For the past decade the crypto space has been described as the wild west. The crypto cowboys and cowgirls have innovated and moved the industry forward, despite some regulatory certainty. Innovation always leads regulatory clarity. There’s a new sheriff in crypto town – the US government and its various regulatory agencies. They seem intent on taming the wild west.

According to a recent report, the IRS Has Sent 10,000 Letters on Taxpayer Digital Assets seeking to collect taxes on gains from crypto assets including NFTs. This is no surprise and we have cautioned on this dating back to 2017. While many people have focused on the tax issues with crypto currencies, the IRS is also focusing on NFTs as reported here.

This comes on the heels of another report this week that the SEC is now targeting certain NFT uses. According to the report, the SEC is probing whether NFTs are being utilized to raise money like traditional securities. The SEC has reportedly sent subpoenas related to the investigation and is particularly interested in information about fractional NFTs. As we discussed here, fractionalization is just one of the
potential securities law concerns with certain NFT business models. NFTs that represent a right to a revenue stream and NFT presales can also presents issues in some cases.

Other recent regulatory activity relating to NFTs includes the following. The Department of the Treasury published a study on the facilitation of money laundering and terrorist financing through the art trade, including NFTs. See our report on this here. The Treasury Department’s Office of Foreign Assets Control (OFAC) sanctioned a Latvia-based digital asset exchange and designated 57 cryptocurrency addresses (associated with digital wallets) as Specially Designated Nationals (SDNs). These designations appear to be the first time NFTs have been publicly impacted as “blocked property” – as one of the designated cryptocurrency addresses owns non-fungible tokens (NFTs). See our report on this here. A number of NFTs are also being used to facilitate illegal gambling.

In addition to the regulatory issues, the number of NFT-related lawsuits and other legal disputes continues to increase. Many of these disputes relate to IP ownership, IP infringement, failure to apply an clear or enforceable license to the NFT, among others.

Most of these issues are avoidable with proper legal counseling early on.

The use of NFT technology to tokenized and record ownership of physical and digital assets, as well as entitlements (e.g., tickets, access, etc.) is just getting started. We believe this technology will see wide scale adoption across many industries. The vast majority of the NFT business models are legal.

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