

Cryptocurrency & Law

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Protocol Labs

About Protocol Labs

- IPFS, libp2p, IPLD, SourceCred
- Filecoin
 - Coinlist
 - SAFT
- Investors: YC, USV, BlueYard, A16z, Sequoia, Polychain

About Me

- Harvard Law
- Kirkland & Ellis
- Free Press
- Opinionated law firm (Google, Apple, Dropbox, OpenDNS, etc.)
- Affiliate Scholar-Stanford CIS
- *GC of Protocol Labs*

About the Law

- Sticks and carrots
- Territorial - by country, by state, by city
- Government bodies - congress/state house, regulatory agencies, court decisions
- Sometimes written - statutes, regulations/guidance, cases
- British/US system - case method, analogies

Black Letter Law

- Plain language (statute or regulation)
- Supreme Court (then Circuit Courts then District Courts)

Not Black Letter

- Analogies
- Guidance, speeches, settlements

Areas of law...

Securities	Projects/ Exchanges	SEC	Banking
Commodities	Multiple	CFTC	Agriculture
AML/KYC	Exchanges	FinCEN	Banking
Tax	Everyone	IRS	Finance
Custody	Custodians/ institutional	SEC	Banking

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What is a token?

Securities	Projects/ Exchanges	SEC	Banking
Commodities	Multiple	CFTC	Agriculture
Software	Everyone	FTC	Commerce

Why does it matter?

- If a token is a security —
 - essentially IPO needed (S1 document) or an exemption to launch or deliver tokens
 - must be on a registered exchange or ATS (“Alternative Trading System”), potentially brokers, etc.
- If a commodity — pretty unregulated except for derivatives, market manipulation, fraud, etc.
- If pre-sold software — pretty unregulated except for fraud/deceptive practices.

Hinman Speech

- Title of Speech: When Howey Meets Gary (Plastic)
- Speaker: Bill Hinman, Director of the Division of Corporation Finance

Howey test for a security

- Is there an investment of money
- In a common enterprise
- With an expectation of profit
- Relying on the efforts of a promoter or third party

Hinman speech

- Bitcoin and Ether are not securities!
- Focused on “reliance on third parties”
- Sufficiently “decentralized” applications are not securities

Hinman's guidance

- Marketed and sold to general public or only to potential users of network?
- Sold for price correlating with good or service or not?
- Central third party whose efforts are key or not?
- Do persons other than promoter exercise governance rights or meaningful influence?

Fact scenarios

- Token pre-sale (ICO)
- Token delivery
- Listing tokens