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An individual's identity combined with her financial transaction history are sensitive data. New York's proposed requirement that many services collect and maintain this information is a serious privacy threat to any user of digital currency, and a liability for companies that must protect the information from hackers. New York's proposed regulations require digital currency companies to have cybersecurity and user privacy programs, which is generally a good thing, but ironically the regulations themselves enhance the risk to privacy and security.

New York's proposed regulations would require digital currency services, wherever they are headquartered, to obtain a "BitLicense" to operate in New York or serve New York customers. The BitLicense would require a wide range of digital currency services to identify their customers by name and physical address. Importantly, the regulations would also require digital currency services to record the details of every transaction, including the identities and physical addresses of the parties involved. As a result, each service with a BitLicense must not only collect detailed identifying and transactional information from users, but would also need to swap this information with other services with each transaction. Digital currency services would be required to maintain these records for ten years.

New York's BitLicense would go beyond what is currently required under federal law.

- 1) New York should remove the requirement that all digital currency services record the identity and physical address of every party involved in every transaction. This would require services to routinely share the identifying information of their users, to the detriment of user privacy and control, and may be a very difficult technical mandate for companies to fulfill securely. If this requirement must exist at all, it would be better relegated to transactions involving a high dollar amount, high risk parties, or high risk goods.

2) New York should reconsider applying its customer identification and transaction tracking requirements to every type of digital currency wallet. New York's regulations would cover services that "store" or "maintain control" of digital currency on behalf of others. Wallets are crucial to users of digital currency since the currency (or, more accurately, the credentials that indicate the user's ownership and control of currency) must reside somewhere. The regulations would cover wallets that store the user's currency/credentials in the cloud, locally on a user's hard disk, or even physically via a paper printout. Even if a wallet is created solely by the user (not on behalf of others), the wallet could be subject to the regulations if the wallet "transmits" the digital currency to another person - a fundamental feature for many e-wallets, because a wallet is of limited use if you can't transfer money out of it.

Users should not be required to provide identifying information and submit to transaction tracking to use a wallet software product that the user downloads to a local machine and that stores the user's digital currency or credentials locally. Reporting requirements for high value or high risk transactions could still apply. For custodial accounts accessible to or controlled by third parties holding funds or credentials on behalf of users, the BitLicense should be no more intrusive or onerous than current federal requirements for money transmitters.

3) New York should clarify its rules to exclude services that are incidental to digital currency exchanges, storage, and transactions. New York's proposed regulations cover businesses that "secure" digital currency on behalf of others. Does this mean cybersecurity or antivirus software vendors must identify digital currency users whom they protect? The proposed regulations would also cover businesses that "transmit" digital currency. Does this include Internet service providers, like Comcast or Sky Broadband, whose networks transport digital currency credentials?

New York's proposed regulations should include clarifying language to prevent such unreasonably broad interpretations. For example, current federal anti-money laundering regulations include an important list of exemptions to the definition of money transmitters that New York's proposed rules lack.

4) New York should widen its exception for video game currencies. New York's proposed regulations include an exception for online video game currency, but only if the currency has no market outside of the gaming platform. Yet game currencies and rare items for most major online games are often sold in online marketplaces for fiat money. For example, Eve Online's Interstellar Kredit is readily available from unauthorized sellers, at least one exchange openly trades Second Life Linden Dollars for Bitcoin, and Diablo 3's Wand of Woh is currently for sale for *only* \$168 on eBay. Given the external markets for such gaming currencies and artifacts, it would seem many gaming companies - as issuers of digital currency - may not be protected by the proposed regulations' exception for video game currency.

Such activities are generally not authorized by the gaming company, but New York's proposed regulations do not make that distinction. If video game currencies must be regulated by the "BitLicense" at all, it may make the most sense to include video game companies only to the extent that the currencies they issue have company-authorized marketplaces outside of the game.

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"A little patience, and we shall see ... the people, recovering their true sight, restore their government to its true principles." Thomas Jefferson

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