *Secondly, by providing regulatory certainty, this regime opens the door to greater investment and growth in Australia's crypto ecosystem and virtual economy.*

The draft bill also seeks to establish disclosure requirements for facilitators of the e-Yuan in Australia. The E-Yuan is the first major Central Bank Digital Currency in operation and has been the subject of criticism that it enhances the Chinese government's ability to conduct surveillance.

The Labor Government has announced an intention to increase consumer protections for crypto assets, but has not yet provided any details of potential legislation except to say it will focus first on a 'token-mapping' exercise, promising to release a public consultation paper soon. It is unclear what shape the token mapping will take. A number of other consultations are underway, and expected to finalise by the end of the year, with the Board of Taxation's review being closely watched.

Senator Bragg is seeking submissions in relation to the draft *Digital Assets (Market Regulation) Bill 2022* prior to 31 October 2022.

SWIFT moving slowly to Blockchain tech

The Society for Worldwide Interbank Financial Telecommunication (**SWIFT**) has announced it will adopt blockchain technology to help automate its messaging system which is used worldwide by financial institutions to communicate various messages including announcements relating to dividends payments and mergers.

As part of a pilot, SWIFT plans to increase the accuracy of the corporate action workflow by integrating a system called Assembly designed by fintech startup Symbiont Inc. Assembly uses blockchain technology and smart contracts to create a network effect that claims to harmonises data and increases efficiency.

In a post made by SWIFT, Chief Innovation Officer Tom Zschach said the integration:

> *can lead to significant efficiencies. Corporate action data from SWIFT messages is translated by the SWIFT Translator and uploaded in Symbiont's blockchain. Their smart contract technology can then compare information shared between participants and flag discrepancies, contradictions or inconsistencies across custodians.*

SWIFT is looking to leverage the benefits of blockchain technology to unlock opportunities like the creation of a single unalterable record which provides a digital audit trail. Vanguard, Citigroup and Northern Trust are also collaborating on the pilot which aims to deliver secure coded messages to 11,000 companies in over 200 countries and territories.

SWIFT is not the only institutional company looking to integrate blockchain technology, at the start of September the Australian Securities Exchange (**ASX**) announced it had completed a test pilot of a blockchain settlement system to replace its existing CHESS platform.

SWIFT is trialing the Assembly program in the month of September and intends to gradually roll it out to more companies. If successful, SWIFT will extend the coverage to more corporate event types and assess the potential to introduce

Assembly in the wider SWIFT community.

FAQ launched by OFAC into the Tornado Cash storm

On 8 August 2022, the US Office of Foreign Assets Control (**OFAC**) imposed sanctions relating to Tornado Cash in connection with alleged money laundering activity, including by US sanctioned entities such as North Korea's Lazarus Group. The sanctions raised significant debate over whether OFAC had overstepped its authority by imposing sanctions on autonomous smart contracts and the steps which DeFi protocols in particular would be required to take to comply with the sanctions. Following widespread calls for guidance, OFAC has issued four FAQs addressing the scope of the sanctions imposed on Tornado Cash.

The FAQs suggest that OFAC will take an expansive approach in requiring US persons and others who may be subject to US jurisdiction to block and report proceeds received from Tornado Cash. While the FAQs do not engage directly in the question of whether OFAC has the authority to sanction technology, OFAC has clarified that interacting with open-source code itself in a way that does not involve a prohibited transaction with Tornado Cash, is not prohibited. FAQ 1076 states:

> *For example, U.S. persons would not be prohibited by U.S. sanctions regulations from copying the open-source code and making it available online for others to view, as well as discussing, teaching about, or including open-source code in written publications, such as textbooks, absent additional facts. Similarly, U.S. persons would not be prohibited by U.S. sanctions regulations from visiting the Internet archives for the Tornado Cash historical website, nor would they be prohibited from visiting the Tornado Cash website if it again becomes active on the Internet.*

That leaves the fundamental question of whether the US sanctions were intended to target an entity or entities called Tornado Cash or whether OFAC considers that it has sufficient authority to sanction technology in the form of autonomous smart contracts.

FAQ 1077 confirms that the US sanctions against Tornado Cash extend to any dealings by US persons with Tornado Cash and not just the wallet addresses which OFAC has identified in the SDN List.

OFAC's expansive approach is underlined by FAQ 1087 which confirms that it will also expect US persons whose addresses were "dusted" with proceeds from Tornado Cash following the imposition of sanctions to comply (absent a specific licence from OFAC). However, OFAC has stated that it will not prioritise enforcement action relating to delayed receipt of initial blocking and subsequent annual reports from those individuals.

FAQ 1079 addresses the issue of incomplete transactions initiated via Tornado Cash prior to the imposition of US sanctions and suggests that OFAC will view favourably licence applications which do not otherwise involve sanctionable conduct.

OFAC's latest guidance does little to address the unprecedented challenges posed by US sanctions relating to Tornado Cash which was also used by many crypto users for legitimate privacy preserving purposes. Given OFAC's expansive view of the sanctions' application, exchanges, decentralised projects and individuals will continue face difficult risk assessments and shoulder a considerable compliance burden in seeking to identify and block transactions which may be tainted by proceeds from Tornado Cash.

The latest guidance also leaves open the important question of whether OFAC in fact has authority to sanction autonomous smart contract addresses, something which may be tested in Court if US based Coin Centre pursues its mooted challenge to the sanctions.