

**8th IAP Eastern European and Central
Asian Regional Conference**
„Asset Recovery and Cybercrime“
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Jurisdictional issues related to assets in e-currency
– Austrian perspective

Virtual Currencies (e.g. Bitcoins) – profile and basic characteristics

I

Bitcoins:

- webbased electronic payment system
- immediate and irreversible transactions
- direct transactions (peer to peer distributed network)
- automatically generated (mining)
- automatically administered (blockchain)
- cryptographic proof
- no physical entities – only electronic data
- no central institution
- value depends on supply and demand
- cryptographic keys for transactions
- widely anonymus

Virtual Currencies (e.g. Bitcoins) – profile and basic characteristics II

Blockchain:

- constant automatic bookkeeping of all transactions
- unchangeable
- anonymus

Trading:

- directly between two private parties
 - by electronic transfer
 - by handing over of the keys physically
- trading platforms (change into traditional currencies)

Virtual Currencies (e.g. Bitcoins) – profile and basic characteristics III

Wallets:

- store the keys
 - on all kind of electronic devices – online
 - offered by various providers
 - backups at various places – paper wallet
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- loss of keys = loss of Bitcoins

Virtual Currencies (e.g. Bitcoins) – profile and basic characteristics IV

legal nature of Bitcoins:

- no object or thing
- no right
- data in sense of penal law
- economic value in the sense of penal law

Virtual Currencies (e.g. Bitcoins) – profile and basic characteristics

V

Bitcoins in summary:

- unregulated digital money
- no central bank or institution
- issue decentralized – automatically
- beyond the control of public authorities
- electronically stored
- access with keys
- use of encryption methods – anonymity
- no link from assets to identified individual persons

Forfeiture and Jurisdiction in Austria

I

Forfeiture – scope:

- any assets acquired **for** or **through** an offence
- benefits (interests, increase in value) and replacement value
- assets in possession of third persons
- assets of criminal organizations and terrorist groups
- assets acquired in temporal connection with crimes (unless the lawful acquisition is substantiated)

Forfeiture and Jurisdiction in Austria II

Forfeiture – geographic reach:

- Austrian cases: all assets in Austria and abroad
- foreign proceedings: all assets in Austria

Austrian jurisdiction for crimes committed:

- in Austria (action or result in Austria)
- abroad,
 - if national interests are concerned
 - if no extradition is possible
 - due to international obligations

Forfeiture and Jurisdiction in Austria

III

Examples:

- 1./ criminal action in Austria, result abroad – Austrian jurisdiction due to the place of action
- 2./ criminal action abroad, result in Austria – Austrian jurisdiction due to the result
- 3./ purchase on an Austrian website with stolen data from a foreign victim – result abroad, place of criminal (online) action unknown – Austrian jurisdiction denied, nevertheless Austrian jurisdiction for relating assets located in Austria

Forfeiture and Jurisdiction in Austria IV

direct trans-border acces to stored data abroad:

- ongoing discussion
- limits given by the cybercrime-convention
 - open source stored data
 - lawful and voluntary consent of the affected person
 - beyond that: traditional judicial co-operation

Jurisdictional aspects related to Bitcoins

general rules on forfeiture and jurisdiction are applicable

localization

- does not rely on the ubiquity of the blockchain
- follows the location of the keys
 - location of the storing device (PC, mobile phone etc)
 - location of the physical wallet (paper wallet)
 - place of residence of the provider (wallet, cloud)

upcoming issues and fields of action in relation to Bitcoins

- technical level
- finding of new fitting instruments – adjusting of existing instruments
 - criminal procedure (seizure, freezing)
 - international co-operation
- jurisdictional issues in view of international online-investigations

Thank you very much for your kind attention!

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