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You've Been Crypto-Served

Cryptocurrency has long been the digital Wild West—the legal system has been working to catch up to the advance in technology in blockchain smart contracts but hasn't quite made it. The exchange of cryptocurrency and other digital assets have long taken place with little oversight – and due to the hallmark anonymity of blockchain technology, action against wrongdoers is difficult. However, a recent ruling in New York made a giant leap forward when it permitted service through an NFT. What does this mean for the future of blockchain litigation? One certainty is the need to understand the space and for innovative legal strategy and thinking.

History of Service

One obstacle to initiating litigation related to blockchain and cryptocurrency is service. Fundamentally, a court does not have personal jurisdiction over a party until it has been properly served. To perfect service of process, a plaintiff must serve a defendant with a summons and a copy of the plaintiff's complaint.

Historically, service of process occurred in-person, by mail, or in rare cases, publication in a newspaper. As technology evolved, so did the various methods of service. Today, parties can be served via email and even social media. Still, these methods of service require some identifying information about the defendant – like a name, address, or email address. Because of the anonymous nature of cryptocurrency transactions, the would-be defendant is or likely could be wholly unknown. Cryptocurrency exchanges (and hacks) can take place in seconds, and digital assets may be moved across the state or across the world. Thus, identification of a defendant is nearly impossible. However, legal redress is necessary even against anonymous parties.

Service in Crypto Space

Attorneys have been forced to leverage "John Doe" summons in cases regarding cryptocurrency and digital assets. In these "Doe"

lawsuits, the plaintiff's legal team sues a fictitious defendant, or "John Doe," in the hopes that the person's identity will be exposed during the discovery process. This approach, though, resulted in a wide window of time for hackers and scammers to dispose of crypto assets and destroy relevant digital evidence. Even if the scammer did not take advantage of this window, there was still the possibility that the value of the crypto assets could diminish in the market.

To mitigate this concern, in 2019, a federal court authorized expedited discovery to identify an anonymous individual who hacked a blockchain asset trading platform and stole hundreds of thousands of cryptocurrency tokens. *ZG TOP Tech. Co. v. Doe*, 2019 WL 917418 (W.D. Wash. Feb. 25, 2019). This narrowed the window of opportunity for crypto criminals by enabling injured parties to track, freeze, and in some cases recover stolen digital assets more quickly. Still, the ever-changing issue of service in the crypto space still required an innovative solution.

A High-Tech Problem Meets a High-Tech Solution

Recently, the New York Supreme Court authorized a groundbreaking approach to service of process in the crypto space. In January 2022, LCX, a cryptoasset exchange, was hacked and robbed of nearly \$8 million in digital assets. Through forensic analysis and cooperation with international police, LCX was able to trace and freeze most of the stolen funds. However, to recover the rest of the stolen funds, LCX still needed to initiate a legal proceeding and obtain an injunction and restraining order against the hacker. The company did not have a name or address for the perpetrator. But it did have a single identifying piece of information: the blockchain address to which the hacker transferred the stolen assets. LCX's legal team proposed a revolutionary plan to the New York Supreme Court: serving the hacker via NFT. The process involved sending a cryptotoken to the blockchain address with a hyperlink to the court documents. In essence, LCX airdropped court documents into the hacker's digital wallet.

Future of Service

While even this groundbreaking method of “crypto” service has its drawbacks, this is a huge step forward for the crypto space. With each legal innovation, crypto-criminals are less shielded by the veil of anonymity that blockchain technology offers. Accordingly, legal teams now have more avenues to secure effective relief for clients that have been negatively impacted by crypto scams or hacks. At the same time, legal innovators must look for ways to preserve the anonymity of legitimate players in the crypto space.

Innovative thinking is key to developing legal strategies to protect crypto assets while still allowing blockchain technology to flourish.

**Summer Associate Ashley Nkadi contributed to this article.*

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