

Cryptocurrency and Blockchain Technology in Consumer Gaming or Prediction Mobile Platforms

A decade ago, almost no one even had heard the word “cryptocurrency,” and gambling was a subject reserved to those who visited Las Vegas, Atlantic City, offshore poker websites, and, as ever, the movies. In 2021, both are mainstream and—increasingly—converging.

Supported by blockchain digital infrastructure, cryptocurrencies purport to offer the possibility of commercial and wealth-management activities outside the purview of publicly regulated markets and state treasuries and central banks. While employing currency-related terminology like “coins” and “tokens,” the adaptability and seemingly unconstrained purposes of cryptocurrencies present fundamental questions about their nature. Existent only in digital form and not created by any government mint, are they nevertheless akin to conventional currencies? Often volatile in value and not issued by a particular corporate entity, are they nevertheless akin to securities?

Of course, traditional currencies also bear features of both media of exchange and securities, and the facts that government actors neither create nor fully understand something do not necessarily prevent them from trying to regulate it. Indeed, to varying degrees, this is the circumstance of many business-lawyer clients, who are responsible for the generation of their business outputs and, vis-à-vis public regulators, tend to be the real experts in their respective fields. When it comes to cryptocurrencies, however, that degree of variance can be so extreme, and their relatively recent emergence and growing popularity coupled with a core identity that is openly hostile to state oversight, has thus far made it difficult for governments to develop workable regulatory models.

That regulatory uncertainty appears to have done little to slow the use of cryptocurrencies, which is not expressly outlawed. Cryptocurrency ownership requires a blockchain wallet, and available statistics show that the number of unique blockchain wallets has been growing at high rates in recent years. Anecdotal indicators, such as financial news sources like CNBC regularly displaying the live value of Bitcoin, perhaps the most popular cryptocurrency, alongside major stock exchange indices, also are consistent with the increasingly mainstream status of cryptocurrencies. Even government actors in countries like El Salvador and states such as Wyoming have expressed approval of the legal use of cryptocurrencies.

Meanwhile, gambling has pressed its way into the mainstream milieu in recent years as well, largely kickstarted by the Supreme Court’s decision in *Murphy v. NCAA* (No. 16-476, 584 U.S. ____ (2018)) that the federal statutory prohibition on state-run sports wagering (the Professional and Amateur Sports Protection Act (“PASPA”)) was unconstitutional. Since then, about a dozen states, including New Jersey, Tennessee,

Pennsylvania, and Michigan, have authorized sports and other gambling activities, with similar initiatives churning through many other state legislatures. Driven, to varying extents, by public interest, prior experience with online daily fantasy sports (“DFS”) and other games, and COVID-19-induced stay-at-home requirements, these state gambling authorizations and bills increasingly allow for mobile gaming applications that require little or no player interaction with brick-and-mortar casinos.

The *Murphy* decision was not quite the broad-scale legalization measure that some in the general public thought it to be, but there is little doubt that it signaled a call to entrepreneurs large and small to begin exploring in earnest the development of gambling and gambling-adjacent products. Some of these products, naturally, came in the form of sports books at land-based casinos that had not previously hosted them.

Far more of these new products, though, were mobile apps. Past experience with online poker, DFS, conventional fantasy sports, and internet casino (“iCasino”) games showed that an audience for mobile gaming exists, and it certainly seems easier to build a smartphone app than a brick-and-mortar casino. Incorporation of cryptocurrency compatibility and blockchain infrastructure made both practical and cultural sense: why not use the latest technology and do so in a way that might appeal to player preferences toward confidentiality in a so-called vice activity? Open, distributed, and decentralized technologies also lend themselves to the creation of different types of gaming experiences, such as peer-to-peer structures that, at least on their face, appear to bypass or invert the traditional concept of “the house.”

While the Supreme Court, in *Murphy*, ended a nationwide prohibition, the practical consequence was not nationwide, uniform legalization. As referenced above, the way forward was and remains a patchwork quilt of unique state-by-state authorizations that, for developers, represent another layer (or many other layers, depending on the scope of operation) of regulatory obstacles to navigate. Including cryptocurrency components might make engagement easier or more enticing for players, but it adds yet another regulatory web to an already highly regulated industry.

Gambling and currency are not remotely new to the human experience. Today, though, technology is permitting them to interact in new ways that pose new and exciting questions. Business lawyers navigating these overlapping regulatory environments also must think beyond basic licensing and compliance matters and consider significant security and privacy responsibilities.

By: Alexander Denton July 13, 2021