

CRYPTOCURRENCY & LAW

Marvin Ammori

Protocol Labs

ABOUT PROTOCOL LABS

- Filecoin
 - IPFS
 - libp2p
 - SAFT
 - Coinlist
- Investors: YC, USV, BlueYard, A16z, Sequoia, Polychain

ABOUT ME

- Legal/Policy @ Protocol Labs
- Harvard Law
- Kirkland & Ellis
- Free Press
 - Comcast-BitTorrent case
- Opinionated law firm (Google, Apple, Dropbox, etc.)
 - Net neutrality
 - SOPA
 - Apple-FBI
- Affiliate Scholar-Stanford CIS

ABOUT THE LAW

- **Sticks and carrots**
- **Territorial - by country, by state, by city**
- **Government bodies - congress/state house, regulatory agencies, court decisions**
- **Sometimes written - statutes, regulations/guidance, cases**
- **British/US system - case method, analogies**

MULTIPLE AREAS OF LAW

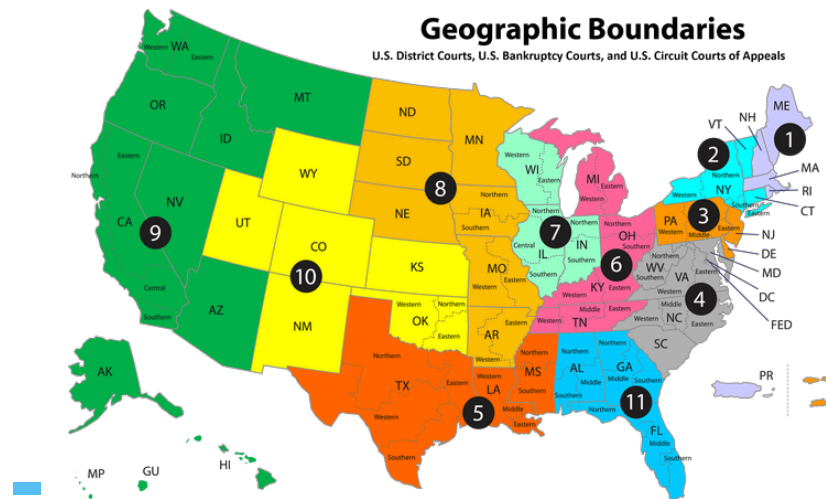
Area of law	Applies to...	Enforced by...	Congress Committee
Securities	Projects/Exchanges/ Custodians	SEC	Banking
Commodities	Exchanges/ Derivatives	CFTC	Agriculture
AML/KYC	Exchanges	Treas. FinCEN	Banking
Tax	Everyone	IRS	Finance
Deceptive practices	Goods/Software	FTC	Commerce

BLACK LETTER LAW

- Plain language of
 - statute (Congress)
 - regulation (agency)

BLACK LETTER LAW

- Supreme Court language
 - or Circuit/regional Courts



NOT BLACK LETTER

- Gaps
- Conflicts
- Ambiguities

NOT BLACK LETTER

- Analogies
- Settlements
- “Guidance”
- Speeches
- Industry practice
- Industry experts
- SECret garden

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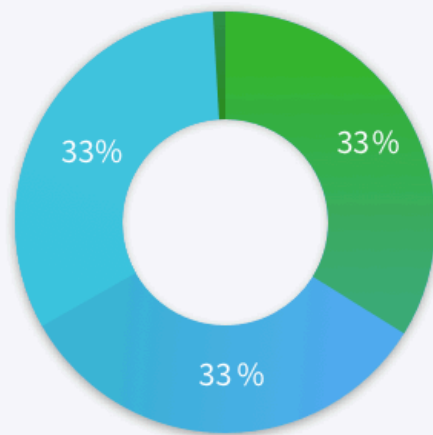
TOKEN GENERATION EVENTS (ICO'S)

- Bitcoin
- Ethereum
- And
 - EOS
 - Filecoin
 - Bancor
 - Tezos
 - Polka Dot
 - Telegram
 - Kin
 - DFINITY

EXAMPLE

Token Sale Terms

1 Billion Tokens Issued



■ Company Tokens ■ Partner Tokens ■ Crowd Sale Tokens ■ Cover tokensale costs

Maximum cap on crowdsale: **\$33 million**

Total token supply: **1 billion (1,000,000,000)**

CVC, of which:

- **33%** sold in the tokensale
- **33%** retained by Civic
- **33%** allocated for distribution to incentivize participation in the ecosystem
- **1%** to cover tokensale costs

Ethereum ERC20 token

Purchase methods accepted: BTC and ETH

ONE MOMENT IN TIME (OR TWO)

- Token pre-sale (ICO)
- Token delivery/network launch

A TOKEN IS WHICH OF THE FOLLOWING

- Software?
- Commodity/good?
- Security?

- [The If->Then of law]

THE STAKES OF THE QUESTION

- If a token is a security —
 - essentially IPO needed (S1 document) or an exemption to launch or deliver tokens
 - can trade on a registered exchange or ATS (“Alternative Trading System”), potentially brokers, etc.
- If a commodity — pretty unregulated except for derivatives, market manipulation, fraud, etc.
- If pre-sold software — pretty unregulated except for fraud/deceptive practices.

HINMAN SPEECH

- **Title of Speech: When Howey Meets Gary (Plastic)**
- **Speaker: Bill Hinman, Director of the Division of Corporation Finance**

HOWEY TEST FOR A SECURITY

- Is there an investment of money
- In a common enterprise
- With an expectation of profit
- Relying on the efforts of a promoter or third party

HINMAN SPEECH

- Bitcoin and Ether are not securities!
- Focused on “reliance on third parties”
- Sufficiently “decentralized” applications are not securities

HINMAN'S GUIDANCE

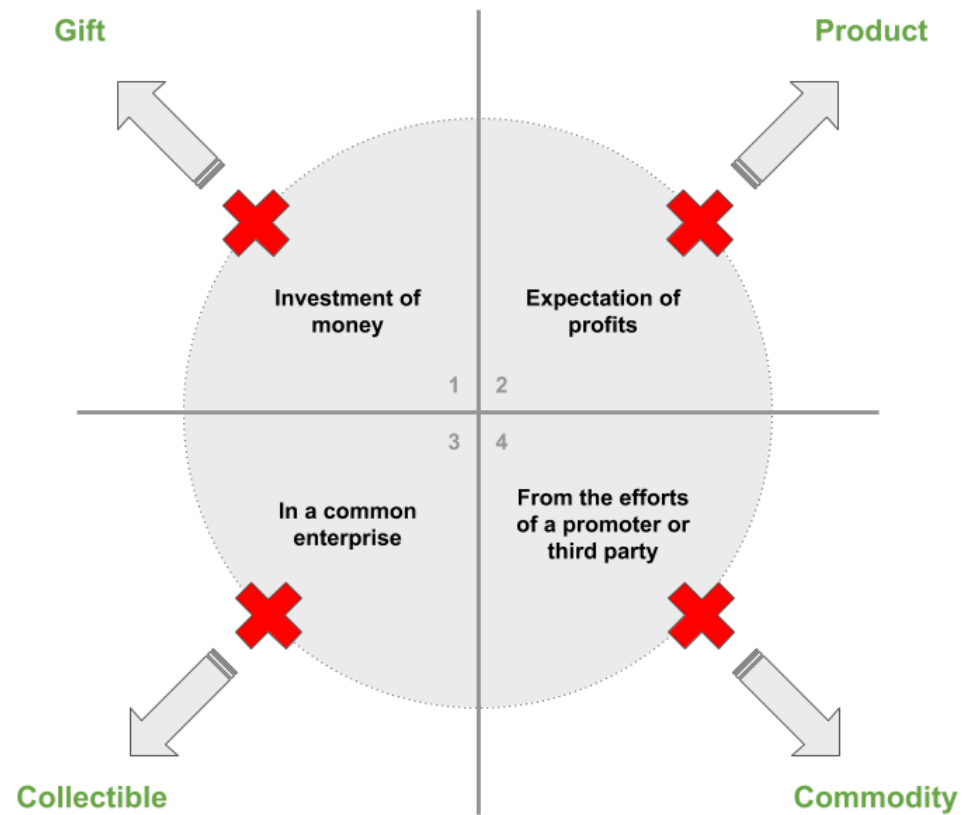
- **Marketed and sold to general public or only to potential users of network?**
- **Sold for price correlating with good or service or not?**
- **Central third party whose efforts are key or not?**
- **Do persons other than promoter exercise governance rights or meaningful influence?**

APRIL 2019 SEC GUIDANCE

- April 2019 guidance “clarified” Hinman speech
- Dozens of factors



The “Howey Test” for an “Investment Contract”



BIGGEST CASES OF 2019/2020

- EOS settlement (\$24M fine on \$3B raise)
 - Primarily sold abroad, some US activities
- Telegram return \$1.2B, pay \$18.5M civil fee
 - After preliminary injunction order in SDNY in April, 2020
- Kik's Kin offering ruled to be a security offering in SDNY in Sept. 2020
- BitMEX & founders/execs charged Oct. 1
 - DOJ: violate Bank Secrecy Act and "willfully failing to implement and maintain even basic anti-money laundering policies"
 - CFTC: "operating an unregistered trading platform and violating multiple CFTC regulations, including failing to implement required anti-money laundering procedures."

BIGGEST CASE?

- Threat to US dollar hegemony
- Libra
 - Basket of currency
 - Libra dollar
 - Multiple hearings globally
- Central Bank Digital Currency (Chinese Yuan)

DEFI?

- Decentralized lending (Compound, etc.)
- Decentralized stablecoins (Maker, etc.)
- Decentralized exchange (Uniswap, etc.)