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THE HOW AND WHY OF CRYPTO ANONYMITY AND THE COURT CHALLENGES THAT MAY UNDO IT ALL IN THE FACE OF MARKET UPHEAVAL

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Table of Contents

INTRODUCTION	22
I. CRYPTOCURRENCY 101: WHAT IS CRYPTOCURRENCY?	22
II. KEY TERMS AND DEFINITIONS IN THE DIGITAL ASSET UNIVERSE	23
III. CRYPTO VIRTUAL WALLETS FOR HOLDING OR STORING CRYPTO.....	25
A. <i>Blockchain Wallets: Hardware and Software Wallets</i>	26
IV. ANONYMITY: AN ADVANTAGE OF CRYPTOCURRENCY	27
A. <i>The Threat to the Anonymity and Privacy of Wallet Holders</i>	28
CONCLUSION	31

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The How and Why of Crypto Anonymity and the Court Challenges that May Undo It All in the Face of Market Upheaval

INTRODUCTION

A bedrock and much touted benefit of cryptocurrency is the anonymity of the parties transacting in crypto. By design, the identities of the persons behind the virtual wallets used for transactions in the non-fiat and decentralized currency is secret and not published on the blockchain. On the other hand, all the transactions of wallet holders are published on the blockchain and available for public viewing on the blockchain. Hence, all of the transactions in a person's virtual wallet will be exposed if their identity can be linked to a wallet.

This article addresses the whittling away of anonymity in the crypto space. The first section attempts to demystify cryptocurrency. The meaning of key terms pervasive in the virtual universe, the genesis of Bitcoin and the difference between cryptocurrency and non-fungible tokens are discussed. Then, the benefits and risks of crypto are examined, with a focus on anonymity and privacy. The final section examines the threat to anonymity posed by the collapse of banks catering to customers dealing in crypto and reviews recent decisions in federal and state courts and government actions challenging the anonymity of virtual wallet holders.

I. CRYPTOCURRENCY 101: WHAT IS CRYPTOCURRENCY?

Cryptocurrency is best described by what it is not! Crypto is not a physical asset that you can hold, smell, or touch. It is not a physical coin or metal. Bitcoins do not jingle in your pocket and cannot be flipped or tossed in the air. Crypto is not a centralized fiat currency regulated by the government like the dollar and does not need monetary authority of a central/national bank.¹

Cryptocurrency is a virtual asset, or a digital representation of value that can be digitally traded, transferred, or used for payment.² The Rolls Royce of crypto is Bitcoin (BTC), the first and currently the most valuable. BTC was launched by Satoshi Nakamoto in 2009 after he anonymously published his Bitcoin whitepaper in 2008.³ BTC has denominations (e.g. one mBTC is 1/1000 of a BTC).⁴ Commonly

¹ Lyle Daly, *Fiat vs Crypto: How Crypto Will Affect Money Printing*, THE MOTLEY FOOL (Oct. 19, 2022), <https://www.fool.com/investing/stock-market/market-sectors/financials/cryptocurrency-stocks/fiat-vs-crypto/>.

² Robert Sheldon, *Definition Virtual Asset*, TECHTARGET, <https://www.techtarget.com/whatis/definition/virtual-asset>.

³ Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, NAKAMOTO INSTITUTE (Oct. 31, 2008), <https://nakamotoinstitute.org/literature/bitcoin/>.

⁴ Beatrice Mastropietro, *Crypto Denominations Explained: Sats, Gwei, Lovelace, and Jager*, COINSPEAKER, (Sept. 13, 2022), www.coinspeaker.com/guides/crypto-denominations-explained-sats-gwei-lovelace-and-jager/#:~:text=Meanwhile%2C%20cryptocurrency%20denominations%20are%20simply,10%20Satoshi%20%3D%200.0000001%20BTC.

The How and Why of Crypto Anonymity and the Court Challenges that May Undo It All in the Face of Market Upheaval

traded crypto include BTC, Ethereum, Tether, BNB, USD Coin, XRP, Dogecoin, Binance USD, and Cardano.⁵ Stablecoins, are virtual assets designed to remain stable by linking their value to an asset like the dollar.⁶

Crypto is considered a commodity and like centralized currencies, is fungible.⁷ On the other hand, NFTs, or "non-fungible tokens," are not an alternative currency and are not considered commodities. Each NFT has a digital signature that makes it impossible for NFTs to be exchanged for or equal to one another.⁸ Because NFTs are non-fungible, they are not considered commodities.⁹ Like cryptocurrency, NFTs are built on the blockchain, however, NFTs are not an alternative currency. Rather, NFTs are used to convey ownership of a digital asset and to store valuable information.¹⁰

An NFT's unique data makes it easy to verify and validate its ownership and the transfer of tokens between owners.¹¹ NFTs have gained popularity in the art world.¹² Real estate is being tokenized through NFTs representing ownership stake in the real property.¹³

II. KEY TERMS AND DEFINITIONS IN THE DIGITAL ASSET UNIVERSE

The terms used in describing cryptocurrency and related transactions are becoming commonplace and form the foundation for understanding and discussing crypto. The key terms in the digital asset universe and their meanings are as follows:

The "**Blockchain**" is the mathematical structure/technology, that makes BTC and other coins possible.¹⁴ The blockchain is commonly described as a

⁵ James Royal & Brian Baker, *12 Most Popular Types of Crypto Currency*, BANKRATE, (Jan. 25, 2023), <https://www.bankrate.com/investing/types-of-cryptocurrency>.

⁶ U.S. DEP'T OF THE TREAS, Report on Stablecoins (2021), https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf.

⁷ *Commodity Futures Trading Comm'n. v. My Big Coin Pay, Inc*, 334 F. Supp. 3d 492, 498 (D. Mass. 2018), *see also* *Commodity Future Trading Comm'n. v. McDonnell*, 287 F. Supp. 3d 213, 217 (E.D.N.Y. 2018).

⁸ Robyn Conti & John Schmidt, *What Is An NFT? Non-Fungible Tokens Explained* (Benjamin Curry, ed.), FORBES ADVISOR, (Apr. 8, 2022), <https://www.forbes.com/advisor/investing/cryptocurrency/nft-non-fungible-token/>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *See generally* Rebecca Carroll, *NFT's: The Latest Technology Challenging Copyright Law's Relevance Within a Decentralized System*, 32 FORDHAM INTELL. PROP. MEDIA & ENT. L. J. 979 (2022), *see also* Lawrence J. Trautman, *Virtual and Non-Fungible Tokens*, 50 HOFSTRA L. REV. 361 (2021).

¹³ Michael C. DeCosimo & Colton Riley, *The Tokenization of Real Estate: An Introduction to Fractional Real Estate Investment*, DENTONS (Sept. 26, 2022), <https://www.dentons.com/en/insights/articles/2022/september/6/the-tokenization-of-real-estate>.

¹⁴ COINTELEGRAPH, *What is the Bitcoin Blockchain? A Guide to the Technology Behind BTC*,

The How and Why of Crypto Anonymity and the Court Challenges that May Undo It All in the Face of Market Upheaval

"virtual ledger." It consists of a chain of blocks in electronic/virtual form accessible on the internet. Each block represents a set of crypto transactions and the spending of the crypto.¹⁵ A block is a permanent store of records that, once written, cannot be altered, or removed.¹⁶ The Blockchain prevents copying the crypto and spending it more than once, a problem in previous crypto attempts.¹⁷

It is important to understand that crypto never leaves the blockchain.¹⁸ The math on the block chain is difficult/impossible to reverse but easy to verify.¹⁹ The first block is the "genesis" and does not reference any prior transactions.²⁰ Each subsequent block references transaction information from previous blocks.²¹ The genesis holds the first coin mined in the blockchain.²²

"Digital asset" is anything created and stored digitally such as documents, audio, videos, photos, and websites.²³

"Hashing" is passing some data through a formula to produce a result called a "hash."²⁴ The hash is usually a string of characters, and the hashes are always the same length regardless of the amount of data. The resulting shorter,

<https://cointelegraph.com/bitcoin-for-beginners/how-does-blockchain-work-a-beginners-guide-to-blockchain-technology>.

¹⁵ Jake Frankenfield, *What Is a Block in the Crypto Blockchain, and How Does It Work?*, INVESTOPEDIA, (Jan. 9, 2022), <https://www.investopedia.com/terms/b/block-bitcoin-block.asp>.

¹⁶ *Id.*

¹⁷ Nathan Reiff, *How Does A Blockchain Prevent Double-Spending of Bitcoins?*, INVESTOPEDIA, (Aug. 26, 2021). <https://www.investopedia.com/ask/answers/061915/how-does-block-chain-prevent-doublespending-bitcoins.asp>.

¹⁸ Brian Nibley, *What Is a Crypto Wallet? Understanding The Software That Allows You to Store And*

Transfer Crypto Securely, INSIDER (July 26, 2022, 1:31 PM), <https://www.businessinsider.com/personal-finance/crypto-wallet#:~:text=Understanding%20how%20crypto%20wallets%20work,-Blockchain%20is%20a&text=Crypto%20isn't%20stored%20%22in,balances%20held%20on%20hat%20blockchain>.

¹⁹ Kate Ashford, *What Is Bitcoin And How Does It Work?*, FORBES ADVISOR (June 8, 2022, 5:12 PM),

<https://www.forbes.com/advisor/investing/cryptocurrency/what-is-bitcoin/>.

²⁰ Benedict George, *The Genesis Block: The First Bitcoin Block*, COINDESK (Jan. 4, 2023, 12:20 PM),

<https://www.coindesk.com/tech/2023/01/03/the-genesis-block-the-first-bitcoin-block/>.

²¹ Frankenfield, *supra* note 15.

²² George, *supra* note 20.

²³ GARTNER GLOSSARY, <https://www.gartner.com/en/finance/glossary/digital-assets> (last visited Jan. 29, 2023).

²⁴ Benjamin Taub, *What Does It Mean To Hash and Do I Really Care?*, DATASPACE, <https://dataspace.com/big-data-applications/what-does-it-mean-to-hash-data/#:~:text=What%20is%20Hashing%3F,data%20you%20feed%20into%20it> (last visited Feb. 22, 2023).

The How and Why of Crypto Anonymity and the Court Challenges that May Undo It All in the Face of Market Upheaval

fixed-length value or key is easier to find or use than the original string.²⁵ Unlike encryption, hashing works in only one direction. You can decrypt encrypted data on a flash drive, for instance, but there is no analogous method of converting a hash back to its original data.²⁶

"**Mining**" is the process to make BTC and other crypto.²⁷ Many computers are used and considerable energy is consumed in the process of solving puzzles to verify transactions on the network. The network is scattered across a huge number of computers.²⁸ As a "reward" the owner of the computers receives coin (the newly created crypto currency).²⁹

"**Staking**" is a way of earning "rewards" on cryptocurrency, often in the form of a percentage-rate over time for the holder.³⁰ Crypto earns rewards while staked because the blockchain puts it to work.³¹ The staked crypto is utilized in the Proof of Stake process, "a method to ensure that all transactions are verified and secured without a bank or payment processor in the middle."³² Not all cryptocurrencies allow staking.³³ "Staking serves a similar function to mining, in that it's the process by which a network participant gets selected to add the latest batch of transactions to the blockchain and earn some crypto in exchange."³⁴

A "**virtual asset**" is a digital representation of value that can be digitally traded, transferred, or used for payment.³⁵

III. CRYPTO VIRTUAL WALLETS FOR HOLDING OR STORING CRYPTO

Crypto is stored on the blockchain and accessed through the owner's "virtual wallet." The wallet is assigned a number and the wallet address is visible on the blockchain.³⁶ "A blockchain or crypto wallet is a way to manage, secure, and use

²⁵ Andrew Zola, *Hashing*, TECH TARGET DATA MGMT. (June 2021), <https://www.techtarget.com/searchdatamanagement/definition/hashing>.

²⁶ *Id.*

²⁷ COINBASE, *What Is Mining?*, <https://www.coinbase.com/learn/crypto-basics/what-is-mining> (last visited Feb. 22, 2023).

²⁸ Jake Frankenfield, *Bitcoin Mining*, INVESTOPEDIA (Mar. 14, 2022), <https://www.investopedia.com/terms/b/bitcoin-mining.asp>.

²⁹ *Id.*

³⁰ COINBASE, *What is Staking?*, <https://www.coinbase.com/learn/crypto-basics/what-is-staking> (last visited Feb. 22, 2023).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Sheldon, supra* note 2.

³⁶ *Nibley, supra* note 18.

The How and Why of Crypto Anonymity and the Court Challenges that May Undo It All in the Face of Market Upheaval

cryptocurrencies such as Bitcoin, Ethereum and other digital assets.”³⁷ Technically, you need a different wallet for each of the different cryptocurrencies.³⁸ For example, owners of coin may need a Bitcoin³⁹ wallet for BTC, an Ethereum wallet for ETH, and a Cardano wallet for ADA.⁴⁰ Although many modern virtual wallets are multi-asset wallets, it is important to understand they technically hold a variety of different wallets for each cryptocurrency.⁴¹ The key take-away is that you should never try to send Bitcoin to an Ethereum address or vice versa as you risk the loss of your coins.⁴²

Notably, a virtual wallet does not actually hold your cryptocurrency. The crypto resides on the blockchain itself and is managed through the blockchain digital ledger.⁴³ The blockchain wallet is a way to secure the digital key that controls access to the crypto.⁴⁴ Depending on the type of wallet, two keys are used. The first is a public key (likened to a web address), which is automatically created when setting up a wallet and is used for crypto transactions.⁴⁵ The public key will be shared with other crypto users for making purchases, accepting payments, or transferring crypto to other accounts. The private key, only known to the wallet holder, is used to manage any movement of the wallet holder's crypto and is basically a password which should be guarded and kept safe to avoid theft of the crypto from the wallet.⁴⁶ Depending upon the arrangement, customer's personal wallets may be accessible by exchanges often called "Crypto Banks."⁴⁷

A. *Blockchain Wallets: Hardware and Software Wallets*

³⁷ Nicholas Rossolillo, *What Is A Blockchain Wallet?*, THE MOTLEY FOOL (July 5, 2022), <https://www.fool.com/investing/stock-market/market-sectors/financials/blockchain-stocks/blockchain-wallet/>.

³⁸ Evan Jones, *Ask CryptoVantage: Do Different Crypto Coins Need Different Wallets?*, CRYPTOVANTAGE.COM (Sept. 23, 2022), <https://www.cryptovantage.com/news/ask-cryptovantage-do-different-crypto-coins-need-different-wallets/>.

³⁹ Arthur Crowson, *Bitcoin Buying Guide 2023: Best Exchanges for Buying BTC*, CRYPTOVANTAGE, (Jan. 3, 2023) <https://www.cryptovantage.com/buying-crypto/bitcoin/>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Rossolillo, *supra* note 37.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Nikolai Kuznetsov, *What Are Crypto Banks and How Do They Work?* COINTELEGRAPH (Aug. 11, 2019), <https://cointelegraph.com/news/what-are-crypto-banks-and-how-do-they-work>.

The How and Why of Crypto Anonymity and the Court Challenges that May Undo It All in the Face of Market Upheaval

There are two basic types of blockchain wallets: software wallets and hardware wallets.⁴⁸ Types of software wallets include web—or crypto exchange—wallets, mobile wallets, and desktop wallets.⁴⁹ Web wallets are hyped as easy-to-use wallets and are hosted by an exchange where you can buy and sell cryptocurrencies. Security keys are stored and managed by the wallet providers themselves.⁵⁰ Convenience comes at a risk, however, and theft of crypto is a problem when using online web wallets.⁵¹ A mobile wallet is used on a smartphone or tablet. Mobile wallets often provide "hot storage" since they can be linked to an exchange, but some may provide added security with offline options known as "cold storage."⁵²

A hardware wallet is a type of cold storage device that allows access to your crypto offline. Hardware wallets are gaining in popularity as more customers of exchanges are losing their assets to theft and fraud. These wallets can be connected via a USB to a computer or other port to enable transfers and transactions.⁵³ Hardware wallets offer the highest level of security.⁵⁴

IV. ANONYMITY: AN ADVANTAGE OF CRYPTOCURRENCY

In the Bitcoin white paper, Nakamoto gloats about how cryptocurrency affords anonymity to the wallet holder stating:

The traditional banking model achieves a level of privacy by limiting access to information to the parties involved and the trusted third party. The necessity to announce all transactions publicly precludes this method, but privacy can still be maintained by breaking the flow of information in another place: *by keeping public keys anonymous*.⁵⁵

The advantages of cryptocurrency include inflation protection, transactional speed, cost effectiveness (fiduciaries/neutral third parties are not required for transactions), decentralization, accessibility, diversity, transparency of transactions, and privacy—anonymity of the wallet holder.⁵⁶ Even though

⁴⁸ *Rossolillo, supra* note 37.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Rossolillo, supra* note 37.

⁵⁴ *Id.*

⁵⁵ *Nakamoto, supra* note 3 at 6 (emphasis added).

⁵⁶ Nikita Tambe & Aashika Jain, *Cryptocurrency Has Its Own Advantages. Here's A List*, FORBES ADVISOR (Jan. 18, 2023) <https://www.forbes.com/advisor/in/investing/cryptocurrency/advantages->

The How and Why of Crypto Anonymity and the Court Challenges that May Undo It All in the Face of Market Upheaval

transactions on the blockchain are pseudonymous or identified on the blockchain by the wallet address, the blockchain does not include any specific information about the wallet holder who remains anonymous.⁵⁷ The level of privacy is desirable and may be both innocent and illicit.⁵⁸ Recent court decisions are threatening this anonymity and in some cases exposing the identity of wallet holders.

A. *The Threat to the Anonymity and Privacy of Wallet Holders*

Anonymity evaporates when a customer withdraws or "off ramps" crypto from an exchange for the purpose of converting the crypto to dollars.⁵⁹ Because the crypto exchanges must rely on banks to accept deposits of dollars into an exchange or customer accounts, and banks are strictly regulated and subject to Know Your Customer or "KYC" requirements,⁶⁰ a customer will lose anonymity when off ramping their cryptocurrency from an exchange. The recent collapse of Sun Valley Bank, Silvergate Capital Corp., and Signature Bank, put on display the need for "off ramps" for converting crypto and made it harder for customers convert their crypto to fiat currency.⁶¹

Many crypto lending platforms and trading exchanges—crypto banks—are currently bankrupt. The immediate financial crunch of these exchanges arose when, in a sort of digital "run on the bank," hordes of customers withdrew their crypto, causing a liquidity crisis. A range of problems led to the sector's insolvencies including undercapitalization, fraud, mismanagement, interconnectedness of lending and borrowing practices, and lack of risk management and regulation.

of-cryptocurrency/ (explaining how the disadvantages of crypt include pseudonymous transactions, theft, excessive use of energy, lack of policies including refund, cancellations (and seemingly regulation)).

⁵⁷ Adam Levy, *Why Should You Use Crypto*, THE MOTLEY FOOL, (Sept. 20, 2022, 2:55 PM) [https://www.fool.com/investing/stock-market/market-sectors/financials/cryptocurrency-stocks/benefits-of-cryptocurrency_\[hereinafter The Motley Fool\];](https://www.fool.com/investing/stock-market/market-sectors/financials/cryptocurrency-stocks/benefits-of-cryptocurrency_[hereinafter The Motley Fool];) Christiaan Vos, *Are Bitcoin Transactions Anonymous and Traceable?*, COIN TELEGRAPH, (Sept. 3, 2022) <https://cointelegraph.com/explained/are-bitcoin-transactions-anonymous-and-traceable>, ("Thanks to the transparency of the blockchain, it is easy to track money flows. If the identity behind a wallet address is known, then the transactions can be traced back and traced in the future. Each transaction can be viewed in detail. In this way, it is possible to see which amount was sent to which wallet and the date of the transfer.") [hereinafter Coin Telegraph].

⁵⁸ The Motley Fool, *supra* note 57.

⁵⁹ Misyrlena Egkolfopoulou and Yueqi Yang, *SVB, Silvergate and Why Crypto Still Needs Banks*, WASH. POST (Apr. 3, 2023, 11:43 AM), https://www.washingtonpost.com/business/2023/04/03/svb-silvergate-and-why-crypto-still-needs-banks-quicktake/a99029e8-d238-11ed-ac8b-cd7da05168e9_story.html.

⁶⁰ 31 CFR § 1010.230(b) (2017); *see also* Dan Ryan, *FinCEN: Know Your Customer Requirements*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Feb. 7, 2016), <https://corpgov.law.harvard.edu/2016/02/07/fincen-know-your-customer-requirements/>.

⁶¹ *Id.*

The How and Why of Crypto Anonymity and the Court Challenges that May Undo It All in the Face of Market Upheaval

Now that these companies are in bankruptcy, the transparency of the bankruptcy process is at odds with the anonymity afforded to wallet holders. A recent bankruptcy decision diminished the privacy of wallet holders by refusing to permit the debtor to redact the names of their customers—virtual wallet holders—in the bankruptcy schedules and creditor lists.

In the mega Chapter 11 of *Celsius Network LLC*,⁶² the court shattered the anonymity of customers—virtual wallet holders—doing business with Celsius. The court ordered the disclosure of the names of wallet holders in the debtors' bankruptcy schedules and creditor lists, documents that are readily available to the public.⁶³ Some have speculated that the publication of the names of wallet holders could enable hackers to discover their wallet numbers and expose their transactions to the world.⁶⁴ Indeed, the release of customer names has potential far-flung consequences because it brings the public one step closer to discovering the customer's transactions on the blockchain. In its ruling, the *Celsius* court rejected the decision in another crypto case in its district—*In re Voyager Digital Holdings, Inc.*,⁶⁵—authorizing the debtor to redact names of “Confidential Parties,” including customers, and authorizing the debtors to redact home addresses of individuals listed on the creditor matrix or other documents filed with the court, and the names and addresses of individuals protected by the EU GDPR data protection act.

Creating a split in the courts, the *Celsius* court held that customer names are not commercial or personally identifiable information protected from disclosure under the Bankruptcy Code.⁶⁶ Sustaining in part the United States Trustee's objection to the debtor and official committee of unsecured creditors' motion to redact and seal the customer information, the Court reasoned that the “strong public policy of transparency and public disclosure in bankruptcy cases requires very narrow exceptions and only on strong evidentiary showings.”⁶⁷

The court in *Celsius* drew a distinction between the disclosure of individual customer names, on the one hand, and their home addresses, telephone numbers and email addresses, on the other hand, finding that only the latter need be redacted in a bankruptcy case to protect customers from harassment and identity theft.⁶⁸

⁶² 644 B.R. 276 (Bankr. S.D.N.Y. 2022).

⁶³ *Id.*

⁶⁴ Namcios, *Why Celsius Exposed User Information and What You Can Do About It*, BITCOIN MAG. (Oct. 8, 2022), bitcoinmagazine.com/business/why-celsius-exposed-users-and-what-you-can-do.

⁶⁵ *In re Celsius, Inc.*, 644 B.R. at 292. The Court also declined to follow bankruptcy decisions in the District of Delaware authorizing the sealing of customer and independent contractor information. *In re Altegrity, Inc.*, No. 15–10226, 2015 WL 10963572 (Bankr. D. Del. July 6, 2015). See *In re Cred, Inc.*, No. 20-12836, 2020 WL 13577187 (Bankr. D. Del. Dec. 21, 2020) (granting debtor's the right to redact client information under certain conditions).

⁶⁶ *In re Celsius, Inc.*, 644 B.R. at 293.

⁶⁷ *Id.* at 292.

⁶⁸ *Id.* at 293.

The How and Why of Crypto Anonymity and the Court Challenges that May Undo It All in the Face of Market Upheaval

Furthermore, the court refused to protect any customer information for business entities, concluding that the Bankruptcy Code protects only certain individual information from disclosure and those protections do not encompass business entities.⁶⁹ Finally, the court refused to protect personal information for creditors located in Europe in recognition of the UK GDPR and EU GDPR data protection acts, citing a lack of legal authority “explicitly dictating” why the acts apply in the United States.⁷⁰

The New York State court in *LCX AG v. 1.27M U.S. Dollar Coin*,⁷¹ took a sledgehammer to the purported benefits of privacy and anonymity in crypto transactions. The opinion will likely be significant to future cryptocurrency litigation. LCX AG alleged that the defendants are hackers who stole about \$8 million worth of cryptocurrency from its wallet and used Tornado Cash—a virtual currency mixer that was recently banned in the U.S.—to make the funds untraceable and conceal the theft.⁷² The plaintiff, alleging the identity of a wallet where at least a portion of the stolen cryptocurrency was stored, obtained an injunction freezing that account/wallet. Nonetheless, the plaintiff could not determine the owners of the wallet and the identity of the alleged thieves, named in the lawsuit as “John Doe Defendants 1-25.”⁷³

Initially, the court determined that the plaintiff could serve the defendants with process by depositing a “Service Token” containing a hyperlink to a “Service Webpage” housing the documents served, into the blockchain and the wallet that allegedly contained the stolen cryptocurrency.⁷⁴ The Court found that the “Service Token” was “reasonably calculated, under all the circumstances, to apprise the defendant of the action” and was permissible under the rules of civil procedure. The Court, noting that because of the anonymity of the John Doe defendants, alternative service was necessary, considered that the John Doe defendants regularly used the

⁶⁹ *Id.* at 293-94.

⁷⁰ *Id.* at 295.

⁷¹ *LCX AG v. 1.274M U.S. Dollar Coin, et al.*, No. 15644/2022, slip op. WL 3585277 (N.Y. Sup. Ct. Aug. 22, 2022).

⁷² *Id.* at **4-6.

⁷³ *Id.* at **5-6.

⁷⁴ *Id.* at **7-9. See *In re Three Arrows Capital Ltd*, No. 22-10920 (MG) 2022 WL 17985969, at *3 (Bankr. S.D.N.Y. Dec. 29, 2022) (finding that service of Rule 45 subpoena for documents via Twitter was warranted and “reasonably calculated” to provide notice and due process because of the witness' recent use of Twitter), see also *Bandyopadhyay v. Defendant 1*, No. 22-cv-22907, 2022 WL 17176849, at **14 (S.D.Fla. Nov. 23, 2022) (allowing alternative service via NFT on John Doe defendants who conducted their alleged scheme over the internet with blockchain ledger technology), see also *In the Matter of the Tax Liabilities of: John Does et al., Order Granting Ex Parte Petition For Leave to Serve John Doe Summons*, <https://www.justice.gov/usao-sdny/press-release/file/1537506/download> (S.D.N.Y. 2022).

The How and Why of Crypto Anonymity and the Court Challenges that May Undo It All in the Face of Market Upheaval

blockchain and would likely return to the wallet since it held over \$1 million in cryptocurrency.⁷⁵

The Court also ordered the law firm appearing for the John Doe defendants to disclose the identity of its clients to the plaintiff, noting that the Service Token method obviously worked since the John Doe defendants were represented by counsel in the litigation.⁷⁶ Finally, the Court found that the “attorney-client privilege does not extend to the identity of the client.”⁷⁷

CONCLUSION

Only time will tell if the disclosure of the customer and virtual wallet holder's identities leads to the theft of their crypto and discovery of their transactions on the blockchain. Although the Securities and Exchange Commission (“SEC”) continues to resist issuing new regulations for digital assets, insisting the current laws are sufficient, the lack of certainty and predictability of SEC enforcement may soon prompt the implementation of formal rules governing crypto in the form of new legislation. Any crypto legislation will likely remove anonymity and require transparency of the identity of virtual wallet holders similar to opening an account at an institutional bank.

Crypto is dominating the headlines worldwide! The issues of customer anonymity and regulation of crypto are political hot potatoes. Some object to the perceived control and interference of the government in their transactions, as well as the cost of transacting in fiat currency. Others cite to theft, the enduring Crypto Winter of 2022, and the domino of bankruptcy filings as evidence that the industry must be regulated, and wallet holders treated like traditional bank customers. Opinions are divided as to whether the industry will soon explode and crypto, like gold, will be accepted as a store of value even without the physical asset or, if the industry is smoke and mirrors, of no intrinsic value and bound to fizzle out. Again, only time will tell.

⁷⁵ *Id.* at *7.

⁷⁶ *Id.* at **9-10.

⁷⁷ *Id.* at *9.