



Morgan Lewis

THE RISE OF CBDCs AND STABLECOINS: LEGAL AND REGULATORY INSIGHT FOR LAWYERS

October 27, 2021

Robin Nunn

James Alphonse Nortey

Julian C. Williams

Brianna Ricqué Howard

© 2021 Morgan, Lewis & Bockius LLP



Robin Nunn



James Alphonse Northey



Julian C. Williams



Brianna Ricqué Howard

AGENDA

- 1. General Overview—Setting the Table**
- 2. The Policy Debate —The Food Fight**
- 3. Many Cooks in the Kitchen: the UCC and Smart Contracts**
- 4. Ransomware —Spread of a Nasty Stomach Bug**

Morgan Lewis

Poll

Are you comfortable investing in or using cryptocurrency today?

General Overview— Setting the Table

Morgan Lewis

Fiat Currency Versus Cryptocurrency

Fiat Currency

- Government-issued money
- Not backed by a physical commodity
- Value-based perception of legal tender



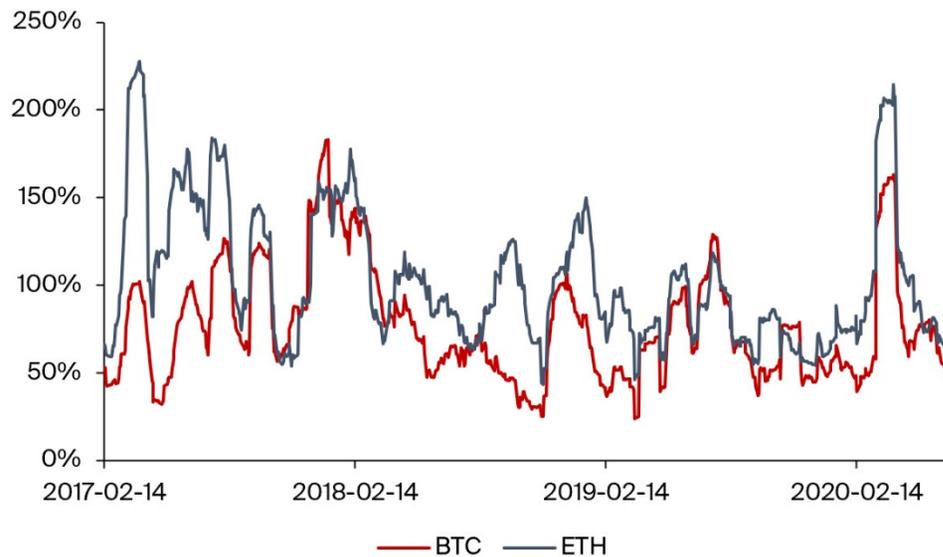
Morgan Lewis

Cryptocurrency

- Privately owned
- Created using blockchain technology
- Value secured through encryption



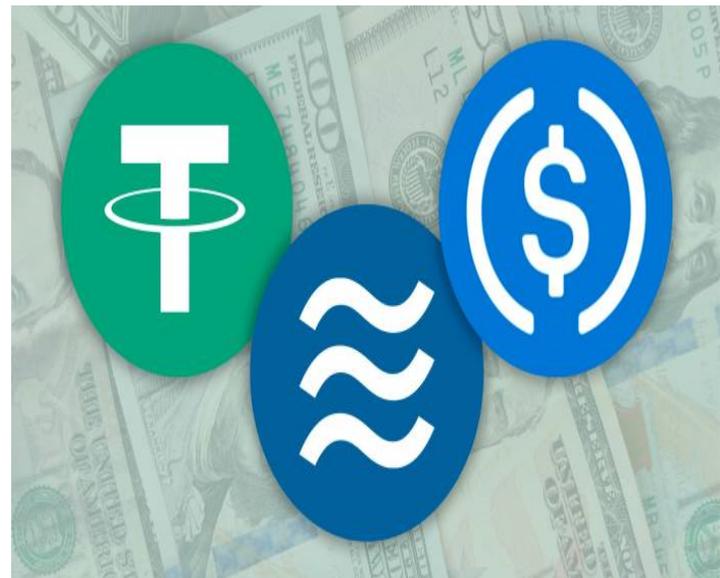
Cryptocurrency Is Volatile



- Cryptocurrencies allow for direct payments without going through a bank.
- Their volatility has limited its adoption for payments.
- Their value fluctuates so much that few people would use them to buy household items.

The Solution: A Stabler Asset

- Stablecoins are a type of cryptocurrency linked to an asset, like the US dollar, the value of which is relatively stable.
- They are designed to combine the stability of national currencies, like the USD, with the ability to trade quickly online like Bitcoin.
- But not everyone trusts the private companies that issue stablecoins.



The Rise of Central Bank Digital Currencies



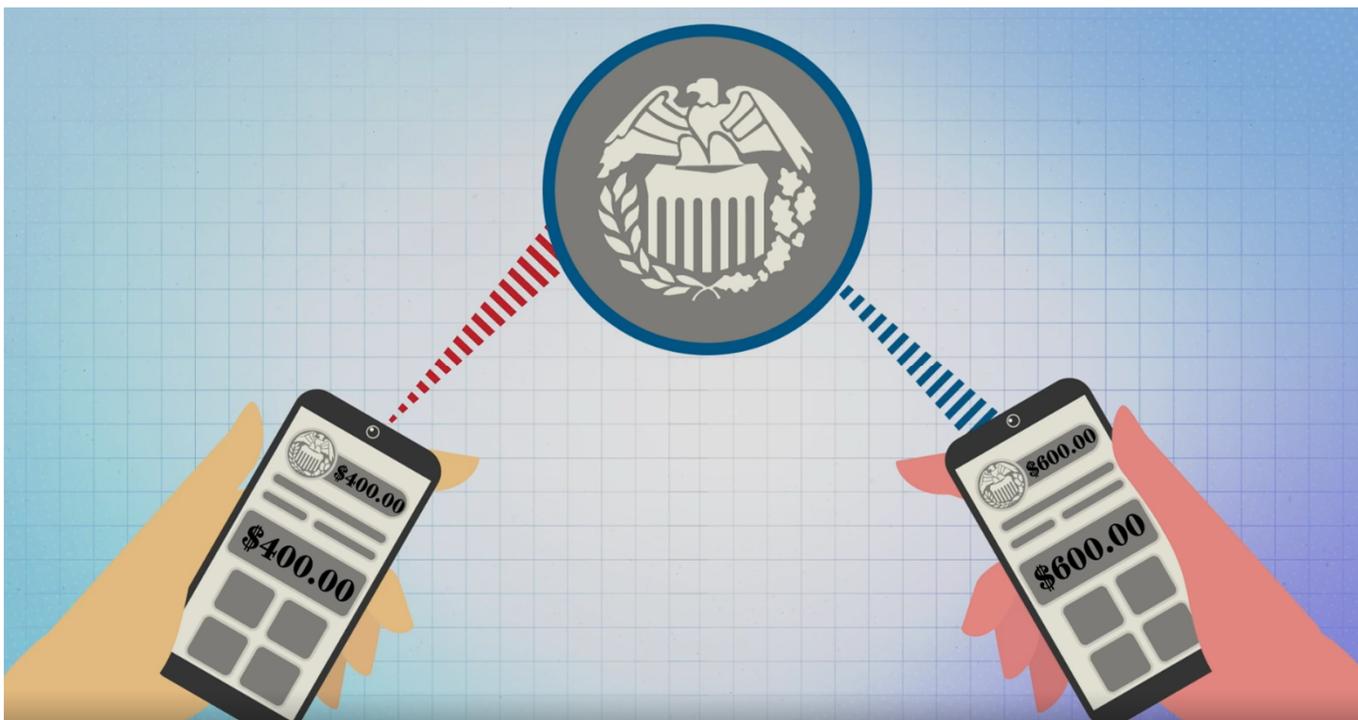
Morgan Lewis

- Digital currencies where the party issuing money is a central bank (Federal Reserve, European Central Bank, Bank of England, etc.)
- A purely digital form of a country's money issued by its central bank that people can use like cash.

How Digital Transactions Occurs Today...



...How CBDCs Might Change Transactions In The Future.



Morgan Lewis

Why Does Any Of This Matter?



Morgan Lewis

MONEY.
POWER.
RESPECT.



This Is About Money And Power.

- Money (in whatever form) is just a unit of value that gives us the power to exchange goods and services.
- The world is constantly changing and the pandemic has sped the pace up even faster.
- Most of our clients and businesses will need to navigate the landscape and will need lawyers who can assess risks and provide guidance.
- Additionally, there is an entire portion of our society that is unserved or underserved by current financial options.

Poll

Should cryptocurrencies be regulated?

The Policy Debate — The Food Fight

Morgan Lewis

Shots Fired From The SEC . . .



- SEC Chair Gary Gensler argues that the SEC has broad authority over cryptocurrency
- He claims that cryptocurrency is being used to “skirt our laws,” and he has likened the cryptocurrency space to “the Wild West . . . rife with fraud, scams, and abuse”

Morgan Lewis

...And The CFTC Claps Back



Brian Quintenz 

@CFTCquintenz



Just so we're all clear here, the SEC has no authority over pure commodities or their trading venues, whether those commodities are wheat, gold, oil...or [#crypto](#) assets.

7:00 PM · Aug 4, 2021 · Twitter for iPhone

1,169 Retweets **292** Quote Tweets **4,258** Likes

The Federal Reserve



Morgan Lewis

- The Federal Reserve planned to release a paper in the summer of 2021 exploring the use of CBDCs in the US economy. The release was delayed until autumn and the Fed is poised to release the paper any day now.

Biden-Harris Administration To Take Action



Morgan Lewis

Biden-Harris Administration to Take Action (cont.)

- The Biden-Harris administration is considering ways to impose bank-like regulation on the cryptocurrency companies that issue stablecoins, according to people familiar with the matter, including prodding the firms to register as banks.
- The administration is also expected to urge Congress to consider legislation to authorize a bank-like regulatory framework for stablecoins.

MANY COOKS IN THE KITCHEN: THE UCC AND SMART CONTRACTS

Morgan Lewis

The Chef's Choice



SEC

Bank
regulators

CFTC

UCC

IRS

State
regulating
bodies

The Uniform Commercial Code



- The Uniform Commercial Code (the UCC) is a uniform state law promulgated by the American Law Institute and the Uniform Law Commission and enacted in substantially uniform form in each state of the United States and the District of Columbia.
- The UCC governs all commercial transactions and covers the sale and lease of goods, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, investment securities, and personal property secured transactions.

Key UCC Provisions To Consider

- **UCC §1-201(b)(24)** defines “*money*,” in part, as “a medium of exchange currently authorized or adopted by a domestic or foreign government.”
- **UCC §9-102(a)(29)** defines “*deposit account*” in part as a “demand, time, savings, pass-book, or similar account maintained with a bank.”
- **UCC §9-102(a)(49)** defines “*investment property*,” in part, as a “security, whether certificated or uncertificated, security entitlement, . . . or securities account.”
- **UCC §8-102(a)(17)** defines “*security entitlement*” as a “financial asset,” which is itself defined as a “security,” an obligation or interest of a type dealt in or traded on financial markets or recognized as a medium for investment, or any property held by a securities intermediary in a securities account if it has been agreed that the subject property is to be treated as a financial asset.
- **UCC §9-102(a)(42)** defines a “*general intangible*” as essentially any personal property that does not fit within any other specific collateral classification.

What Is A Virtual Currency?

- Section 102(23) of the Uniform Regulation of Virtual Currency Businesses Act
 - “**Virtual currency**”:
 - (A) means a digital representation of value that:
 - (i) is used as a medium of exchange, unit of account, or store of value; and
 - (ii) is not legal tender, whether or not denominated in legal tender
- Sometimes referred to as “**digital currency**” or “**cryptocurrency**”
- Typically recorded digitally on a blockchain or other distributed ledger

Does The UCC Account For Virtual Currencies?

The **American Law Institute** and the **Uniform Law Commission** appointed a study committee in 2019 to recommend changes to take into account emerging technological advances, including artificial intelligence, distributed ledger technology and virtual currency.

Earlier this year, they proposed new amendments to the UCC to address virtual currencies.



The Slice And Dice Of UCC's Proposed Amendments

- **The draft proposal includes amendments to, among other things, Articles 1 and 9 to accommodate for the concept of “intangible money” and its “perfection” by control.**
 - UCC Article 9 governs secured loans that are collateralized by digital assets and other personal property that are directly owned by the debtor.
 - Under a proposed new UCC §9-105A, a security interest in intangible money can be perfected by control and only by control.
 - The amendments to Article 9 also include new rights to payments defined as “controllable accounts” and “controllable payment intangibles.”
 - Under the draft amendments to Article 9, UCC §9-203 would determine whether a secured party had an enforceable security interest against a controllable electronic record.
- **The amendments also create a new Article 12 entitled “Controllable Electronic Records,” which is intended to govern the transfer, either fully or for security, of interests for digital assets.**



Cooking Up UCC Amendments

- The growing use of virtual currencies as collateral has encouraged these changes to the UCC.
- As a result, the proposed amendments for Article 9 ultimately outline security interests for intangible assets and Article 12 provides the rights of transferees in these assets.
- Under these proposals, the goal is to have intangible negotiable instruments meet the same requirements as written tangible negotiable instruments to the extent possible, including the legal rules for governing attachment, perfection, priority and enforcement of a security interest.

A Look Forward At The UCC To Come

- **The various legal regimes appear to have settled on the notion that cryptocurrencies are indeed a form of property and virtual currencies continue to gain acceptance in commercial transactions.**
- Under the UCC, however, they don't have the same standing as fiat currency as of yet.
- **Unlike money, virtual currencies are general intangibles under the UCC and when pledged as collateral, these virtual currencies are subject to its attachment and perfection rules.**
- The Committee's effort to tackle these unsettled issues by modifying existing provisions and adding new ones is a major step by the UCC to account for emerging technologies.



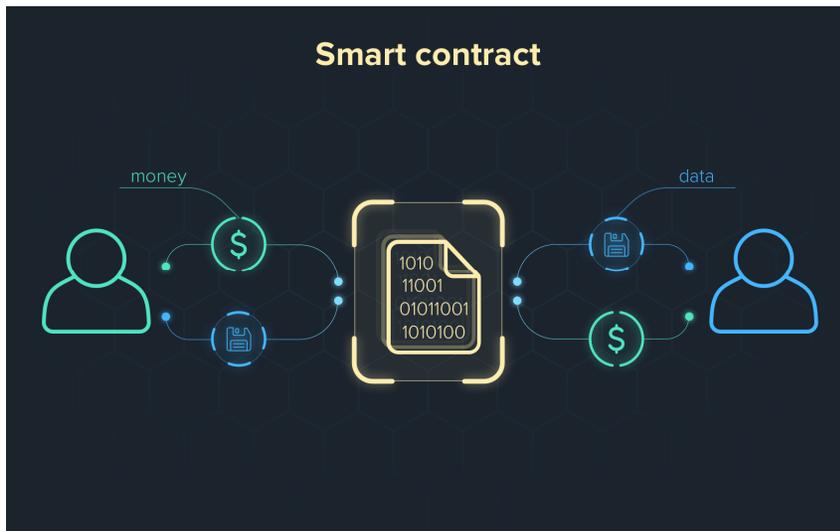
Creating Security Interests In A Decentralized System

Virtual currencies can exist through a decentralized system, with no central administrator controlling the currency supply.

Think, Bitcoin.

- In a decentralized system, transactions are recorded through ledger entries across decentralized computer networks known as blockchains. These blockchains can be used as a way to store terms of transaction in the form of a smart contract.
- The UCC's governance of all commercial transactions in the United States extends to smart contracts. The proposed amendments to the UCC to account for virtual currencies will also provide clarity on the enforceability and execution of smart contracts.

Creating Security Interests And Contractual Obligations Through Smart Contracts



Smart Contract – A contract embedded in code.

Blockchain is an immutable distributed ledger meaning once information is put into blockchain it cannot be deleted. A smart contract is essentially a self-executing computer program that uses distributed ledger technology to store the terms of a transaction, verify the request, and execute the agreed terms. These coded transactions in effect can create security interests and contractual obligations similar to a written agreement.

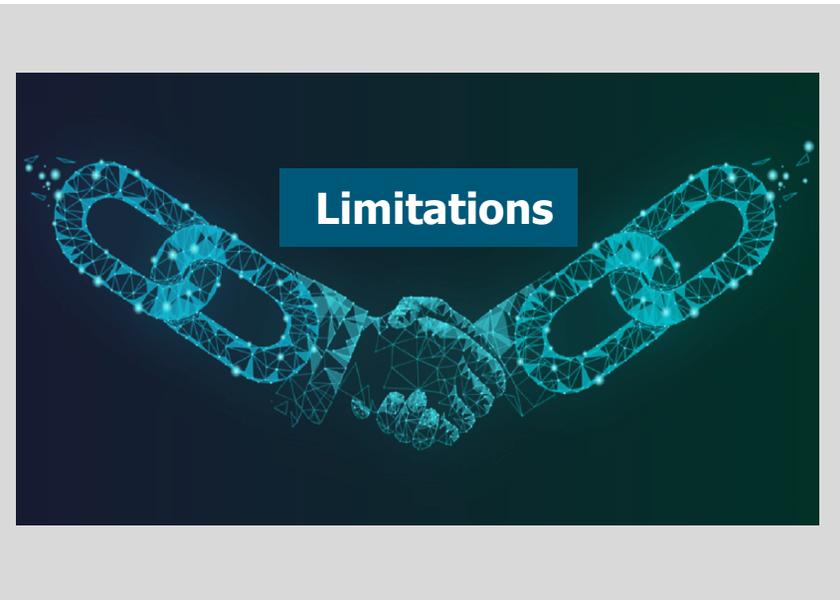
Are Businesses Using Smart Contracts?

YES!

- Many global banks have adopted blockchain technology for financial transactions.
- Insurance companies are using smart contracts to process claims' payouts.
- Many food and product suppliers are using blockchain to ensure safety standards are met.
- Other companies are looking to smart contracts to automate payments and other transactions.

Are Smart Contracts Enforceable?

- **UCC and Statute of Frauds**
 - Writing
 - Signature
- **Governing Law Provision**
- **Admissibility of blockchain-based evidence**
- **External and Subjective Information**



Poll

Do you think lawyers should learn code before advising clients on smart contracts?

Smart Contracts And The Complex Ingredients



- **Automated Terms**
- **Objectively computed code**
- **Ambiguous Terms**
- **Reliance on External**
- **Amending and terminating smart contracts**
- **Privacy and intellectual property concerns**

Poll

How many ransomware attacks does the United States face each year?

RANSOMWARE: THE SPREAD OF A NASTY STOMACH BUG

Morgan Lewis

What Is Ransomware?



- Ransomware is a form of malware designed to encrypt files on a device, rendering any files and the systems that rely on them unusable so that malicious actors can demand a ransom in exchange for decryption.
- Ransomware is a form of malware that uses asymmetric encryption, where a public-private pair of encryption keys is uniquely generated by the threat actor to encrypt the victim's files, and the attacker makes the private key to decrypt the files available to the victim only after a ransom is paid, although that is not always the case.
- Ransomware is most often distributed using phishing email campaigns.

The Scourge Of Ransomware Attacks

- The U.S. faces more than seven ransomware attacks an hour.
- Many ransomware attacks require cryptocurrencies such as Bitcoin for ransoms, making tracing and prosecuting the perpetrators difficult.
- Since 2012, ransomware attacks have increased significantly. For example, there were 181.5 million ransomware attacks in the first six months of 2018, marking a 229% increase over this same time frame in 2017. The number of cyberattacks during 2020 was double that of 2019.
- In May 2020, the global average cost to remediate a ransomware attack (including downtime, people time, device cost, network cost, lost opportunity and ransom paid) was \$761,106, and 95% of organizations that paid the ransom had their data restored.

Colonial Pipeline Ransomware Attack



- A group of threat actors known as DarkSide launched a ransomware attack in April 2021 that shut down Colonial Pipeline’s entire network and resulted in a \$4.4 million bitcoin ransom payment for Colonial Pipeline to regain access to its network and recover the data stolen by the threat actors.
- The ransomware attack was the result of a single compromised password. The compromised Colonial Pipeline employee account was no longer in use at the time of the attack but could still be used to access Colonial Pipeline’s network.
- The compromised account did not use multifactor authentication, a basic cybersecurity tool, allowing the hackers to breach Colonial’s network using just a compromised username and password.

Cyber Incident Reporting Act

- In September 2021, Senators Gary Peters (D-MI) and Rob Portman (R-OH) introduced the Cyber Incident Reporting Act (CIRA).
- Under CIRA, critical infrastructure companies would need to notify the Cybersecurity and Infrastructure Security Agency (CISA) within 72 hours of discovery of a cyber intrusion or a potential cyber intrusion, and provide regular seventy two-hour updates to CISA until the cyber intrusion has been mitigated.
- The Act also requires federal contractors, government agencies, and companies of more than 50 employees to report to CISA within 24 hours of making a ransom payment in response to a ransomware attack.
- In addition, the Act Grants CISA subpoena power to demand an incident report from an entity hit by a cyber attack or making a ransom payment.
- The Act also establishes a joint ransomware task force to coordinate an ongoing, nationwide campaign against ransomware attacks and solicit international cooperation.



CIRA (cont.)

- Impetus for Act was wave of major ransomware attacks aimed at country's infrastructure, including May 2021 Colonial Pipeline ransomware attack, where hackers exploited a Colonial Pipeline legacy VPN that lacked two-factor authentication and forced Colonial to shut down over 5,500 miles of pipeline. Colonial chose to pay the hackers to regain access to its network.
- Under existing law, there is no federal requirement for individual companies to disclose to CISA a ransomware attack, let alone mandated within a certain time frame.
- Under CIRA, organizations that fail to comply with CISA would then be referred to the Justice Department, and potentially banned from doing business with the federal government.

Cyber Incident Notification Act

- In July 2021, Senators Mark Warner (D-Va.), Marco Rubio (R-Fla.) and Susan Collins (R-Maine) introduced the Cyber Incident Notification Act (CINA) was introduced by the Senate Intelligence Committee. The Act would require all government contractors, agencies, and critical infrastructure operators to report all cybersecurity incidents and ransomware attacks to CISA within 24 hours of experiencing a breach or intrusion.
- Under the Act, reports are inadmissible as evidence into any resulting criminal or civil actions and exempt from subpoenas, except for those directly coming from Congress.
- Failure to report subjects companies to penalties as high as 0.5% of the firm's prior year gross revenues—per day the violation continues.

Insights for Companies Impacted By New Ransomware Laws

- Companies must have adequate incident response plans in place that include response and notification protocols for ransomware attacks so that they can timely notify relevant authorities in the event of an attack and avoid major penalties.
- Companies should regularly change employee passwords regularly and use multi-factor authentication to verify users.
- Companies should train employees to recognize suspicious phishing attacks.
- In addition, notifying federal agencies, such as the CISA taskforce, can provide insights in the form of agency recommendations, and in some cases authorities may have broken the encryption algorithms of ransomware strains.
- It is important that backups be maintained offline as many ransomware variants attempt to find and delete any accessible backups, and there is no need to pay a ransom for data that you have access to.

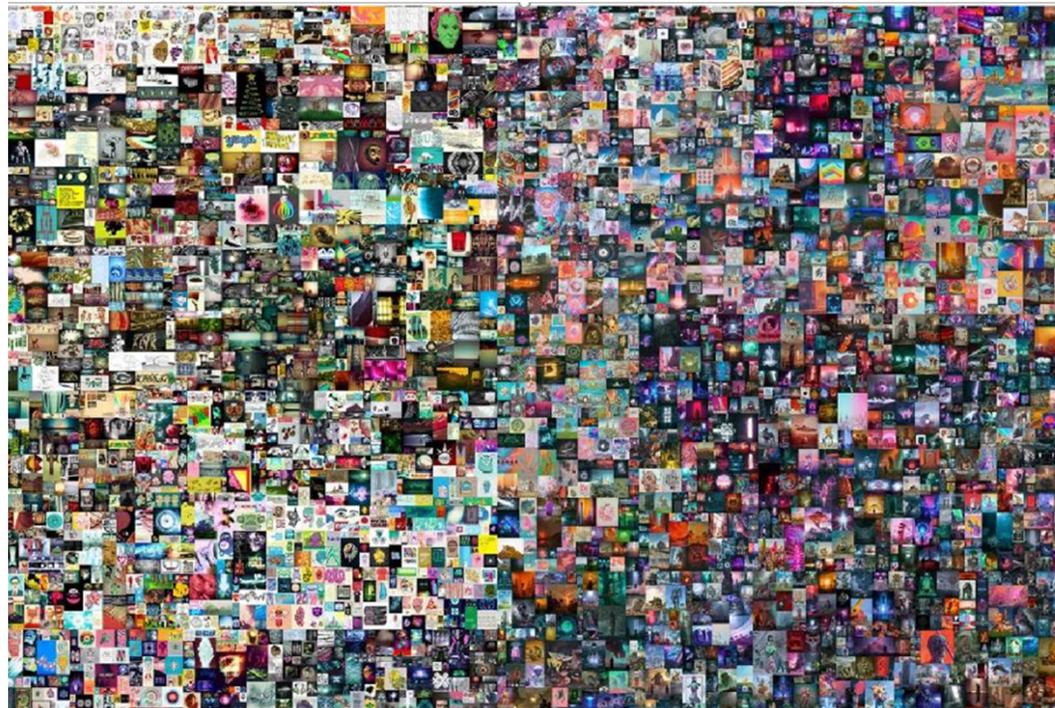
Poll

What is the average cost to remediate a ransomware attack?

WHAT ARE NFTS?

Morgan Lewis

"Beeple's" \$69 MM NFT



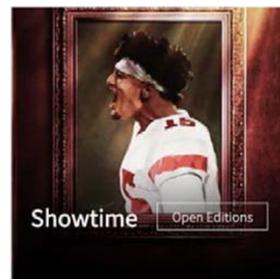
Morgan Lewis

NBA Top Shot's \$387,600



Morgan Lewis

Mahomes & Gronk Sell A Combined \$4.5MM In NFTs



Patrick Mahomes price \$2,500.00



Patrick Mahomes price \$5,000.00



Morgan Lewis

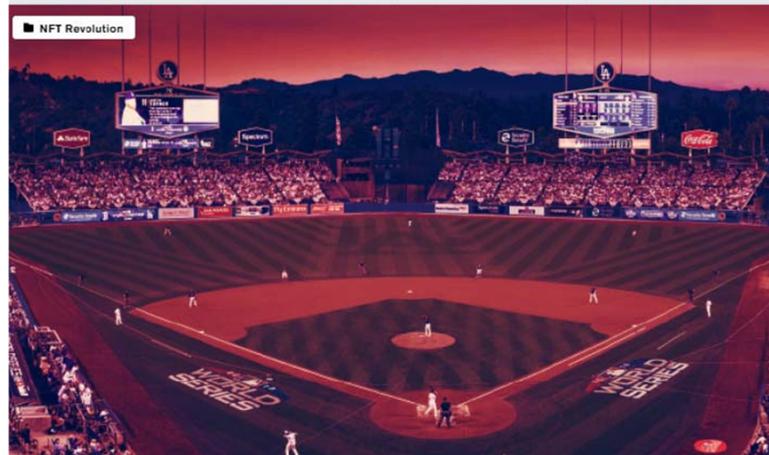
Dodgers Auction NFT With Physical World Series Ring

Los Angeles Dodgers to Auction NFT With Physical World Series Ring

Gary Vaynerchuk's Candy Digital will release Dodgers collectibles as its second MLB launch, following this week's Lou Gehrig NFT.

By [Andrew Hayward](#)

3 min read • Jul 11, 2021



Morgan Lewis

What Is An NFT?

- **“NFT”** = “Non-Fungible Token”
 - “Fungible”: interchangeable or replaceable (E.g. Cash/Bitcoin)
 - “Non-Fungible”: Unlike Bitcoin or traditional currencies like the US Dollar, NFTs are unique assets that do not have one-to-one value with other NFTs
- **“Token”** = unit of currency; reference to blockchain

But, Really, What IS An NFT?

- Three components
 - Base consists of cryptocurrency (usually Ethereum)
 - Digital file
 - Smart contracts (computer code)
- When these components are combined, the NFT is “minted”

Key Characteristics Of NFTs

- True, Verifiable Ownership of Content
- Royalties
- Rarity, Uniqueness and Exclusivity
- Longevity
- Community

Who Is Selling NFTs?

Primary Market

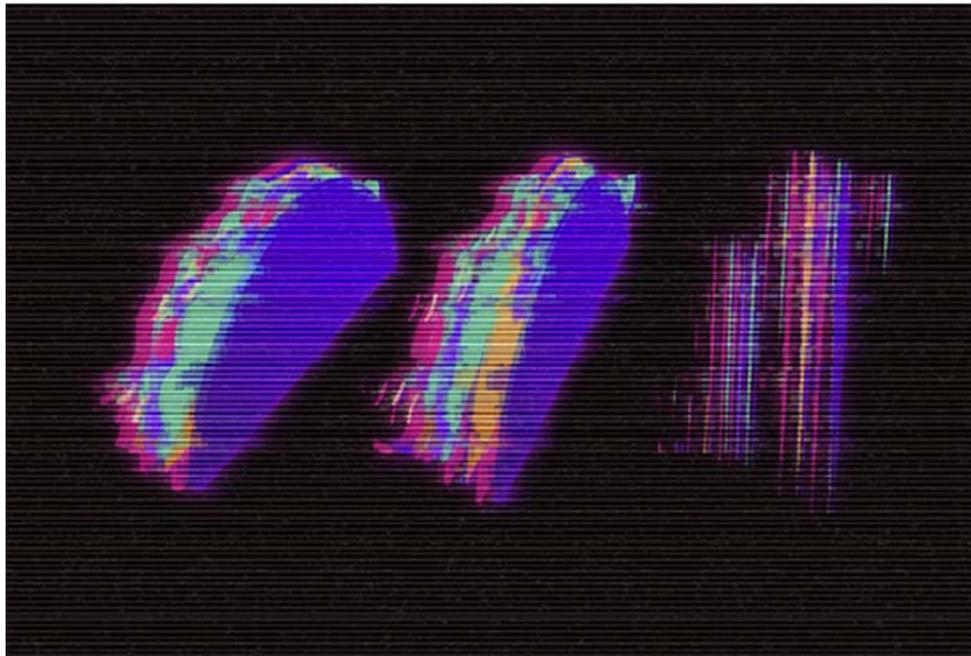
- Athletes
- Sports Leagues/Teams
- Fashion Designers
- Digital Artists
- Celebrities and Influencers
- Brands
- Musicians

Secondary Market

- Collectors
- Investors

Morgan Lewis

Who Is Selling NFTs – Brands



Morgan Lewis



Pringles



Morgan Lewis

Stella Artois



Morgan Lewis

Bud Light NFT

Vaynerchuk to Lead Beer Giant's long-Term' NFT Play

The tie-up puts everything from ticketing to merchandise on the table for NFTs from the multinational suds conglomerate.



Morgan Lewis

Who Is Selling NFTs – Studios & Networks



Morgan Lewis

Who Is Selling NFTs – Video Game Manufacturers



Morgan Lewis

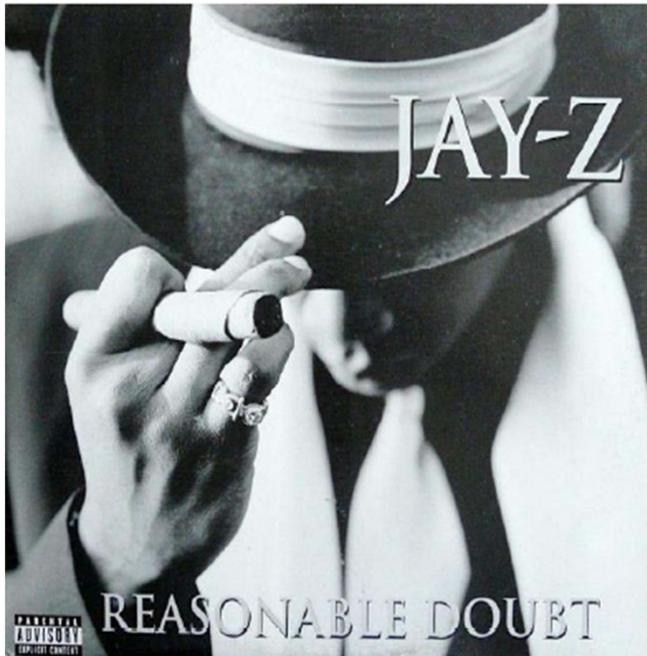
Who is Selling NFT's - Fantasy Sports

- **Sorare**
 - Collect & trade NFT cards that you then use to enter into fantasy lineups.
 - Earn cash, new NFTs and other rare collectables.
 - 126 officially licensed clubs and 120,000 active monthly users.
- **TradeStars**
 - Unique ethereum based platform that will create a fantasy sports stock exchange.
 - Users can buy, sell, and trade “stocks” of players that are digitalized and tokenized.
 - The “stock price” is impacted by the players recent performance



Morgan Lewis

Who Is Selling NFTs - Musicians



Morgan Lewis



Jay-Z vs Dame Dash: Lessons for NFTs

Roc-A-Fella Records

HOME > MUSIC > MUSIC NEWS

JUNE 22, 2021 1:30PM ET

Dame Dash Prohibited From Selling Jay-Z's 'Reasonable Doubt' as NFT Following Roc-A-Fella Lawsuit

Judge sides with label, but Dash claims he wasn't trying to mint and sell the album as an NFT, but rather his entire stake in Roc-A-Fella Records

By **JON BLISTEIN**



"By attempting such a sale, Dash has converted a corporate asset and has breached his fiduciary duties. His planned auction of Reasonable Doubt would result in irreparable harm," the lawsuit reads.

Greg Allen/Invision/AP; Stefanie Keenan/Getty Images

Morgan Lewis

A Tribe Called Quest Sell Royalties as NFT

A Tribe Called Quest

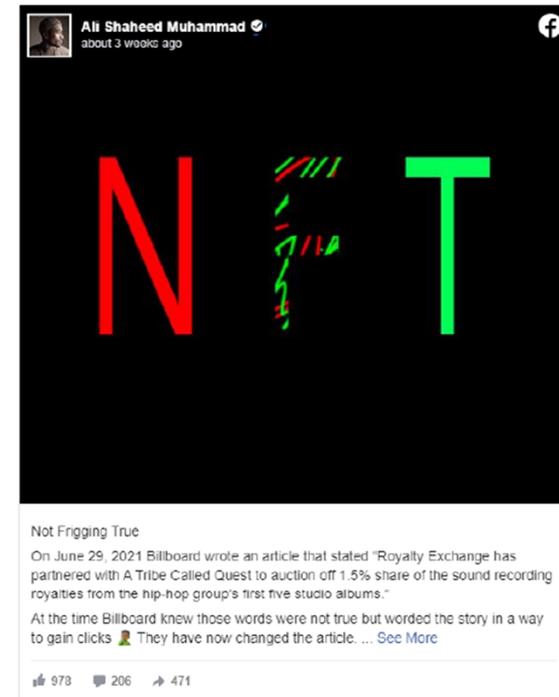
A Tribe Called Quest Denies Involvement In NFT Royalties Sale

Group member Ali Shaheed Muhammad refutes reports of the group's involvement and claims the royalties in question were stolen from them.

BY PREZY BROWN | JULY 8, 2021 10:56AM



Morgan Lewis



Risks & Challenges Of Talent Crypto Promotion

1. Possible Violations of SEC's Anti Touting Rules

- In 2017, the SEC warned that coins sold in ICOs may be securities and thus subject to anti-touting rules.
- Any celebrity or other individual who promotes a virtual token or coin that is a security must disclose the nature, scope, and amount of compensation received in exchange for the promotion.
- **Important to note that currently, Bitcoin, Ethereum and NFTs are not classified as securities.**

Floyd Mayweather & DJ Khaled



Morgan Lewis

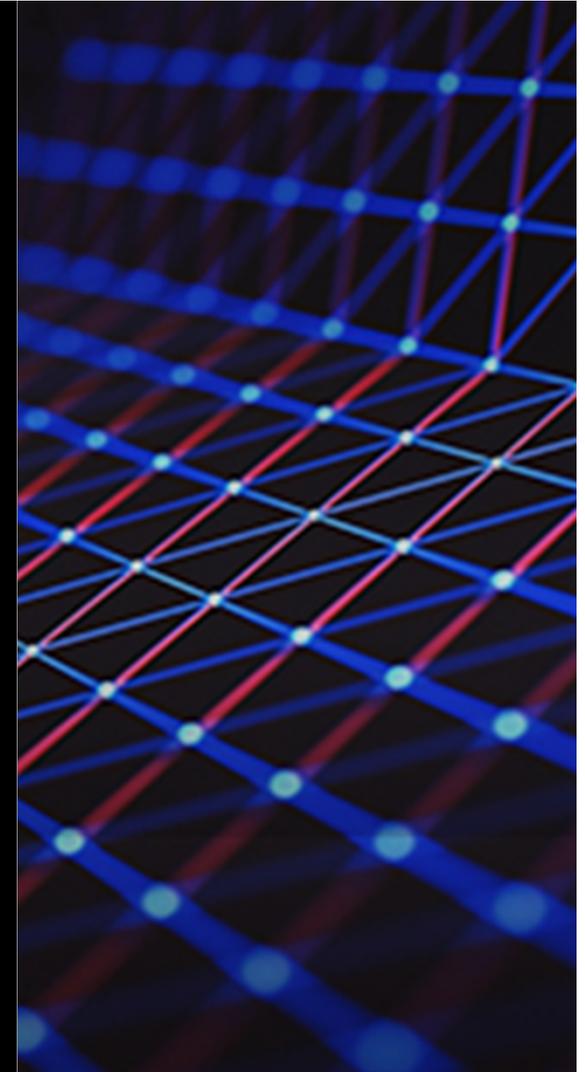
Coronavirus COVID-19 Resources

We have formed a multidisciplinary **Coronavirus/COVID-19 Task Force** to help guide clients through the broad scope of legal issues brought on by this public health challenge.

Morgan Lewis

To help keep you on top of developments as they unfold, we also have launched a resource page on our website at www.morganlewis.com/topics/coronavirus-covid-19

If you would like to receive a daily digest of all new updates to the page, please visit the resource page to [subscribe](#) using the purple "Stay Up to Date" button.



Our Global Reach

Africa

Asia Pacific

Europe

Latin America

Middle East

North America

Our Locations

Abu Dhabi

Almaty

Beijing

Boston

Brussels

Century City

Chicago

Dallas

Dubai

Frankfurt

Hartford

Hong Kong

Houston

London

Los Angeles

Miami

Moscow

New York

Nur-Sultan

Orange County

Paris

Philadelphia

Pittsburgh

Princeton

San Francisco

Shanghai

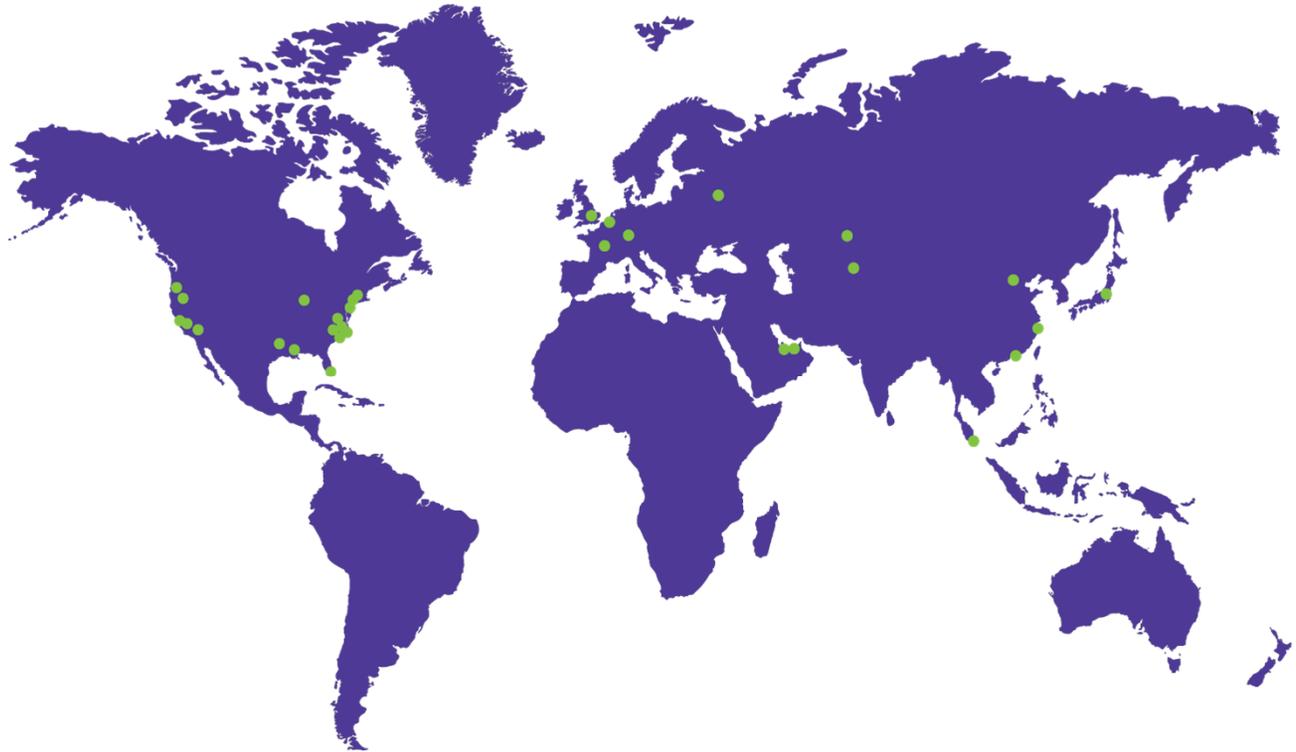
Silicon Valley

Singapore

Tokyo

Washington, DC

Wilmington



Morgan Lewis

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

ROBIN NUNN



Robin Nunn

Washington, DC

New York

+1.202.739.5382

robin.nunn@morganlewis.com

Robin Nunn has a wealth of experience gained in private practice as well as working in-house for Fortune 500 companies. Robin's practice focuses on complex civil litigation, enforcement litigation, white collar defense, transactional due diligence, creation and review of corporate compliance programs, and investigations. She also counsels on novel issues connected to new communication technologies, blockchain, cryptocurrencies, payments, artificial intelligence, and big data. Robin is also a co-leader of the firm's banking industry team.



JAMES ALPHONSE NORTEY



James Alphonse Northey

Houston

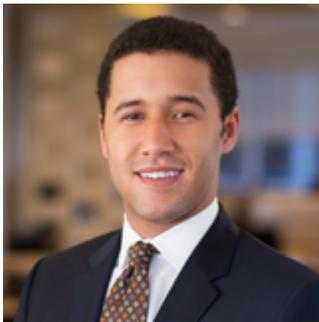
+1.713.890.5472

james.northey@morganlewis.com

James Northey is a trial lawyer who litigates and negotiates high-stakes commercial disputes on behalf of clients before US federal and state courts as well as administrative agencies. His practice includes retail operations, insurance recovery, healthcare, product liability, mass torts, and pro bono matters. James has experience with all phases of the litigation process, from pre-complaint investigations through trial and appeals, and has tried and won both jury and bench trials. He is an associate representative for the firm's Black Lawyer Network and a co-leader of the Mobilizing for Equality Community Engagement and Volunteerism Working Group.



JULIAN C. WILLIAMS



Julian C. Williams

Philadelphia

+1.215.963.5359

julian.williams@morganlewis.com

Julian C. Williams focuses his practice on class action lawsuits and complex commercial and product-related litigation. Julian understands the unique issues facing retail, ecommerce, and other consumer-facing companies. He also focuses on privacy and data security matters, and regularly counsels and represents clients in connection with these issues. Julian is a member of the firm's retail and privacy and cybersecurity practices as well as its Class Action Working Group.



BRIANNA RICQUÉ HOWARD



Brianna Ricqué Howard

Los Angeles

+1.213.612.7427

brianna.howard@morganlewis.com

Brianna Ricqué Howard has successfully represented clients in commercial and intellectual property disputes in state and federal courts. She advises corporations, small business, and private individuals across a broad range of legal issues, including complex commercial disputes, product liability litigation, unfair competition claims, and government investigations. Brianna has published articles about the legal issues facing various technology-based industries including pieces in *Forbes*, *TechCrunch*, and *VentureBeat*, and she is a member of the firm's technology and financial services practices as well as its Class Action Working Group.



THANK YOU

© 2021 Morgan, Lewis & Bockius LLP
© 2021 Morgan Lewis Stamford LLC
© 2021 Morgan, Lewis & Bockius UK LLP

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. Prior results do not guarantee similar outcomes. Attorney Advertising.

Morgan Lewis