



May 4, 2017

Drafting Committee for the Uniform Regulation of
Virtual Currency Business Act
Uniform Law Commission

**Re: EFF Comments on May 2017 Style Committee Meeting Draft of the
ULC's Regulation of Virtual Currency Business Act**

Dear Sarah Jane Hughes and Members of the Drafting Committee:

The Electronic Frontier Foundation (EFF) appreciates this final opportunity to submit comments to the drafting committee on the Regulation of Virtual Currency Business Act (Act). Throughout the drafting process, EFF—an organization dedicated to protecting *both* innovators and consumers of technology—has expressed concern over the Act's inadvertent stifling of innovation. We believe the drafting committee shares our concerns; if not, there would be no discussion regarding a *de minimis* exemption or a provisional license—topics which have been the subject of much debate. EFF appreciates the time and effort that the Committee has paid to addressing these issues.

The monetary thresholds inserted since the last meeting, however, threaten to completely gut all the time and effort the Committee has spent endeavoring to protect innovation. As Coin Center notes its letter to the Commission, these numbers also diverge from the consensus that was reached by the Commissioners and Observers at the last meeting. Based on our understanding, it was agreed that the thresholds for both the *de minimis* exemption and the provisional license would depend on whether the entity in question was engaged in (a) long-term *custodial* activities, “administration” and “storage”—for which the threshold would be *lower*—or (b) short-term *transactional* activities, “transfer” and “exchange”—for which the threshold would be *higher*. But the most recent draft includes the same thresholds for each—and the thresholds are far too low to be even remotely effective for protecting innovation. Specifically, the threshold for the *de minimis* exemption is a flat \$5,000. *See* Sec. 103(b)(8), p. 15. Meanwhile, the threshold for the provisional license is a flat \$35,000. *See* Sec. 201(a).

EFF agrees with Coin Center that the current draft's thresholds must—as discussed at the last meeting—be modified. To keep the Act as simple as possible while protecting innovation,¹ EFF believes that the thresholds should be raised as followed: \$15,000 for the *de minimis* exemption and \$100,000 for the provisional license. EFF, however, believes that the consensus discussed at the last meeting, as documented in Coin Center's letter—*i.e.*, that the threshold for the *de minimis* exemption be \$5,000 for long-term activities

¹ As outlined in EFF's previous letters, one of EFF's overarching concerns is that the Act's provisional license scheme is far too complicated and will only make the Act's requirements even more confusing, burdensome, and costly for small businesses and startups.

(storing and administering) and \$15,000 for short-term transactional activities (transferring and exchanging), while the threshold for the provisional license be \$35,000 for long-term activities and \$100,000 for short-term activities—is superior to the thresholds included in the current draft. The consensus thresholds make more sense from a practical perspective than the current draft’s thresholds and will do far more to protect innovation. As noted in our prior letters, EFF has other concerns regarding the provisional licensing scheme’s potential chilling of innovation. But the consensus thresholds will help rectify *at least some* of those concerns.

EFF also agrees with the other edits proposed by Coin Center in its thorough and thoughtful red line attached to its comments, including removal of the phrase “virtual currency credentials” from the Act, removal of “change of location” in the definition of “transfer,” and clarification that the personal use exemption applies to personal uses beyond just “relinquishing” activities. Acceptance of these changes is critical for EFF’s support of any element of the Act.

We thank the Committee for the opportunity to highlight these outstanding concerns. If you have any further questions about these topics, please contact me at (415) 436-9333, ext. 164, or jamie@eff.org.

Sincerely,

/s/ Jamie Williams

Jamie Williams
Staff Attorney