



BY STU HOEGNER



The Rise (and Rise) of Bitcoin

One of the big news stories of 2013 has been the rise of a virtual currency called bitcoin. After consistently trading for years after its invention at less than \$20 per bitcoin, the price jumped this year to an all-time high of \$266 per bitcoin. At the time of writing, one bitcoin is worth approximately \$105 and the entire market capitalization of bitcoin is greater than \$1B.

In this article, I want to briefly set out what bitcoin is, its legal status in Canada and the United States vis-à-vis internet gaming, and its strong advantages in internet wagering. I also want to look at some of the public policy challenges that bitcoin presents and who can expect to exploit this technology in i-gaming.

WHAT IS BITCOIN?

Bitcoin is a completely decentralized,

virtual currency that was invented in 2009.¹ Bitcoins are generated at a constant rate by ‘miners’ using open-source software. It allows for the holding and transmission of value anywhere, to any one, at any time, irreversibly, with a high degree of privacy. Bitcoins can be transferred very quickly at little or no cost. There is minimal or zero counterparty risk in bitcoin transactions.

This definition is cumbersome but it

shows how truly revolutionary bitcoin is. In a matter of seconds I can transfer any amount of bitcoin—limited only by my own resources—directly to another party on the other side of the globe with no reliance on an intermediary. No other form of money yet invented offers this combination of flexibility, autonomy, and security. International bank wires can take days to be received. Physical gold transfers can take weeks. Both rely on

individuals and institutions to make good on their promises. Bitcoin is instant and, at its most basic, requires only the person sending and the person receiving the currency.

IS BITCOIN LEGAL?

Generally, it is legal to hold, mine, buy, sell, and send and receive bitcoins for goods and services.² In the United States, FinCEN has indicated that certain participants in the bitcoin economy (e.g., exchanges) are money transmitters and, as such, subject to the Bank Secrecy Act³ and sundry registration, reporting, and other compliance requirements. FinTRAC, Canada's financial intelligence unit, has indicated that bitcoin exchanges in Canada will not be regulated as money services businesses under some federal money laundering rules.⁴ (Regardless of the jurisdiction, and depending on the bitcoin business model, other applicable laws—securities, financial institutions, and criminal proceeds of crime rules—will still apply.)

Things get somewhat less clear at the intersection of bitcoin and gaming and betting laws, but some things about bitcoin are already known. In the United States, operating an unregulated gaming business denominated in bitcoin will not save an operator from the application of gaming laws. The Unlawful Internet Gambling Enforcement Act (“UIGEA”), for example, applies to unlawful internet gambling, i.e., where a bet or wager is unlawful under a predicate state or federal law. In Nevada, the definition of “game” or “gambling game” includes “any representative of value,”⁵ which should be broad enough to capture bitcoin, so the UIGEA would apply to an unregulated gaming business in Nevada.

In Canada, the definitions of “property”⁶ in the federal Criminal Code and “money’s worth”⁷ in the case

law would certainly encompass bitcoin stakes and prizes. Accordingly, a bitcoin-denominated gaming business in Canada that is otherwise offends the gaming provisions of the Criminal Code will not be cleansed of its illegality by the fact that it accepts wagers and sends out winnings exclusively in bitcoins. In both Canada and the US, bitcoin is generally not a get out of jail free card when it comes to unlawful gaming.

ADVANTAGES AND CHALLENGES OF BITCOIN

Bitcoin offers internet gaming operators (and other merchants) a number of huge advantages over other payment systems. Possibly the biggest single attraction is the low transaction costs. Transaction fees are either zero or nominal. On one popular Android bitcoin wallet, the standard transaction fee is 0.0001 BTC, currently equal to \$0.10. Lower transaction costs are great for both consumers and merchants.

Another benefit is how quickly deposits and withdrawals are processed. A currently prominent casino roulette-type site gaming site allows you to deposit to a unique wallet identifier in under one minute. Withdrawals, after two authentications on the transfer to the site, are similarly immediate. Transfers are also not reversible, eliminating the risk of chargebacks to the operator.

At the same time, bitcoin raises serious consumer protection and regulatory issues. Bitcoin vests total control of one's bitcoin wallet with its creator and those having access to it; its owner must carefully safeguard her bitcoins and guard against loss or theft. In this context, we can add concerns about use of a bitcoin wallet by underage or at-risk gamblers. FinCEN has indicated that the irreversibility of transactions in the event of fraud is troubling.⁸ The anonymity of bitcoin worries anti-money laundering regulators, however suitable bitcoin

protocols can be built into existing robust AML standards for regulated internet gaming operators.

WHO WINS?

At present, gaming regulators might believe that there are simply too many question marks about bitcoin to allow their respective licensees to accept it as a form of deposit or withdrawal. Bitcoin can co-exist with other payment and receipt options in a well-regulated internet gaming environment, but it might still be too new, too strange, or too niche a product to interest regulators. Accordingly, the ones that can enter the bitcoin gaming space and exploit this technology will be those who have regulators—or, possibly, who are not regulated at all, or under-regulated—willing to engage in a discussion about how bitcoin can be implemented consistent with the regulators' goals, policies, and procedures, while redounding to the benefit of players and internet gaming businesses.

Operators and regulators ignore bitcoin at their peril. Bitcoin is a harbinger of things to come; the way people think about, hold, and spend money is changing. Many have noted that the ‘Bitcoin Experiment’ may ultimately fail, and this is axiomatic. However, astute observers have also suggested that if bitcoin does fail, it will likely be because something even better comes along. That's an exciting prospect for everyone—not just for players and businesses in internet gaming. **CGL**

Stuart Hoegner is a gaming attorney, accountant, and IMGL member in Toronto, Canada. He writes a regular blog on gaming law and has been widely published in tax and gaming journals in Canada and internationally. He can be reached at stu@gamingcounsel.co.

1. Bitcoin is a virtual currency (“bitcoin”) like many other fiat currencies, e.g., Canadian and US dollars and Euros. It is also an international payment system (“Bitcoin”), like PayPal (note that PayPal does not have its own currency—it is just a payment system). Perhaps unhelpfully, both the payment system and the currency are called “Bitcoin” (“bitcoin”), but the distinction between the two is important.

2. Recently it was reported that Thailand had “banned” bitcoin by making the buying and selling of bitcoins, among other things, illegal under applicable laws there. See, e.g. Matt Clinch, Bitcoin banned in Thailand, *cncb*, available at <http://www.cncb.com/id/100923551>. However, other reporting suggests that this stance might be only preliminary and not as broad as first reported. See, e.g. Jake Maxwell Watts, Thailand's Bitcoin ban is not quite what it seems, *Quartz*, available at <http://qz.com/110164/thailands-infamous-bitcoin-crackdown-is-not-quite-what-it-seems/>.

3. FinCEN Guidance FIN-2013-G001 (March 18, 2013), available at http://finccen.gov/statutes_regs/guidance/

[html/FIN-2013-G001.html](http://FIN-2013-G001.html). See also, e.g. Ryan Straus, *The Last Straw for Bitcoin*, *American Banker*, available at <http://www.americanbanker.com/bankthink/the-last-straw-for-bitcoin-1059608-1.html>.

4. See, e.g. Stuart Hoegner, *Canada becomes bitcoin-friendly*, *Pokerati*, available at <http://pokerati.com/2013/05/canada-becomes-bitcoin-friendly/>.

5. *Nev. Rev. Stat.* § 463.0152.

6. *Criminal Code*, R.S.C. ch. C-46 § 2 (1985) (definition of “property”).

7. See, e.g. *R. v. DiPietro* (1986), 25 C.C.C. (3d) 100 at 107 (S.C.C.) (Can.); *R. v. Irwin* (1982), 3 O.R. (2d) 314 at 319-320 (C.A.) (Can.).

8. See, e.g. Straus, *supra* note 3. Straus points out that “the loss of irrevocability could be fatal for bitcoin as it would result in increased transaction costs and slower remittances.”