Bitcoin and the Law

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Disclaimer

This presentation is for general information purposes and is not intended to be and should not be taken as legal advice.
What is Bitcoin?
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• Decentralized virtual currency
  – No central bank
  – Not backed by any government

• Peer-to-peer electronic payment system
  – BitTorrent + PayPal

• Unit of account: 1 bitcoin (btc)

• Blockchain: Public ledger
What are the advantages of Bitcoin?

• Lower transaction fees
  – Compare to credit cards or cross-border money transfers
  – Paid by purchaser

• Transparency
  – Prevents double-spending
What are the disadvantages of Bitcoin?

• Exchange rate volatility
  – 52-week high: $1,147.25 (December 3, 2013)
  – 52-week low: $319.64 (October 5, 2014)

• Lack of anonymity

• Lack of investor protections
Is Bitcoin legal?
Yes (in the U.S.).
Is Bitcoin legal?

• Legal in the U.S.

• But bitcoins can be used in illegal activities.

• Illegal in some countries.

• Russia considering a total ban.

• China: no purchases of consumer goods; banned for financial institutions.
Bitcoin prosecutions

• Mostly focused on criminal activities involving bitcoins, not bitcoins themselves.
• U.S. v. Ulbricht: Prosecution of founder of Silk Road
• U.S. v. Faiella: CEO of a bitcoin exchange accused of conspiracy to commit money laundering
Is it legal to mine bitcoins?

Yes.
Can I mine bitcoins?

• Mining is not heavily regulated.
• Self-employment tax if:
  – No employer
  – Constitutes a trade or business
• Note: Technological requirements have made mining bitcoins impractical for most people.
Is it legal to sell bitcoins for cash?

Yes.
Can I sell bitcoins for cash?

• Individual exchanges of bitcoins for cash are only regulated by the IRS.
• IRS: Bitcoin is property, not currency.
• Record exchanges or purchases for tax purposes.
• Short-term sales: ordinary income rate.
• Long-term sales: capital gains rate.
• No safe harbor for small transactions.
Can I sell for bitcoins for cash?

• Students: If exchanging bitcoins for cash for your own benefit, need only worry about tax reporting.
Can I sell bitcoins for cash?

• Businesses whose business is based on exchanging money for cash may be “money transmitters.”

• Key: Money transmission = currency exchange on behalf of someone else.
Can I sell bitcoins for cash?

• If a business is a money transmitter...
  – Need to register with FinCEN (Treasury) and state regulators
  – Comply with federal and state money transmission regulations
Are bitcoin wallets insured against losses?

No.
Are bitcoin wallets insured against losses?

• Unlike bank accounts, bitcoin wallets are not FDIC insured.

• If a wallet company fails or steals your bitcoins, your recourse is limited to suing the company.
Can merchants accept bitcoins?

Yes.
Can merchants accept bitcoins?

• Must comply with IRS guidance.
  – Recording bitcoins received as payment as an ordinary gain, at bitcoin’s fair market value on the day the bitcoins were received.

• Most merchants use payment processors.
  – Coinbase, BitPay
  – Merchant doesn’t take control of bitcoins.
  – Lessens price volatility risk.
Is it legal to develop Bitcoin software?

Yes.
Is it legal to develop Bitcoin software?

- Subject to the same laws as any other software
- Do not:
  - perform tasks that a user has not authorized
  - invade the user’s privacy without the user’s consent
- Tidbit takeaway: Any state may try to enforce its consumer protection laws on you.
What other regulatory concerns should Bitcoin software developers keep in mind?

• New York’s BitLicense
  – Proposed regulation of “virtual currency businesses”
  – Requires complying with financial sector regulations
  – Proposed exemption for software developers
What other regulatory concerns should Bitcoin software developers keep in mind?

• Watch out for money laundering
  – Bitcoin mixers may help criminals launder money
  – Liability if the mixers knowingly aid criminals
Can I offer virtual currencies or shares of investment vehicles that I have created myself to the public?

- Requires registration with the SEC:
  - Any equity offering
  - Any offering of an investment vehicle structured like a traditional mutual fund

- Unclear whether registration is required:
  - Offerings of “tokens” (Ethereum)
  - No contractual rights