

Cryptoassets and the Regulation of Money Transmission

This week will be a continuation of our look at FinCEN, and will expand to look at state money transmission laws and how they apply to cryptocurrencies.

Readings:

Overview of Federal and State Money Transmitter Laws

Excerpt from Kevin Tu, *Perfecting Bitcoin*, 52 Ga. L. Rev. 505 (2018). (see page 3 of this assignment for the excerpt).

Are cryptocurrencies 'money'?

U.S. v. Faiella, 39 F. Supp.3d 544 (S.D. New York) 2014 (link available in TWEN Course Materials).

SEC v. Shavers, No. 4:13-CV-415, 2013 WL 4028182 (E.D. Tex Aug. 6, 2013). (link available in TWEN Course Materials).

FinCEN Guidance (from last week, but not covered in class yet):

Department of the Treasury, Financial Crimes Enforcement Network, Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, March 18, 2013, <https://www.fincen.gov/sites/default/files/shared/FIN-2013-GOO1.pdf>

Department of the Treasury, Financial Crimes Enforcement Network, Application of FinCEN's Regulations to Virtual Currency Mining Operations, Jan 30, 2014, <https://www.fincen.gov/sites/default/files/shared/FIN-2014-R001.pdf>

Department of the Treasury, Financial Crimes Enforcement Network, Application of FinCEN's Regulations to Virtual Currency Software Development and Certain Investment Activity, <https://www.fincen.gov/sites/default/files/shared/FIN-2014-R002.pdf>

Overview of state money transmission laws and arguments for a federal replacement.

Peter Van Valkenburgh, *The Need for a Federal Alternative to State Money Transmission Licensing*, Coin Center Report, January 2018.

<https://coincenter.org/files/2018-01/federalalternativev1-1.pdf>

The New York BitLicense

Jen Wieczner, Inside New York's BitLicense Bottleneck: An 'Absolute Failure?', Fortune, May 25, 2018.

<http://fortune.com/2018/05/25/bitcoin-cryptocurrency-new-york-bitlicense/>

Enforcement Actions by states / FinCEN

FinCEN enforcement action against Ripple Labs, May 5, 2015.

<https://www.fincen.gov/news/news-releases/fincen-fines-ripple-labs-inc-first-civil-enforcement-action-against-virtual>

FinCEN enforcement action against BTC-e, July 27, 2017.

<https://www.fincen.gov/news/news-releases/fincen-fines-btc-e-virtual-currency-exchange-110-million-facilitating-ransomware>

Inside an Undercover Bitcoin Sting, Time, March 1, 2018.

<http://time.com/5161663/bitcoin-sting-jason-klein-crypto-irs-money-transmitter/>

Virtual Ticket to Prison, FBI News, May 3, 2017.

<https://www.fbi.gov/news/stories/fraud-scheme-leads-to-illegal-bitcoin-exchange>

Uniform Law Commission actions around Virtual Currency

Jeremy M. McLaughlin and Eric A. Love, *K&L Gates Discusses the Virtual-Currency Business Act and Coming Cryptocurrency Regulation*, Columbia Law School Blue Sky Blog, November 17, 2017.

<http://clsbluesky.law.columbia.edu/2017/11/17/kl-gates-discusses-the-virtual-currency-businesses-act-and-coming-cryptocurrency-regulation/>

Reflection Questions:

What is money transmission?

What are the justifications for regulating it?

How is it regulated in the US today?

How do cryptocurrencies interact with regulation around money transmission?

Which parties in the cryptocurrency ecosystem fall under money transmission regulation?

-Owners of the cryptocurrency? Exchanges? Wallet services? Miners/validators?
Software developers?

What has been the cryptocurrency industry's response to money transmission laws?

What are the arguments that cryptocurrencies should be governed by existing money transmission laws? What are the arguments that they should not be?

What has the Uniform Law Commission done related to this?

What was the rationale behind New York's 'Bitlicense'? How has it been perceived? Has it been successful?