

THE SILK ROAD AND ME: WHY MY BITCOIN (AND PROBABLY YOURS, TOO) IS SAFE FROM GOVERNMENT SEIZURE

Posted on November 19, 2020 by Sanford J. Boxerman



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Ok, I admit it. This blog post began purely out of selfishness.

I read about the Government's seizure early this month of [\\$1 billion worth of bitcoin](#), which the Government justified on the grounds that the bitcoin bore a relationship to a now-shut-down website called the Silk Road. I'll talk about the specifics of the Government's contentions below, but the seizure prompted me to do a little thinking. Specifically, the Government claimed that the seized bitcoin was, *or derived from*, proceeds of illegal transactions which took place on that website.

As the owner of a small amount of bitcoin, I began to wonder: If you traced the origins of my tiny stash of bitcoin – which you can generally do because all bitcoin transactions, since the creation of bitcoin in 2009, are listed on the publicly-available bitcoin blockchain (the ledger of all bitcoin [transactions](#)) – would you find that mine came, directly or indirectly, from an illegal exchange taking place on the Silk Road? Might the Government be coming after *my* bitcoin?

After reviewing some court filings, as well as federal forfeiture law, I'm pretty sure that the answer to that last question is no. **Here's why:**

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The Bitcoin Seized by the Government

Where did it come from?

On November 5, the Government filed in federal court in San Francisco a [lawsuit entitled](#) "United States of America versus Approximately 69,370 Bitcoin (BTC), Bitcoin Gold (BTG), Bitcoin SV (BSV), and Bitcoin Cash (BCH) seized from "1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbh".

The suit describes the Silk Road, a "dark web" site created and run by Ross Ulbricht a/k/a "Dread Pirate Roberts", now [serving a life sentence](#) in the Federal Bureau of Prisons. The Silk Road functioned as a marketplace for unlawful transactions, most of which involved narcotics. A purchaser of goods on the Silk Road could not use cash, check, or credit card. As the lawsuit put it, "The only form of payment accepted on Silk Road was Bitcoin."

The suit describes how federal law enforcement officers, with the help of "a third party bitcoin attribution company," (that company is called [Chainalysis](#)) analyzed bitcoin transactions, tracing bitcoin moving from addresses controlled by the Silk Road through one of two other addresses and ultimately to the 33-character address, set forth in the title of the lawsuit, beginning with "1HQ3". Based on its analysis, the Government concluded that the bitcoin going into 1HQ3 had been stolen from the Silk Road by way of "unauthorized and illegal access" – a hack – perpetrated by an individual whom the suit calls "Individual X". To put it another way, the criminals running Silk Road had been victimized by the criminal hacker Individual X.

According to the suit, on November 3, 2020, "Individual X signed a Consent and Agreement to Forfeiture," thereby agreeing not to fight the Government's efforts to seize and forfeit 1HQ3 or its contents.

What is Forfeiture?

Federal law allows the Government to seize and retain – and then, ultimately, to sell with the proceeds going to Government coffers – "any property, real or personal, involved in a transaction or attempted transaction" that violates certain specified federal statutes. "Computer Hacking" constitutes one such statute.

But that doesn't seem fair. If someone hacks into your bank account and puts the funds in his or her account, should the Government get to seize the hacker's account for itself, leaving you out in the cold?

No. Federal forfeiture law requires that, when the Government seizes property which it proposes to keep for itself by way of forfeiture, it provide notice to anyone who might claim an interest in the property, so that such persons will have the opportunity to show that the Government shouldn't get to keep it for itself. For instance, if the victim of the bank account hack described above is an "innocent owner", he or she would retain his or her interest in the stolen funds.

Someone who acquires criminally-derived property after the crime can qualify as an innocent owner

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if that person can show that he or she “was a bona fide purchaser or seller for value” of the property, and that he or she “did not know and was reasonably without cause to believe that the property” constituted the proceeds of illegal activity.

How does all that apply to the Silk Road Forfeiture and me?

First, what about the victim of Individual X's hack, the Silk Road? Can it claim that the bitcoin seized in 1HQ3 belongs to it and so the Government should not get it? Probably not. As the lawsuit points out, property that is the proceeds of, or otherwise involved in, trafficking drugs is independently subject to forfeiture. So, the Government's response to the Silk Road's claim to the bitcoin would most likely be, “Hey, if the hacker hadn't taken it from you first, we could have, and we're taking it from you now.”

Second, and, of course, of far greater importance, What about me and my bitcoin? Is there any chance that it could be forfeited? No, for two reasons. First, from the lawsuit, it appears clear that my bitcoin was not part of the bitcoin that made its way from the Silk Road to 1HQ3. The suit traces the seized bitcoin directly from Silk Road addresses to two other addresses to 1HQ3 (and, I assure you, my address is not one of those “two other addresses”). In addition, I obtained my Bitcoin by purchasing it for its fair market value at the time of the purchase from a reputable seller who would never get involved in illegal activity. Accordingly, I am proud to proclaim that I am an “innocent owner”, and so my bitcoin would not be subject to Government forfeiture.

Some Miscellaneous Concluding Thoughts

1. If you, like me, are in the habit of buying your bitcoin for fair market value and from reputable sellers, your chances of not having it seized by the Government are pretty good.
2. What if you get bitcoin as a gift and it turns out to be the proceeds of illegal activity? That certainly doesn't mean you're a criminal. It does mean that the Government might try to take the bitcoin away from you and you won't have the “bona fide purchaser” defense available to you.
3. Why does the Government's suit list other cryptocurrencies besides bitcoin? The answer involves “forks”. Sometimes a holder of cryptocurrency can, by reason of a fork, obtain an equivalent account of a new cryptocurrency. That appears to have happened in 1HQ3.

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