



SUMMER 2018 E-NEWSLETTER

At Digital Mountain we assist our clients with their computer forensics, e-discovery, and cybersecurity needs. For this E-Newsletter, we discuss cryptocurrency hacking events, as well as the regulatory and legal climate for blockchain and cryptocurrency technologies.

States Embracing Blockchain for Evidence

The intersection of law and technology is often one that appears to have a two-way stop, with both signs on the legal side. The cautious pace at which courts and legislatures address technological innovation can be a challenge for those practitioners who enthusiastically embrace and adopt technology. Those who espouse the philosophy that the law should be curious but cautious when it comes to altering rules or crafting law, may need to consider that technology continues to rapidly change the way business, legitimate and criminal alike, is conducted. The need to remain receptive to new information seems as imperative as ever. In the case of blockchain technology, it appears that some states are taking steps to accelerate the incorporation of new technology.



Vermont in the Lead

On June 6, 2016, then Governor Peter Shumlin signed into law House Bill 868, which included a section entitled “Blockchain Enabling.” This bill made news across the country as Vermont became the first state to legislate the admissibility of blockchain records in court. The bill is specific in the tests that must be met to admit blockchain records, beginning with a definition of what blockchain technology is:

§ 1913. BLOCKCHAIN ENABLING

(a) As used in this section, “blockchain technology” means a mathematically secured, chronological, and decentralized consensus ledger or database, whether maintained via Internet interaction, peer-to-peer network, or otherwise.

(b) Authentication, admissibility, and presumptions.

(1) A digital record electronically registered in a blockchain shall be self-authenticating pursuant to Vermont Rule of Evidence 902, if it is accompanied

by a written declaration of a qualified person, made under oath, stating the qualification of the person to make the certification and:

(A) the date and time the record entered the blockchain;

(B) the date and time the record was received from the blockchain;

(C) that the record was maintained in the blockchain as a regular conducted activity; and

(D) that the record was made by the regularly conducted activity as a regular practice.

(<https://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT157/ACT157%20As%20Enacted.pdf>)

The blockchain record introduced becomes self-authenticating, meaning that the party producing the document need only certify that items A through D are met, and securing a witness to authenticate a document is no longer a requirement. This is an important acknowledgment of the immutability touted by blockchain proponents.

In May 2018, the state enacted a law enabling the creation of blockchain-based limited liability companies. The bill also included provisions commissioning a study of how blockchain technology can be implemented in Vermont's banking industry, which may include recommendations for recordkeeping and production.

Not Quite as Far as Vermont

In 2017 and 2018, Arizona, Illinois, Hawaii, New York, and California, all began studying how blockchain technology might be integrated into contracts, recordkeeping, and legal administration. Arizona and Nevada also took steps toward embracing blockchain records in March and June 2017, respectively, by conferring legally binding status to blockchain records, including smart contracts: "if a law requires a record to be in writing, submission of a blockchain which electronically contains the record satisfies the law" (<http://lawcast.com/2018/01/02/state-distributed-ledger-technology-and-blockchain-regulations/>).

Since August 2017, business-friendly Delaware has allowed private businesses to "maintain shareholder records, including authorized, issued, transferred, and redeemed shares...to permit corporations to rely on [blockchain technology] as a stock ledger itself, potentially eliminating a separate transfer agent for private companies" (Ibid).

While not fully granting the evidence admissibility that Vermont did, these other actions are clear indicators that blockchain technology is recognized as a viable, potential alternative to traditional record storage and pen and paper signature pages.

Connecticut's Governor Malloy recently signed into law a bill creating a "blockchain working group" to study the technology and encourage the industry in the state. Interestingly, the working group will be made up of three blockchain technology professions, two academic professionals, and the state's Commissioner of Economic and Community Development as the sole representative of the state government. A report is due in January 2019 and is expected to contain recommendations for expansion of blockchain technology in Connecticut.

Blockchain and eDiscovery

At this juncture, there's no reason to say that blockchain technology will eliminate the need for eDiscovery. In fact, just the opposite. As blockchain technology becomes more popular and prolific, increased amounts of data subject to discovery will be in the form of blockchain distributed ledger records. Rather than reduce the need for eDiscovery, this increase means that eDiscovery firms, Digital Mountain included, may simply add blockchain eDiscovery to their array of services. The format may change, and the technology will definitely evolve, but the need to locate and authenticate critical information will remain.

Please direct questions and inquiries about cybersecurity, computer forensics and electronic discovery to info@digitalmountain.com.

UPCOMING INDUSTRY EVENTS

MASTERS CONFERENCE
New York, NY: July 24, 2018

BLACK HAT USA
Las Vegas, NV: August 04-09, 2018

ILTACON 2018
Washington, DC: August 19-23, 2018

HTCIA INTERNATIONAL 2018 CONFERENCE AND TRAINING EXPO
Washington, DC: August 19-22, 2018

TODAY'S GENERAL COUNSEL, "THE EXCHANGE" EDISCOVERY
Seattle, WA: September 1, 2018

[Click here to see more upcoming events and links](#)



Digital Mountain, Inc. Founder and CEO, Julie Lewis, will be presenting at various upcoming industry events. Please send requests for speaker or panel participation for her to marketing@digitalmountain.com.

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