



AMERICAN  
BANKRUPTCY  
INSTITUTE

# 2018 Southwest Bankruptcy Conference

## The ABCs of Electronic Currencies

**Hon. Daniel P. Collins**

*U.S. Bankruptcy Court (D. Ariz.); Phoenix*

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**Steven J. Yeager**

*State of Nevada Assembly; Las Vegas*

# The ABCs of Electronic Currencies

ABI's 26<sup>th</sup> Annual Southwest Bankruptcy Conference  
September 7, 2018

**Hon. Daniel P. Collins**

United States Bankruptcy Court  
District of Arizona

**Assemblyman Steve Yeager**

Chair, Assembly Judiciary Committee  
Nevada District 9

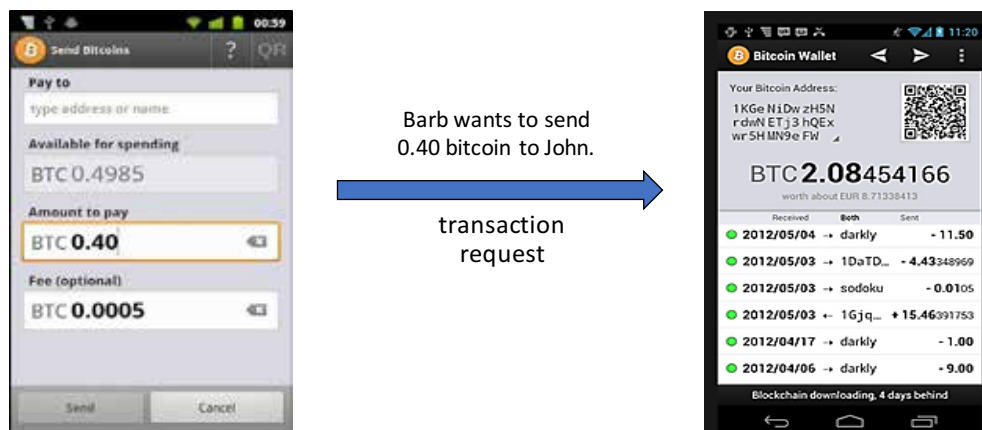
**Bryce A. Suzuki**

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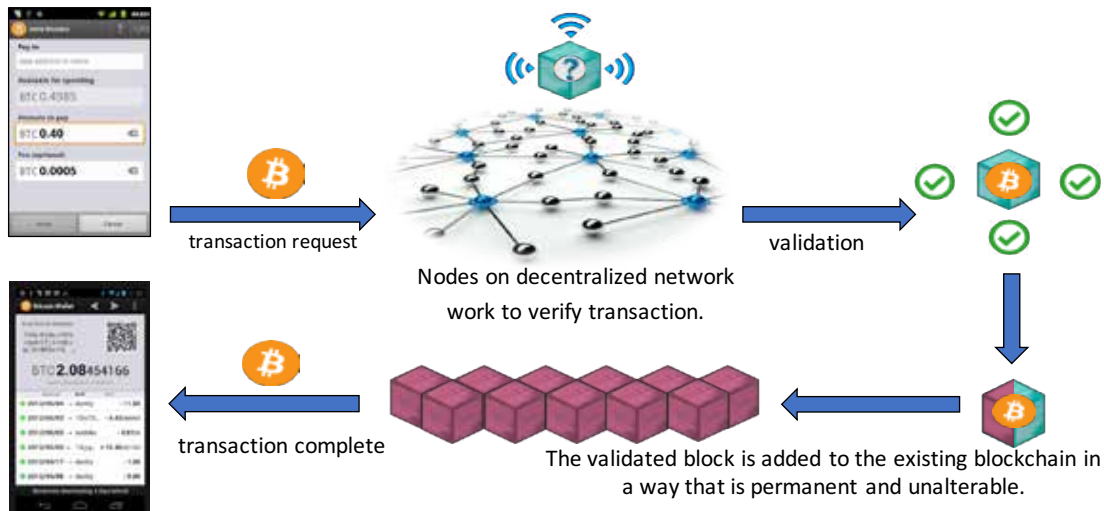
**Christopher Wells**

Managing Director  
Alvarez & Marsal, Phoenix

## Bitcoin Illustration



## Bitcoin Illustration



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# Before we start....

# Some key terminology to be crypto savvy

# FOMO

“Fear Of Missing Ot”



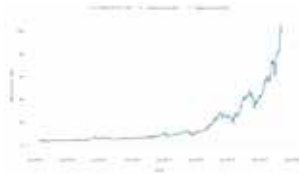
# HODL

“Hold On for Dear Life”



# MOON

Where you want crypto to  
skyrocket to...



# LAMBO

Status Symbol or Goal Post



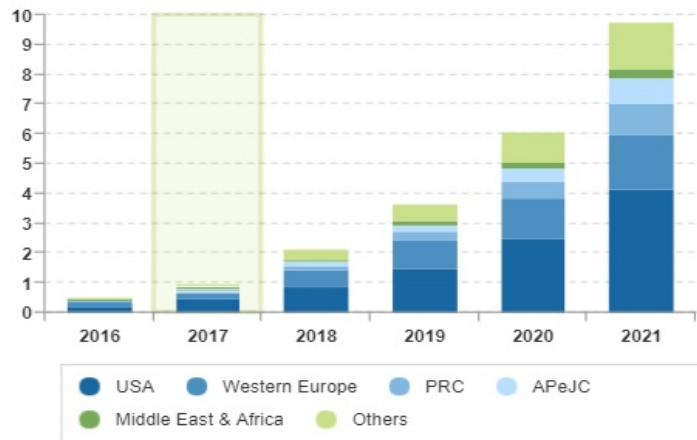
# Business Discussion

How big is this market?  
*(Why should I care?)*

## Blockchain Spending Forecast by Region (2016 – 2021)



Top Region Based on Spend, 2017 (Value  
(Constant Annual), USD, B)



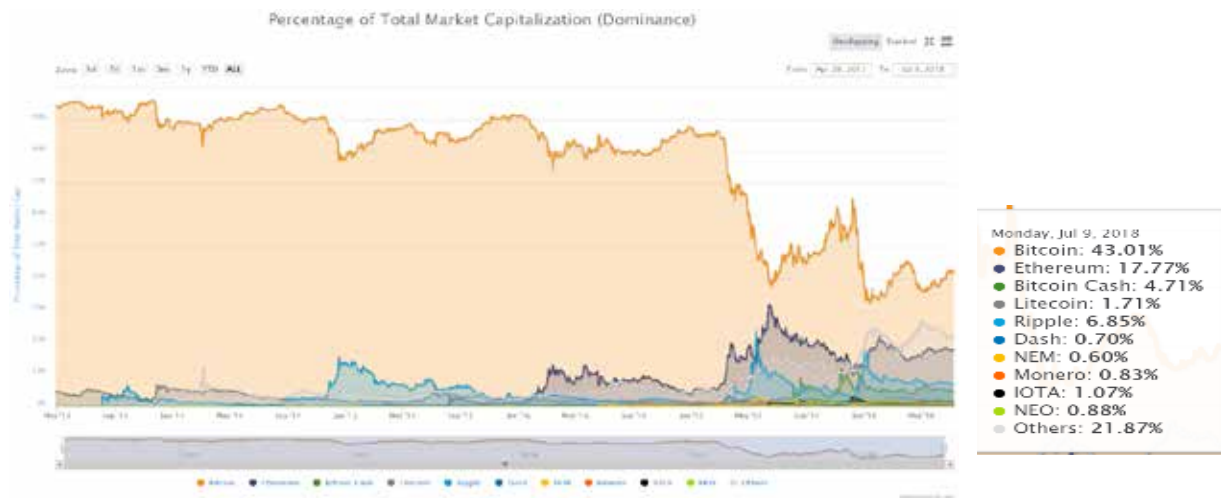
5 Yr CAGR  
81.2%

Source: IDC Worldwide Semiannual Blockchain Spending Guide, 2017H1

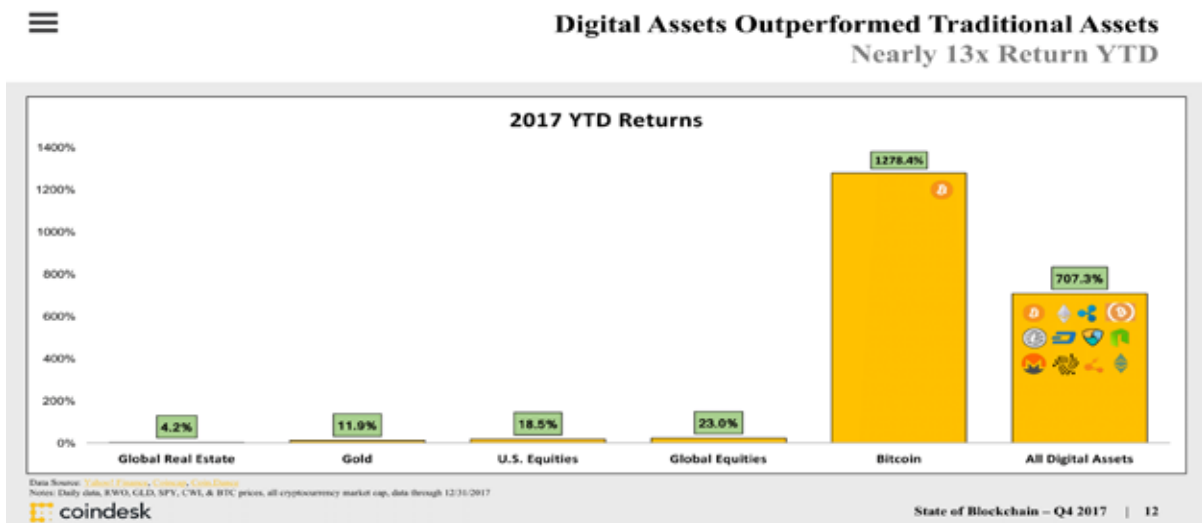
## Cryptocurrency Market Cap (2013 – July 2018)



## % of Crypto Dominance (2013 – July 2018)

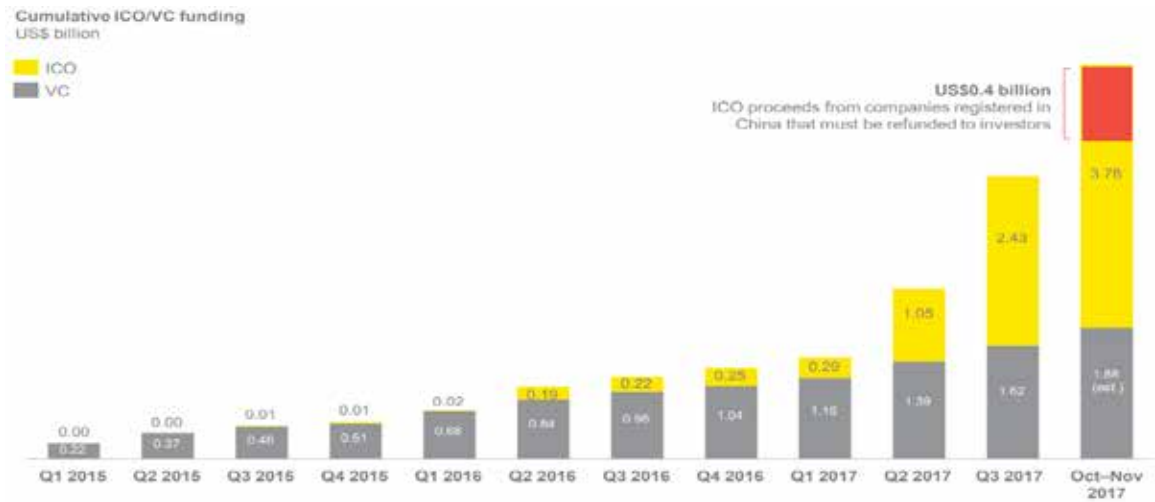


## 2017 Annual Return Comparison





## Trended ICO Cumulative Funding



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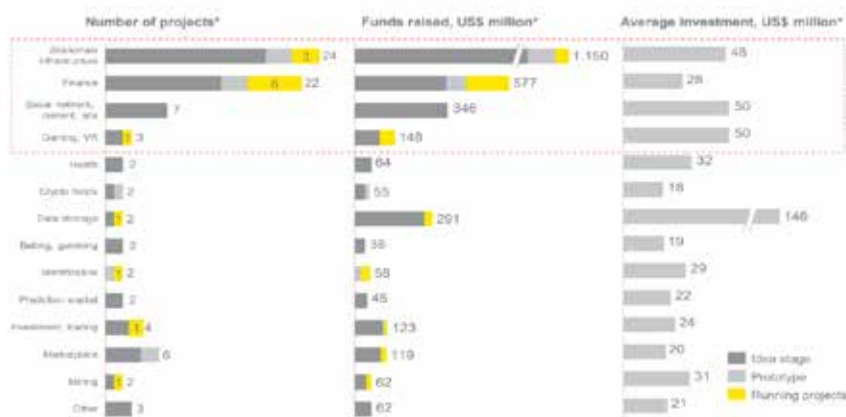
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## Segmented ICO Volume

### Public blockchain and ICO

Segment leaders by volume: blockchain infrastructure, finance, gaming platforms, social networks and data storage



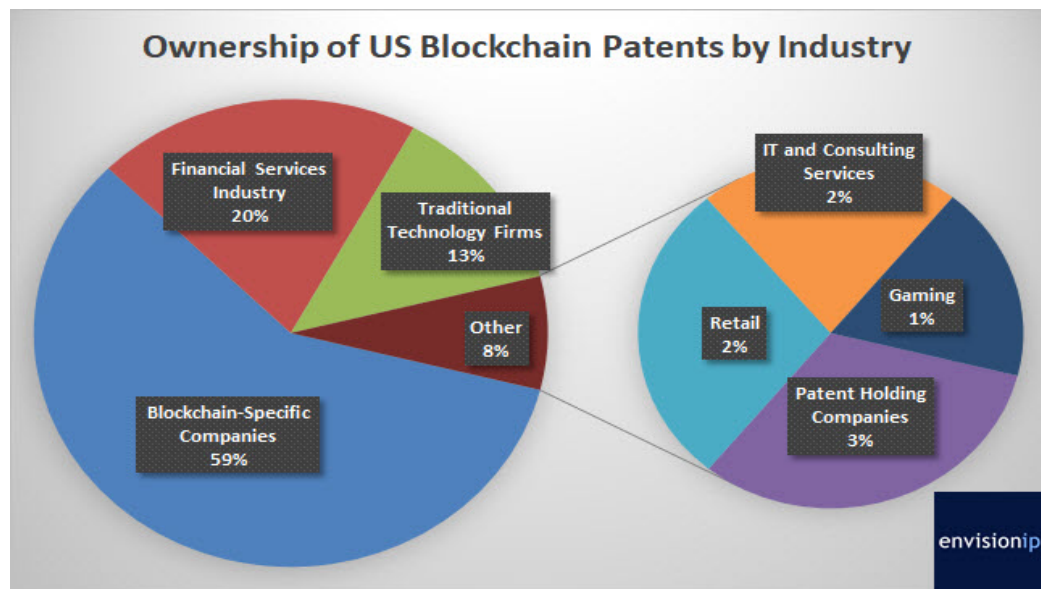
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# Blockchain Implications *(Disruption/Transformation)*

## Company Patent Owners by Industry



# Business Uses

## Industries Ripe for Blockchain

- |  |   |
|--|---|
| 1. <b>Banking and Payments</b>           | 11. Government  |
| 2. Cyber Security                        | 12. Public Benefits   |
| 3. <b>Supply Chain Management</b>        | 13. <b>Healthcare</b>   |
| 4. Forecasting                           | 14. Energy Management   |
| 5. Networking and the Internet of Things | 15. <b>Online Music/Digital Rights</b>                              |
| 6. <b>Insurance</b>                      | 16. Retail  |
| 7. Private Transport and Ride Sharing    | 17. <b>Real Estate</b>  |
| 8. Cloud Storage                         | 18. Crowdfunding  |
| 9. Charity                               | 19. Any business/industry with heavy<br>reliance on processing data |
| 10. <b>Voting</b>                        |   |

*(<https://futurethinkers.org/industries-blockchain-disrupt/>)*

# Case Study

## Eastman Kodak Company

### Brief History:

- Founded in 1888
- By 1976 Kodak had 90% of the film market and 85% of the camera market in the US
- Slowing sales in the 1990s with the rise in digital photography
- Kodak begins turnaround focused on digital camera – ranked #1 in camera sales by 2005



# Eastman Kodak Company

## Struggles/Bankruptcy:

- Digital sales slip (7<sup>th</sup> in US sales by 2010) as the camera is displaced by cellphones/smartphones/tablets
- Focused on printer business and patent infringement; shut down film factories
- Files for Bankruptcy in January 2012 (NY)

# Eastman Kodak Company

## Emergence:

- Emerges in Sept 2013 – focused on commercial customers
- Revenue continues to decline – \$2.1bn (2014) to \$1.5bn (2017)
- EBITDA margins remain flat at ~12% over the period



# Eastman Kodak Company

## BLOCKCHAIN/CRYPTO SOLUTION:



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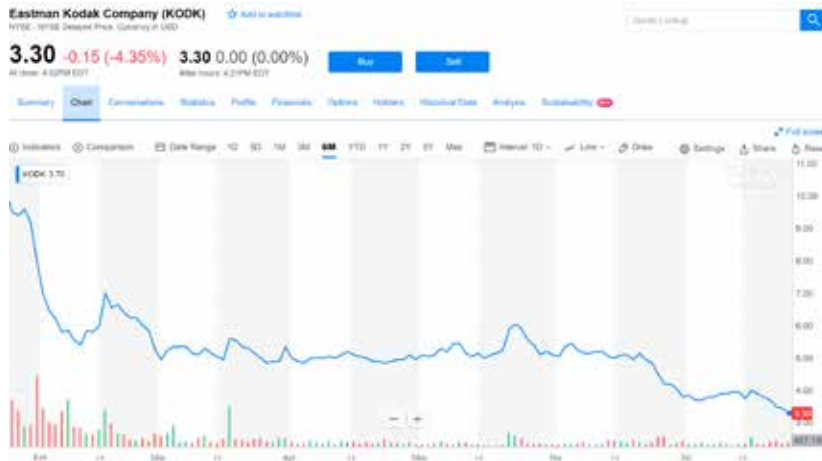
# Eastman Kodak Company

## Blockchain/Crypto Entrance:

- Creation of KodakCoin cryptocurrency
- Use of blockchain service to track “Digital Rights” for photographers
- WENN Digital Partner (6k paparazzi photographers)
- \$50M ICO fundraise perpetually delayed

# Eastman Kodak Company

Is it FOMO or Transformation?



## Legislative Hurdles

- Understanding blockchain technology and interplay with cryptocurrency
- Enacting legislation in a complex and ever changing space
- Ensuring consumer protection while not stifling innovation and creativity

## Legislative Successes

- Task force to study/evaluate blockchain for use in gov't (IL, VT, CT, HI, **ME**, NJ, **NY**, VA, WY)
- Recognizing blockchain technology as a type of electronic record and recognizing electronic signatures (AZ, **NV**, CA, IL, NY, TN)
- Allow corps to use blockchain to create and maintain records, including stock ledger (**DE**; **WY**; AZ; CA; NJ)
- Several Wyoming House Bills: 19; 70; 101; 111; 126

## Legislative Failures

- Allowing cryptocurrencies to be used to pay taxes (vetoed in AZ)
- World Economic Forum believes this will happen by 2023
- Obstacle: extreme fluctuation of market value



## FinCEN Guidance

- Crypto-exchange is a Money Services Business and a Money Transmitter – must have an effective anti-money-laundering compliance program
- Does not apply to users of virtual currency
- State action in this space

## SEC Guidance

- These are securities (seems to be the prevailing view)
- SEC Chair Jay Clayton: “I believe every ICO I’ve ever seen is a security.”
- Many SEC subpoenas and enforcement actions in 2018

## CFTC & Commodities Trading

- Sept. 2015 – CFTC concludes that cryptocurrency is a commodity
- CFTC v. McDonnell et al., 18-CV-361 (E.D.N.Y. March 6, 2018) – virtual currencies fall within definition of commodity

## Tax Enforcement

- Virtual currency is treated as property for federal tax purposes.
  - Gain v. loss depends on whether it is a capital asset
  - Payments subject to same reporting as other payments in property
  - Payment of wages is treated like payment in US currency, whether employee or independent contractor

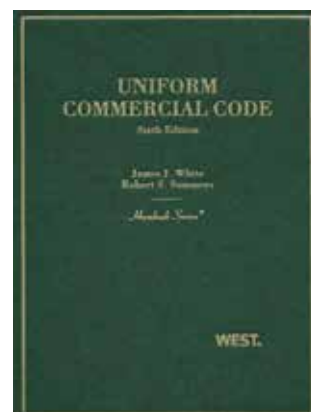
## What's Next

- Token/cryptocurrency as a potential solution to cannabis banking issue or for energy market
- Formation of a tech caucus in the Nevada Legislature
- Further federal guidance on these issues
- Continued efforts to regulate but not over-regulate in this space

## Civil Legal Issues

### UCC: What Is This Stuff?

- UCC definition of “money”
- Article 9 general intangibles
- Expand definition of Article 8 investment property?



## Civil Legal Issues

### Bankruptcy & Insolvency: What Is This Stuff?

- *Hashfast Technologies LLC v. Lowe*, Adv. No. 15-03011-DM (Bankr. N.D. Cal. Feb. 22, 2016)
- Mt Gox insolvency proceeding  
Tokyo, Japan



## Civil Legal Issues

### Litigation Claims



- SEC enforcement actions against ICO issuers and principals
- Private securities cases against ICO issuers and principals
- Shareholder class action suits on ICO issues