



# 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?

# What is Bitcoin?

- 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



**Bitcoin**