The Computer & Internet Lawyer

Volume 44 ▲ Number 1 ▲ January 2027

Ronald L. Johnston, Arnold & Porter, Editor-in-Chief

What Is a DAO?

By Kempshall C. McAndrew

A decentralized autonomous organization (DAO) is a digital organization without a centralized authority whose members join online communities to make decisions, manage funds, and propose initiatives through voting systems – all done collectively. Most DAOs require that members purchase or acquire governance tokens to participate in the decision-making process. Examples of DAOs include Uniswap, Bittensor, Aave, Sky, and Arbitrum, each with billions in market capitalization.

STATE REGULATIONS

Though there is no comprehensive federal regulatory scheme concerning DAOs, multiple U.S. states have passed statutes that recognize and regulate DAOs. The first of these statutes was enacted in Wyoming, which treats DAOs as limited liability companies, requires them to register with a name that includes some variation of the abbreviation "DAO," and specifies the extent to which management of the DAO will be conducted via algorithm.[1] This treatment contrasts with the decisions in California federal courts discussed below, in that this Wyoming statute essentially allows DAO organizers to define, reduce, or eliminate their fiduciary duties, and is designed to provide legal protections to DAO members without compromising the key characteristic of a DAO: its decentralized nature.

Other states have closely followed Wyoming's lead. New Hampshire and Utah's DAO statutes are somewhat different. These statues require that a DAO must:

(i) be deployed on a permissionless blockchain;

(ii) have open-source code,

(iii) undergo quality assurance testing,

(iv) maintain a publicly accessible graphical user interface; and

(v) operate a decentralized governance system at all times.[2]

These statutes also seem to directly contradict the caselaw from California discussed below that finds that these DAOs are general partnerships – the New Hampshire statute expressly states that DAOs exist as an entity separate and distinct from its developers, participants, and administrators (who are largely shielded

Kempshall C. McAndrew, an attorney with Cuddy & Feder LLP, may be contacted at kmcandrew@cuddyfeder.com.

from personal liability), and shall at no time be deemed a partnership.

FEDERAL FLUX

Regulation of DAOs at the federal level is also in a state of flux. The Securities and Exchange Commission (SEC) previously found in a 2017 report that DAOs are investment contracts subject to the Securities Act of 1933. In 2023 the Commodity Futures Trading Commission (CFTC) obtained a default judgment against the Ooki DAO in an enforcement action.[3]

More recently, however, the SEC and CTFC issued a joint release concerning cryptocurrency tokens, including the governance tokens employed by DAOs. As per Decentralized Autonomous Organizations (DAOs): Overview, Practical Law Practice Note Overview w-036-6149, these tokens are not subject to federal securities laws, because the value of these assets is derived from the programmatic operation of a crypto system that is functional and from supply and demand dynamics, rather than from the expectation of profits from the essential managerial efforts of others. This release reflects a reduced federal enforcement posture towards DAOs, if, for example, they fail to register governance tokens as securities. However, the courts' deference to this type of agency release is limited.

RECENT DECISIONS

Recent court cases have grappled with how to legally characterize DAOs. In contrast to the state statutes and 2026 regulatory guidance discussed above, several California federal courts have found that a DAO is a general partnership. Often, these lawsuits emerge from when things go wrong in a DAO. For example, in *Samuels v. Lido Dao*,[4] an investor in cryptocurrency filed a class action against a DAO called Lido, claiming that the large institutional investors in Lido were liable for the investor's losses because these institutional investors were members of a general partnership as a result of, among other things, the investors' exercise of voting rights to guide the project's direction. Lido moved to dismiss, arguing that it was not a legal entity, but was instead just autonomous software that ran without human management.

The court disagreed and found that Lido could be sued as a general partnership under California law because "Lido's alleged actions are not those of an autonomous software program—they are the actions of an entity run by people." The court cited the fact that Lido made decisions through token holder votes, maintained a treasury, and hired over 70 employees. The court further held that the plaintiff was not suing an autonomous "protocol," but was instead suing the founders of Lido who deployed or created the DAO's system.

The court in *Samuels* also held that (i) Lido was required to register its crypto tokens as securities, and (ii) the large investors in Lido could also be held liable for the losses Samuels incurred under Section 12(a)(1) of the Securities Act of 1933 even though Lido did not offer or sell the tokens to Samuels – instead, Samuels bought them on the secondary market though a cryptocurrency exchange. Under the Securities Act, a person "solicits" a security when they petition, entice, lure or urge another person to buy that security. In *Samuels*, the court found that Lido did solicit the DAO's tokens by being involved in the tokens' creation and promotion, getting crypto exchanges to list them, and by encouraging others to participate in DAO governance.

Similar to the "partnership" holding in *Samuels*, the court in *Sarcuni v. bZx DAO*[5] held that a plaintiff (who lost funds in a phishing attack) plausibly alleged that token holders in the DAO were general partners in the DAO because they participated in the DAO's voting and governance and shared in profits. In *Ooki*, the court found that that DAO was a person under the Commodities Exchange Act, and so therefore could be held liable for regulatory violations.

These decisions demonstrate why DAOs often seek a "legal wrapper," defined as a registered legal entity (like a corporation) placed around the DAO's decentralized activity, to give the DAO a recognized status in traditional legal systems. In Wyoming, that legal wrapper comes in the form of a limited liability company. Without such a wrapper, a DAO can face legal uncertainty, and may end up being characterized as a general partnership or other type of entity whereby many of those involved are personally liable – such as the DAOs in *Samuels* and *Sarcuni*. Having a legal wrapper is also a benefit to DAOs in that it allows them to engage in activities like signing contracts, raising funds, and managing funds.

OTHER JURISDICTIONS

Notably, DAOs have also sought legal wrappers via the laws of other countries. For example, Singapore provides a regulatory framework which allows DAOs to operate and conduct business by registering with the country's Accounting and Corporate Regulatory Authority. In Singapore a DAO can either be formed as a company limited by shares, or a company limited by a guarantee. The company limited by shares format has problems – transfer of tokens cannot be done immediately, and "members" of such a company are not anonymous - both of which are antithetical to the workings

of a DAO. While a company limited by a guarantee eliminates some of these issues, it is only suitable for DAOs which have a nonprofit component, as "guarantee" companies are prohibited from paying dividends or profits.

Gibraltar also offers a DAO-friendly environment, providing such legal wrappers as a private foundation (an ownerless, independent legal entity that can hold assets and pursue certain objectives without shareholders or members, but still provides the DAO with a shield from personal liability and the ability to sign contracts, manage its treasury, etc.), a purpose trust (a non-charitable trust set up to fulfill an operational objective rather than to benefit specific named individuals, with trustees to manage the DAO's assets in accordance with a trust deed that sets forth these objectives), or a company limited by a guarantee (similar to the format offered in Singapore, though such Gibraltar companies can, in some circumstances, have share capital and pay dividends; this is prohibited for standard non-profit guarantee structures).

CONCLUSION

In the United States, the California federal courts' decisions suggest that the entities or individuals involved in deploying, heavily investing in, and/or governing the DAO will need to tread carefully. These individuals may be held to high standards of care and duties of loyalty, and be exposed to the risks of joint, several and unlimited liability for all debts and obligations incurred by the DAO "partnership" that come with being a general partner. At least, that is the case in California's federal courts. These holdings should be contrasted with the government's current non-enforcement stance on unregistered tokens, combined with newer legislation in states such as New Hampshire, Utah and Wyoming, which treat DAOs as entities like limited liability companies with much less chance of exposure to liability for developers, participants, and administrators. In the current legal and regulatory environment, DAOs who are averse to the risk of being treated as general partnerships, but are willing to undergo registration and nominal oversight, will flock to and seek a legal wrapper in these states (or other countries like Gibraltar and Singapore) who have more permissive legislation in place.

Notes

1. See Wyo. Stat. Ann. § 17-31-104.
2. See N.H. Rev. Stat. Ann. § 301-B:15.; Utah Code Ann. § 16-22-201.
3. Commodity Futures Trading Comm'n v. Ooki DAO, No. 3:22-CV-05416-WHO (N.D. Cal. June 8, 2023).
4. Samuels v. Lido Dao, 757 F. Supp. 3d 951, 960 (N.D. Cal. 2024), motion to certify appeal denied, No. 23-CV-06492-VC (N.D. Cal. Feb. 3, 2025).
5. Sarcuni v. bZx DAO, 664 F. Supp. 3d 1100, 1115 (S.D. Cal. 2023).

Copyright © 2027 CCH Incorporated. All Rights Reserved.
Reprinted from *The Computer & Internet Lawyer*, January 2027, Volume 44, Number 1, pages 11–13 with permission from Wolters Kluwer, New York, NY, 1-800-638-8437, www.WoltersKluwerLR.com

