



# The Open Web and Law

## A Brief Overview

---

The development of blockchain technology is undoubtedly one of the most important conceptual and systemic revolutions in recent memory. Distributed ledger technology has undermined the logic of centralising governance and introduced a new concept of trust. This is why it collides with current laws which are designed for a socio-economic paradigm in which there is always a managing entity to whom responsibility for actions is attributed. For blockchain technology to be developed to its full potential, it must therefore find a place within a suitably structured, relevant and versatile regulatory framework, capable of developing *pari passu* with current technological advancements.

## Blockchain and Law: Where to Start?



### Smart Contracts

Smart contracts are defined as “contractual type arrangements”, incorporation of contractual clauses, through computer language, into computer software or protocols. They have the characteristic of executing themselves automatically on the basis of certain conditions predetermined by the parties.

The term smart contract may be somewhat misleading because they are very different from traditional contracts. They operate on the principle of “code is law”, that is, it is the code itself that underlies digital transactions that guarantee the correct executions of obligations and behaviour, as well as the general functioning of the system.

In the context of blockchain, smart contracts have the possibility of creating automatic and unchangeable enforcement of any obligations coded into the platform. More generally, a smart contract operating on a blockchain displays the following characteristics:

- 1)** Certainty of execution of contractual obligations visible to all participants in the network and not only to the parties involved.
- 2)** Transparency of the contractual obligations and their results and implications such as to be pre-set and therefore “pre-comprehended” by all the participants of the blockchain.

- 3) Immutability of the recorded transactions and therefore the impossibility of modifying or cancelling the contract.
- 4) Automatic execution of the contract when pre-coded inputs have been fulfilled.

Smart Contracts create the possibility of reaching an agreement in the absence of trust between stakeholders. It effectively replaces the trust traditionally placed in intermediaries and between the parties themselves, with the “trust” placed exclusively in the code and the blockchain network. Smart contracts allow for self-executing code that can operate on its own in cyberspace.

## **Cryptocurrencies and the Legal System: A Struggle for Recognition**

The term “cryptocurrency” encompasses a universe of protocols differing in purpose, governance, function and technical structure. From a strictly legal point of view, classification is particularly difficult because the rigid categories of law are not compatible with the flexibility and hybrid nature of information technology. Cryptocurrencies can represent property, property rights, the provision of services or the receipt of goods.

Cryptocurrencies are an incredibly versatile and useful tool, but their potential is hindered by current regulations. Different countries have very different regulations over cryptocurrencies, with the most crypto-friendly being Estonia, Canada, Norway, Switzerland, Japan, Singapore.

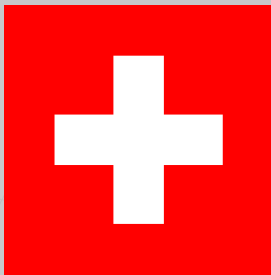
## Different Legal Approaches

### Germany



The most advanced European country for legislation in the European context. In January 2020, crypto-asset custody was integrated into the German Banking Act as a regulated financial service, granted upon application for a special licence with the German Federal Financial Supervisory Authority. As a result, many financial institutions are in the process of launching various digital asset offerings.

### Switzerland



Established itself as a hub for cryptocurrencies and Fintech start-ups in the European continent. Its laws and regulations have been revised in order to take advantage of the opportunities provided by blockchain technology. Switzerland has implemented a taxation system for cryptocurrencies and worked out a regulation plan for businesses that prevent issues of money laundering.

### United States



The US remains significantly behind in crypto regulation compared to Europe and Asia. This backwardness is already having a major impact on the adoption of digital assets by institutions. The uncertain framework does not help the overall development of the digital asset market, making the US one of the unfriendliest places for crypto.

### China



In 2020 China passed a new law on the regulation of cryptography. The law aims at establishing a normative framework that institutes standards for cryptographic application to make it comply with the standard of the CCP. The adoption of blockchain technology is encouraged by the government and plans for the launch of a national cryptocurrency.

## Topics to Discuss

---

The Debate on Regulation: Can Crypto Survive? Will it Thrive?

Robots, Self-Executing Code, and Lawyers: How Will Technology change Law?

Are Lawyers keeping up with technological innovation?

Smart Contracts as pre-law and post-law: Avoiding a clogged legal system using commercial contracts.

Law as a hindrance to innovation: How smart contracts fit into the picture.

Smart Contracts and the Institutions of the Future: Is the place of Law changing?

The Dangers of non-regulation: Approaching Cryptocurrencies with a Global Regulation Framework.

# NEAR

NEAR Protocol is a 3rd Generation Blockchain Platform built with scalability and usability in mind. The NEAR Ecosystem is home to a number of cutting edge projects in the crypto space that hold the promise of building the Open Web. Geographically diversified, NEAR features headquarters across 3 continents (USA, San Francisco; China, Shanghai; Switzerland, Zug). The NEAR Community, NEAR Guilds, and the NEAR Team are growing the NEAR Ecosystem to be a home for native crypto, enterprise blockchain, and emerging technology solutions around the world. Learn more about NEAR at [NEAR.org](https://near.org) or join the discussion on [Telegram](#).