



Legal Workshop on “Crypto-Equity & the Law”

A workshop organised in the framework of the **Study group on Legal, Social & Economic Aspects of Cryptolegger-based Technologies at the Berkman Center for Internet & Society**, examining the interplay between blockchain technologies including distributed cryptolegger technology and existing legal infrastructure or regulatory regimes. The workshop will gather a small group of lawyers and entrepreneurs involved in the deployment of distributed cryptolegger-based applications in order to sketch out a techno-legal framework that could resolve the issues that most of these applications are currently facing, without hindering their distributed potential and decentralized character.

Convened by:

- Primavera De Filippi, Berkman Center for Internet & Society
- Joel Dietz, Swarm.fund
- Costance Choi, DATA

Locations:

- Berkman Center for Internet & Society, 23 Everett Street, Cambridge, Massachusetts
- MIT MediaLab, 77 Massachusetts Ave; Cambridge, Massachusetts

Dates:

- January 16th (MIT Medialab)
 - 09:00-16:00 - (optional) **Open discussions in thematic groups with entrepreneurs**
 - 16:00-18:00 - **Public presentation of each WG on current regulatory framework**
- January 17th (Berkman Center)
 - 9:00 - 18:00 - **Internal Workshop**
- January 18th (MIT Medialab)
 - 9:00 - 13:00 - **Internal Workshop**
 - 14:00-18:00 - **Roundtable with regulators & policy makers**

Sponsors:

- Buckley Sander LLP
- Katten Muchin Rosenman LLP



Objective:

The goal is to examine the current applications and potential opportunities of cryptolegder technology to create policy recommendations outlining appropriate integrations to existing legal infrastructure. Ideally, the document will contain a set of recommendations concerning potential applications of distributed cryptolegder technology and how they can be regulated within the existing legal framework, as well as recommendations with regard to different areas that should either be better regulated or rather be left unregulated. The workshop participants will also come up with potential recommendations (in the US context) to reform existing laws or regulation that may prevent innovation around these technologies.

Questions to be addressed

Cryptolegders provide a novel way of issuing secure and tradable tokens via a distributed networks. Although sometimes described as “cryptocurrency,” implying that the use value of the tokens is closest to currency, there are numerous other potential applications of these tokens that range from stock equivalents to previously unimaginable forms.

Although often generally referred to as “crypto-equity” they can be divided into the following categories:

- (1) Shares in a project that serve as a function similar to stock, allowing participation in the decision making and participation in financial upside (*i.e.* BitShares)
- (2) Tokens which represent ownership in something other than a company, for example intellectual property (*i.e.* CommonAccord)
- (3) Product tokens which are redeemable for some product, perhaps one consumable in the context of a decentralized technology (*i.e.* Ethereum)
- (4) Access tokens which provide access to a particular set of benefits within a network, similar to a membership (*i.e.* Swarm)

Because in some of the aforementioned cases there may be no necessary relation back to the existing legal regimes (e.g. contract law, security law, etc), the context in which they operate is currently outside the law which presents both problems and potential.



The legal system is currently lagging behind these technological developments and does not properly account for the granularity of these cryptographic tokens, which currently stand in the gray-area of the law. Legal uncertainty might dissuade people from adopting these technologies, thus discouraging the deployment of new applications that could be highly beneficial to society.

While the need for a legal reform is pressing, for the time being, it is important to understand how we can benefit from the opportunities provided by cryptolegger-based technologies in a way that remains compliant with the law.

The purpose of this workshop is to examine both the problems and potential of cryptolegger-based applications from the standpoint of the existing legal infrastructure.

In particular, it hopes to answer the following questions:

- Under what circumstances should tokens issued in the above categories fall under existing regulations? For examples, securities as defined by the 1933 securities act.
- Under what circumstance can new legal infrastructure be developed which accommodates these tokens? For example, how can individual tokens be linked to legally enforceable intellectual property?
- To what extent can we rely on technical and contractual means to deploy a system of internal validation and self-regulation that complies with current sectoral regulations?

Preliminary Work:

Before the workshop, the participant will set up small task-forces that will be working on documenting the legal space as it currently exists. The task-force will be subdivided into 4 working groups, working specifically on:

- **Legal status of cryptographic tokens**
 - as payments, asset-backed commodities, securities, etc
- **Legal status of crypto-equity**
 - for-profit ventures vs participatory structure
 - interplay between ownership and participation
 - use of consumer disclosures, etc
- **Legal validity and enforceability of smart contracts**
 - replacement of or added layer for digital contracts
 - necessity for digital outputs or enforcement/adjudication mechanisms
- **Regulatory issues around cryptolegger-based applications**
 - compliance, AML/KYC/financial controls/corporate governance, etc



Agenda

The in-person workshop will be subdivided in three parts:

1. **Open presentation (Friday 16th) at MIT Media Lab (6th Floor)**

A. Legal discussion groups (9am-5pm)

09:00 - 09:30 Breakfast

09:30 - 11:30 Working Group: Breakout Sessions

- Group 1: **Custodian, account holders, identity**
- Group 2: **Specific Tech Policy Considerations**
- Group 3: **Crypto-tokens & Crypto-equity**

Working groups will produce outline of model framework, related issues and potential solutions, identify open questions and follow-up research

11:30 -12:00 Morning roundup from Working Groups A-C

12:00 - 13:00 **Lunch Keynote** Policy Panel:
Preeti Bansal, Alex Fowler, Howard Schloss, Joshua Fairfield
(Sponsored by Perkins Coie)

13:00 – 15:00 Working Group A-C - Breakout Sessions (continued)

15:00 – 15:30 Break

15:30 - 17:00 Collaborative drafting of framework document

B. Report-back from the Legal Task-forces (5-6pm)

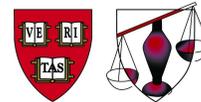
In the afternoon, there will be a presentation of the output and findings of each working group. Every presentation will be about 20 minutes in length, followed by 15 mins of Q&A.

Working Group 1: Legal status of cryptographic tokens

Working Group 2: with specific focus on crypto-equity

Working Group 3: Legal validity and enforceability of smart contracts

Reception (7-9pm) (Sponsored by Buckley Sanders LLP)



2. **Internal workshop** (Saturday 17th & Sunday 18th) at the Berkman Center / MIT

Participants will try and come up with regulatory landscape and solutions with regard to the following subject areas, answering the question “Where do we go from here?” :

- **Legal status of cryptographic tokens** (WG 1)
 - with specific focus on **crypto-equity** (WG 2)
- **Legal validity and enforceability of smart contracts** (WG 3),
 - with specific focus on **Intellectual Property licensing** (WG 4).

Day 1 (January 17th) at the Berkman Center

8:30 - 9:00: Breakfast

9:00 - 12:00: **Working Groups** (initial brainstorming):

Each working group gather together to produce outline of related issues and potential solutions for each sub-area of research:

09:00 - 10:00: Brainstorming ideas

10:00 - 11:00: Discussing and selecting ideas (2 issues & 2 solutions)

11:00 - 12:00: Drafting the outline

12:00 - 14:00: Lunch Keynote **GAV WOOD**: “*Alegality*”

14:00 - 18:00: **Working Groups** (document drafting):

Each working group is divided in two sub-groups, first working on the issues and then on the solutions.

14:00 - 15:00: **Issues**: each subgroup picks one issue and expand upon it

15:00 - 16:00: Group switch, each subgroup take on and expands on the other issue

16:00 - 17:00: **Solutions**: each subgroup picks one solution and expand upon it

17:00 - 18:00: Group switch, each subgroup review & expands on each other’s work

18:00 - 19:00: Working dinner (buffet); plenary session with report back to the other WG’s

19:00 - night: Participants keep working on the selected issue or solution



Day 2 (January 18th) at the MIT Medialab

8:30 - 9:00: Breakfast

9:00 - 12:00: **Working Groups:** Final touches on collective report on related issues

09:00 - 09:30: Reconvening and assignment of individual tasks for final drafts

09:30 - 11:00: Drafting of each section as an individual task for each participant

11:00 - 12:00: Final review and group editing of the report

By the end of the Workshop, working group participants are expected to produce a collective statement on these topics. They will come up with a document summarizing the identified problems and solutions.

3. Roundtable & Community feedback (Sunday 18th) at MIT Medialab

The roundtable will convene a small number of entrepreneurs, policy makers and FinCen/SEC representatives. First, the working groups will first present their findings to the broader audience, who will then be invited to join the workshop participants in a roundtable discussion, with a view to assess the viability of the presented solution, and come up with possible amendments to refine the documents. The objective is to converge towards a common understanding concerning the applicability of the law to these cryptographic tokens, and to identify the most pressing issues that should be addressed both in the legal and technical field.

The resulting documents will then be disseminated to the larger legal community for further feedback and suggestions.

12:00 - 14:00: Lunch Keynote **JOICHI ITO:** *"How is blockchain like or not like the Internet?"*

14:00 - 16:00: **Roundtable** with policymakers & regulators to get direct feedback from them



Modalities of participation:

Except for the 16th and 18th afternoon, the workshop is an closed, invite only workshop (*i.e.* it is not be open to the public). Participants will be invited beforehand.

For the policy roundtable on the 18th, we will invite the key actors in the field, including regulators, policy makers, entrepreneurs and other interested stakeholders.

The workshop conversations will be off-the-record, although all the documents and proceedings, including the roundtable discussion on the third day will be made generally available to the public