

Game on: The virtually real risks for financial lines insurers playing in Web 3.0 and the Metaverse

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6 October 2022



“

Metaverse will act as a virtual space beyond (meta) our fractured and hurtful reality... the catch is that we will get a commons which is privately owned, with a private feudal lord overseeing and regulating our interaction.

---Slavoj Žižek “Boringly postmodern and an ideological fantasy”, *The Spectator*, January 2022

“

This is not good. Worlds are colliding!

---George Costanza, *Seinfeld* Season 7, The Pool Guy



Agenda

- What is Web 3.0 and the Metaverse?
- D&O and PI exposures involving cryptocurrencies including coverage exclusions
- DAOs
- NFTs
- The Future

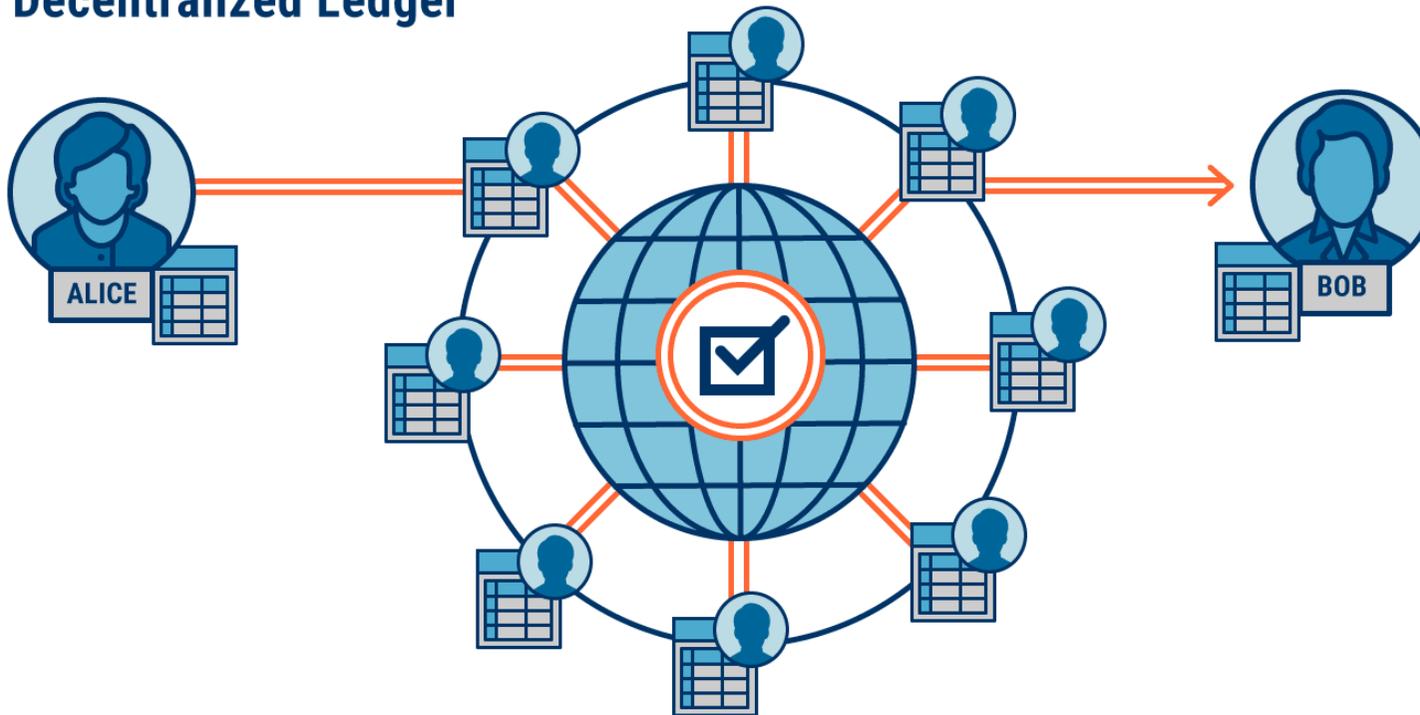




Bitcoin



Decentralized Ledger



CBINSIGHTS

Non Fungible Tokens (NFTs)

OpenSea Search items, collections, and accounts Explore Stats Resources Create

Discover, collect, and sell extraordinary NFTs

on the world's first & largest NFT marketplace

Explore Create

CryptoKitties No wallet Catalogue Search Guides More Start

CryptoKitties Collect and breed furrever friends!

Get your own Kitty

- Buy & sell cats with our community
- Crack puzzles alongside other players
- Create collections & earn rewards
- Chase limited edition Fancy cats
- Breed adorable cats & unlock rare traits
- Play games in the KittyVerse

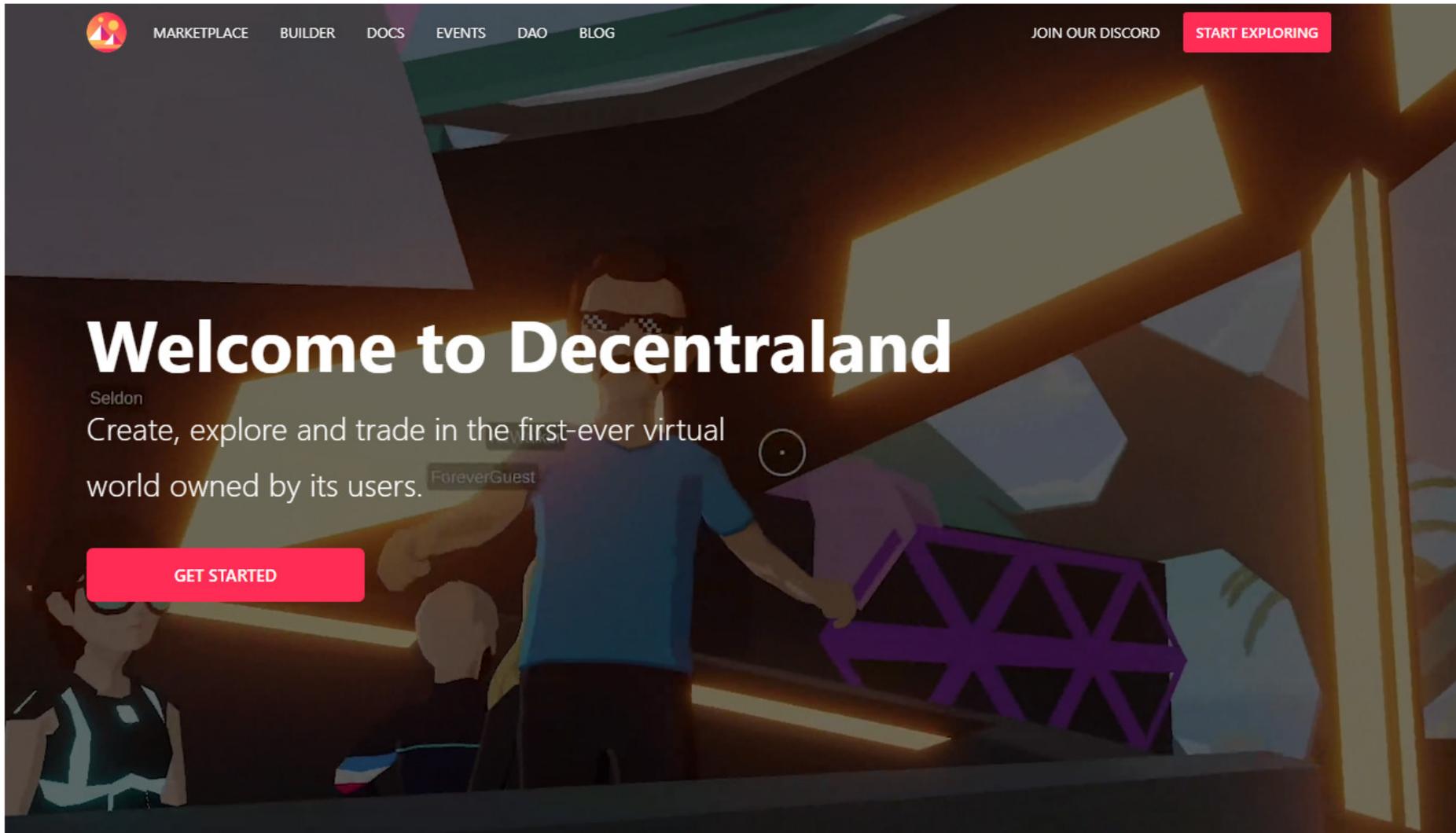


Beeple: Everydays: The First 5000 Days (USD 69 m, Mar 2021)

Decentralised Autonomous Organisations (DAOs)



The Metaverse



- S HOME
- ALPHA
- MARKET
- CREATE
- MAP
- ABOUT

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Apr 25, 2022 - 11 min read

LAND SALES

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D&O and PI opportunities

METAVVERSE

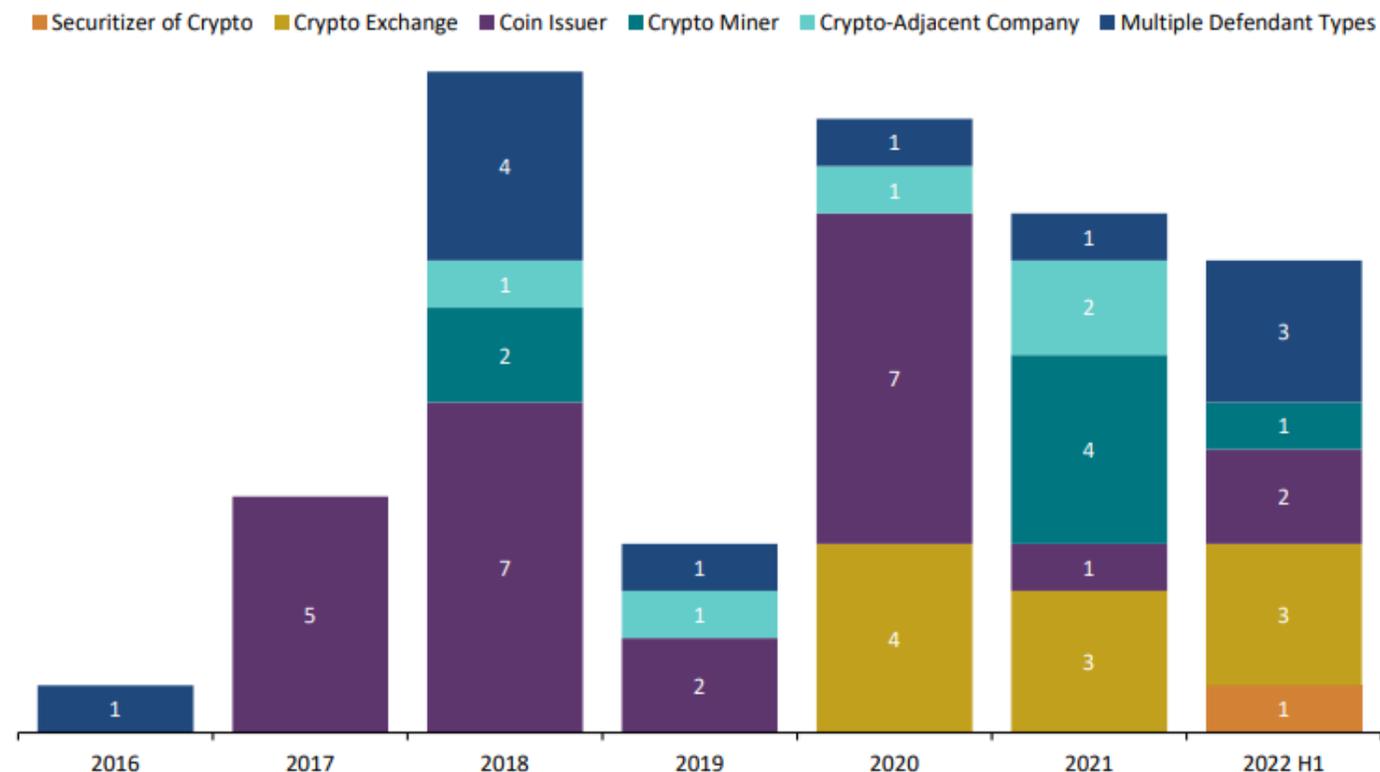
Virtual worlds but real world risks?

- Liability issues still have traditional roots in D&O & PI liability
- With some exceptions, we usually still have real world entities involved
- Predominantly companies that have been exposed to Web 3.0 and The Metaverse
- Violation of local securities laws (eg. Ripple)
- Misleading and deceptive conduct (eg. Coinbase)
- Securities litigation (eg. Coinbase)



Securities actions

Figure 5: Summary of Cryptocurrency-Related Filings—Core Federal Filings 2016–2022 H1

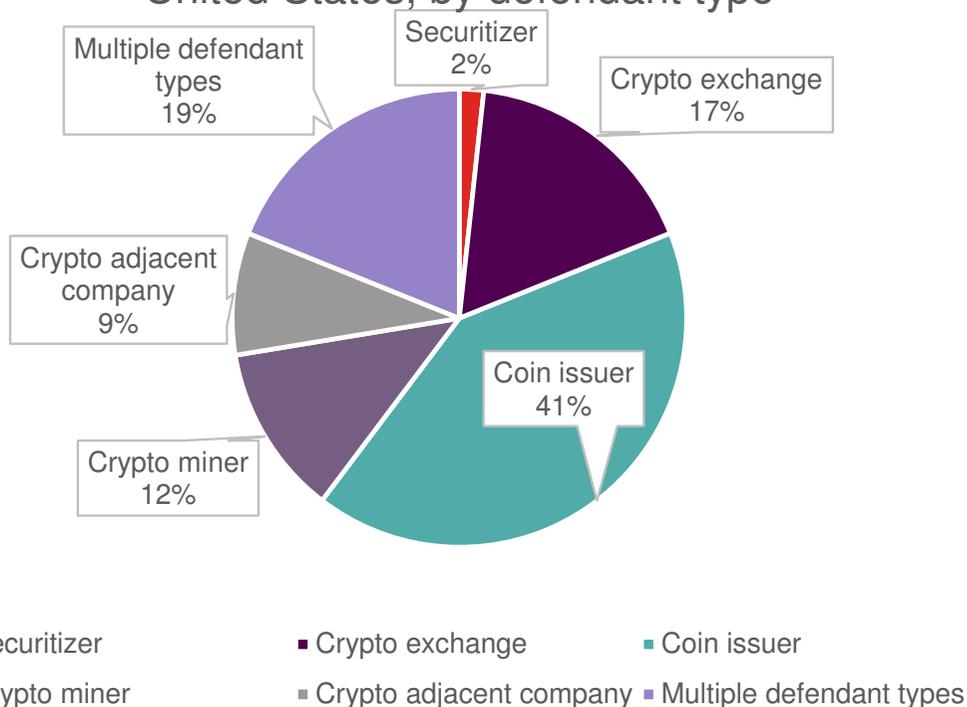


Note: Crypto-Adjacent Companies include companies selling mining rigs and chips, companies attempting to enter the cryptocurrency space, and companies partnering with cryptocurrency companies to provide services. "Multiple Defendant Types" refers to primary defendants operating in two or more of the categories.

- Securities class actions prominent among crypto companies
- US is still the choice of forum for such actions

Distribution by defendant type

Cryptocurrency related filings (2016-2022 H1) in the United States, by defendant type



- Coin issuers take up the majority
- Interesting that exchanges are next
- Multiple defendant types – exchanges lumped in
- Future regulation?
Digital Assets (Market Regulation) Bill 2022 (Bill) & Regulation on Markets in Crypto Assets (MiCA)

Coinbase exchange consumer litigation

Case 4:22-cv-04829-DMR Document 1 Filed 08/23/22 Page 7 of 33

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7

Case No. 3:22-cv-4829



Risks for exchanges

- Security is paramount, but how best to manage the risks around advertising such protection when hacks abound?



TECH

More than \$90 million in cryptocurrency stolen after a top Japanese exchange is hacked

PUBLISHED THU, AUG 19 2021-8:01 AM EDT | UPDATED THU, AUG 19 2021-10:13 PM EDT



Ryan Browne
@RYAN_BROWNE_

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The real victims of mass crypto-hacks that keep happening

Forbes

BREAKING | Aug 10, 2021, 11:10am EDT | 140,142 views

More Than \$600 Million Stolen In Ethereum And Other Cryptocurrencies—Marking One Of Crypto's Biggest Hacks Ever



Jonathan Ponciano Forbes Staff
Investing

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Risks for exchanges...what can insurers look out for?

Mechanisms deployed to protect user assets

Advertising of returns available on certain digital assets

Impact of future regulation of exchanges? Minimum standards for custody providers?

Consumer protection laws including unfair contract terms

Risk assessment at time of underwriting



Coinbase securities class action

Allegations are that

- Coinbase custodially held crypto assets on behalf of its customers, and knew or recklessly disregarded that they could qualify as property of a bankruptcy estate
- This meant that those assets may potentially be subject to bankruptcy proceedings in which Coinbase customers would be treated as general unsecured creditors
- Coinbase allowed users to trade digital assets that knew or recklessly disregarded should have been registered as securities with the SEC;
- the above conduct subjected the company to heightened risk of regulatory and governmental scrutiny and enforcement action; and
- Coinbase's public statements were materially false and misleading



Share price

\$19.27 first drop

\$14.14 second drop

Disclosures

Moreover, because custodially held crypto assets may be considered to be the property of a bankruptcy estate, in the event of a bankruptcy, the **crypto assets we hold in custody on behalf of our customers could be subject to bankruptcy proceedings and such customers could be treated as our general unsecured creditors. This may result in customers finding our custodial services more risky and less attractive** and any failure to increase our customer base, discontinuation or reduction in use of our platform and products by existing customers as a result could adversely impact our business, operating results, and financial condition

10 May 2022 Quarterly Report



Brian Armstrong  @brian_armstrong · May 11



6/ We should have updated our retail terms sooner, and we didn't communicate proactively when this risk disclosure was added. My deepest apologies, and a good learning moment for us as we make future changes.

 45

 34

 395



What does this mean?

Same allegations relating to share price typically seen in securities class actions

However, relates to Web 3.0 legal uncertainty

How best to mitigate?

Underwriting process

The Coinbase logo, consisting of the word "coinbase" in a lowercase, blue, sans-serif font.

DAOs

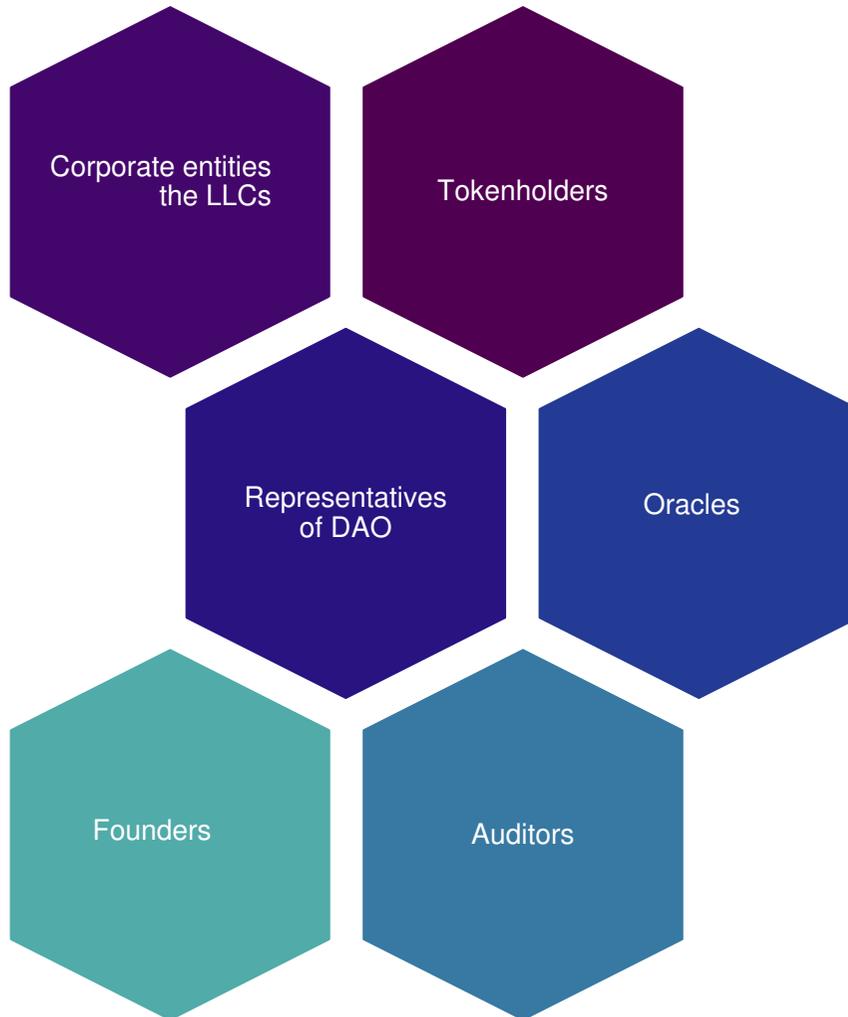


bZx class action

- bZx DAO was developing a new DeFi platform, Fulcrum
- bZx was developed by two LLCs and two individuals
- bZx repeatedly made representations relating to the security of the platform stating that ‘users maintain control of their own keys and assets’ and that users ‘never’ have to worry about exchanges being hacked
- Phishing attempt led to the hack and losses
- But what is the DAO?



Who could be insured?



Potential for individual liability

- Fiduciary obligations owed to other participants?
- Duties of care under tort law owed by DAO members?
- Theft of crypto
- Market share, dominance or collusion

Future regulation?

Is the DAO a partnership?



The background of the slide is a dense, colorful collage of numerous small, overlapping images and text fragments. The images vary in size and content, including what appears to be social media posts, memes, and various abstract or recognizable figures. The overall effect is a complex, multi-layered visual texture.

NFTs

What is an NFT?

“

`creator : 0xc6b0562605d35ee710138402b878ffe6f2e23807`

“

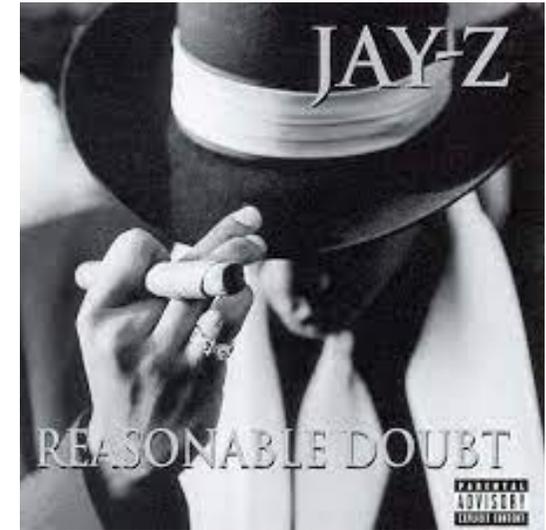
`metadataPath : QmPAg1mjxcEQPptqsLoEcauVedaeMH81WXDPvPx3VC5zUz`

`tokenURI : ipfs://ipfs/QmPAg1mjxcEQPptqsLoEcauVedaeMH81WXDPvPx3VC5zUz`

Roc-A-Fella Records – is copyright in NFTs beyond reasonable doubt?

- Roc-A-Fella Records, 1/3 ownership by Jay Z, Damon Dash and Kareem Burke

SuperFarm is proud to announce, in collaboration with Damon Dash, the auction of Damon's ownership of the copyright to Jay-Z's first album Reasonable Doubt. This marks a new milestone in the history of NFT's, entitling the new owner to future revenue generated by the unique asset. The monumental event will last for two days starting on June 23 and concluding on June 25. SuperFarm is excited this truly remarkable auction and immortalize one of the world's greatest the blockchain!



NFTs thrive here.

SuperFarm is a passionate community building at the intersection of NFTs and DeFi.

Use Farms

What was being sold?

- The SuperFarm announcement may have been misleading
- The records company sue for breach of fiduciary duty and that he did not have the rights to do so.
- Dash asserted that he was not selling the copyright, but rights to the royalties
- NFT royalties coded on the smart contract
- Case now settled so no definitive guidance



Bored Ape Yacht Club litigation

 <p>8885 Price ⬇️ 84.69 Last sale: ⬇️ 0.324</p>	 <p>4473 Price ⬇️ 84.0374 Ends in 5 hours</p>	 <p>5672 Price ⬇️ 84.98 Last sale: ⬇️ 95</p>	 <p>9149 Price ⬇️ 85 Buy now</p>
 <p>6698</p>	 <p>3154</p>	 <p>9109</p>	 <p>3279</p>



TECHNOLOGY

Adidas reveals new NFT project with Bored Ape Yacht Club

In a *Vogue Business* exclusive, Adidas outlines why a partnership with profile picture phenomenon Bored Ape Yacht Club, NFT influencer Gmoney and comics series Punks Comics is the start of an elaborate metaverse strategy.

BY MAGHAN MCDOWELL AND KATI CHITRAKORN

December 17, 2021

Bored Ape Yacht Club



#1058

Owned by JamesTate 1.2K views 20 favorites

Highest offer

205 (\$204.76)

Make offer

Price History

Listings

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#1058

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Make offer

Price History

Listings

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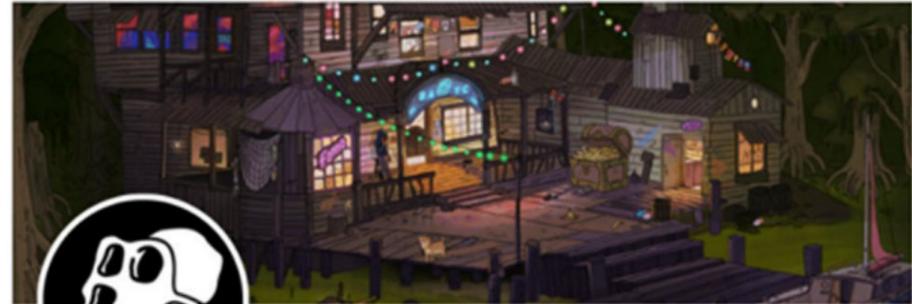
RYDER RIPPS Bored Ape Yacht Club

@RR_BAYC

To become a member, buy a RR/Bored Ape or Mutant Ape on foundation.app/collection/bayc. Nothing but the truth gordongoner.com Community ran.

rrbayc.com Joined May 2022

35 Following 1,519 Followers



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Bored Ape Yacht Club

@BoredApeYC

To become a member, buy a Bored Ape or Mutant Ape on OpenSea. Discord: discord.gg/bayc Created by @yugalabs

The Swamp boredapeyachtclub.com Joined April 2021

5,493 Following 965K Followers

Bored Ape Yacht Club

- Common law trademark infringement case
- Are we likely to see more of these in relation to NFTs? Remember the actual NFT is just a piece of code.
- What are the liability risks for NFT marketplaces that display the image as well? What duty do they have? Recent case in China.

“

creator : 0xc6b0562605d35ee710138402b878ffe6f2e23807

“

metadataPath : QmPAg1mjxcEQPPtqsLoEcauVedaeMH81WXDPvPx3VC5zUz

tokenURI : ipfs://ipfs/QmPAg1mjxcEQPPtqsLoEcauVedaeMH81WXDPvPx3VC5zUz

Metabirkin Litigation

The screenshot shows the Hermès website's product page for 'THE BIRKIN'. At the top, there is a navigation bar with a menu icon, a search bar, the Hermès logo (HERMÈS PARIS), and links for 'Australia', 'Find a store', and 'Contact Us'. Below the navigation, the title 'THE BIRKIN' is centered. A paragraph of text describes the bag's origin: 'Who could have imagined that one of the most coveted objects of recent decades would be born in the sky, in 1984, on a flight from Paris to London? British actress Jane Birkin, sitting next to Jean-Louis Dumas, Executive Chairman of Hermès (1978-2006), was complaining that she couldn't find a bag suitable for her needs as a young mother.' Below the text are three images: a tan Birkin bag on a matching leather surface, a brown Birkin bag viewed through an airplane window, and a stack of three Birkin bags in red, orange, and purple. A small 'EFS' logo is visible in the bottom left corner of the screenshot.

Metabirkin Litigation



Nike v StockX ... what exactly is an NFT?

The Vault



Vaulted Goods Vault
NFT Crocs Pollex Clog
by Salehe Bembury
Crocodile - US M 10

Lowest Ask
\$195



Vaulted Goods Vault
NFT Crocs Pollex Clog
by Salehe Bembury
Urchin - US M 10

Lowest Ask
\$215



Vaulted Goods Vault
NFT Pokémon TCG
Champions Path Elite
Trainer Box

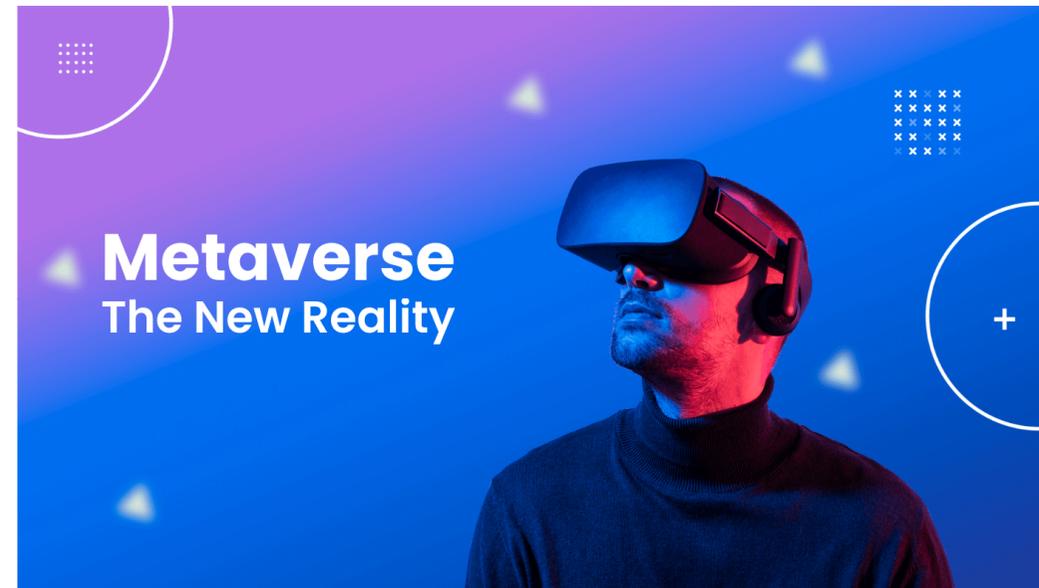
Lowest Ask
\$94

Nike v StockX ... what exactly is an NFT?



Some concluding remarks

- Virtual world still comes with real world risks
- Financial lines insurers can provide support and innovate as companies explore the Metaverse
- Characterisation of crypto assets still unknown
- Legal uncertainty to resolve in years to come, but may have quite a bit of litigation and regulation first
- What's next for regulation?







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