The Risk of Alternative Internet Payments

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Abstract

Alternative Internet Payment systems have been created as an option for consumers to use instead of credit cards, debit cards and checks while conducting electronic commerce on the web. Developed to mimic paper cash systems, alternative payments are identified by a variety of names such as: electronic currencies, cyber payments, Internet dollars, digital currency, etc. The companies that offer the service promote the ability to transfer value (typically through e-mail), anonymously between people and /or businesses through private closed networks. Many of the providers are located outside the United States; those in the US have expanded to allow international transfers. Because the networks are private and do not utilize the traditional federally insured banking systems to move funds, they do not have to comply with government regulatory policies such as the Bank Secrecy Act.

The ability to transfer value anonymously has attracted the attention of government regulators as well as law enforcement agencies. The concern is that the methodology is yet another avenue to move funds for a potentially criminal enterprise. This article will identify the risks and make recommendations to mitigate the exposure to unlawful activity.

Introduction

"Money in the 21st century will surely prove to be as different from the money of the current century as our money is from that of the previous century…Electronically initiated debits and credits will become the dominant payment mode, creating the potential for private money to compete with government –issued currencies." – Jerry L. Jordan, President and CEO, Federal Reserve Bank of Cleveland".[i]

Electronic commerce has created a totally unique infrastructure in the utilization of payment systems through the creation of electronic currencies issued by private companies. The most common application for electronic currency is consumers paying each other or small businesses via electronic mail. Estimates by the TowerGroup predict that person- to- person (P2P) payments will grow to 100 million transactions in 2002-but only 9 million of these will represent true person- to- person consumer volume. The remaining are payments to Internet merchants and on-line auction sites. [ii]

There are different types of e-currency and processing technologies in the marketplace. The following definition has been chosen for this analysis:

"… electronic payment cash is an attempt to construct an electronic payment system modeled after our paper cash system. Paper cash has such features as being portable, recognizable hence readily acceptable (without involvement from the financial network), untraceable (no record of where the money is spent), anonymous (no record of who spent the money) and has the ability to make "change". The designers of electronic cash focused on preserving the features of untraceability and anonymity. Thus, electronic cash is defined to be an electronic payment system that provides…the properties of user anonymity and payment untraceability…" [iii]

Money v. Currency

Currency is the physical representation of money through different forms; it can be government representations or non-governmental private issue. [iv] It is quite common to see the terms *money* and *currency* used interchangeably when discussing cash transactions. However, *currency* will be used for this article because alternative Internet payments do not meet the legal definition of *money* as stated in the Uniform Commercial Code (U.C.C.). The Code defines *money* as a "medium of exchange authorized or adopted by a domestic or foreign government

and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations". [v] The United States dollar is money; the Mexican peso is money, the British pound is money etc.

The Uniform Commercial Code is a code of law that defines negotiable instruments, governs various commercial transactions including the sale of goods, banking transactions…and other matters designed to bring uniformity in these areas to the laws of various states, and that has been adapted, with some modifications in all states as well as the District of Columbia and in the U.S.Virgin Islands. [vi]

Historical Perspective

Electronic cash is not just a new technology; other scientific fields have created theories about how and why people pay for goods and services. The notion of monetary freedom has brought together such diverse scientific disciplines as economists, sociologists, and cryptographers. There are numerous sociological and economical opinions and studies on the topic. There were two priorities for all the disciplines: (1.) find a way to create a safe and secure mechanism to exchange value on the Internet. (2) the concept of monetary freedom without government intervention while participating in a transaction.

The Nobel laureate economist FA Hayek championed this perspective in 1978. He said, " Money does not have to be created legal tender by government: like law, language and morals, it can emerge spontaneously. Such private money has often been preferred to government money, but government has usually suppressed it"[vii]

" For the first time ever, each individual has the power to create a new value standard with an immediate worldwide audience. The opportunity to launch an alternative monetary

system on a grand scale simply has not been available until recently. If all that digital cash permits is the ability to trade and store dollars, francs and other governmental units of account, then we have not come very far. Even the major card associations, such as Visa and MasterCard, are limited to clearing and settling government units of account. For in an age of inflation and government ineptness, the value of what is being transacted and saved can be seriously devalued. Who wants a hard drive full of worthless "cash"? True, this can happen in a privately managed digital cash system, but at least then it is determined by the market and individuals who have choices between multiple providers."[viii]

One of the first proponents and developers of electronic cash was cryptographer, Dr. David Chaum. In keeping with the concept of private currency, his focus was the anonyminity of the transaction rather than protecting consumers from fraudulent activity on their accounts. In fact, his idea of privacy was that there should be no record of transaction activity documented by traditional financial institutions. Chaum was proposing untraceable payments in 1983. He advocated the strongest cryptography possible to keep the payments anonymous to banks and merchants. Philosophically, Chaum felt electronic cash would be synonymous with physical cash rather than electronic payments. He theorized that physical cash is considered anonymous because it reduces the ability to identify a specific purchaser with a transaction. Electronic cash could provide the same invisibility.

Chaum developed one of the first alternative payment systems, DigiCash in the mid 1990's. Currency value of Digicash could be stored in an electronic wallet, a computer hard drive or loaded onto a smart card. The product was not totally anonymous, however, because a consumer had to have a bank account to debit the money and fund the DigiCash account in order to participate in a transaction. Although the bank was involved in all aspect of the

transaction flow between two parties, cryptographic protection would ensure the transaction was anonymous. The process was difficult to manage because the merchant or receiving bank had to store all the customer's cryptographic keys in order to conduct a transaction. Due to the complex cryptographic process that had to be in place for consumes, banks and merchants, Digicash filed for bankruptcy in 1998. A similar program, Cybercash filed for bankruptcy in March of 2001. Verisign recently purchased a portion of their merchant-processing network.

Current Industry

Over the past five years, a variety of private payment networks have been introduced for use on the Internet to facilitate electronic commerce as a replacement for using credit cards and to transfer payments between individuals. Unlike Digicash and Cybercash, there is no need for complex encryption keys in order to pass transaction information. Private companies have created secondary networks outside the traditional financial services infrastructure in which to process their own units of value for customers. They are responsible to settle and clear (e.g. exchange financial data and value) the transaction to ensure payment for the specified party.

Here is a selection of alternative Internet payment products currently in the marketplace:

1. InternetCash is a pre-paid card that is purchased from a real world store and spent online. A temporary anonymous account is set up from the unique card ID.

2. NetCash is a research prototype that was designed to facilitate anonymous electronic payments over an unsecured network.

3. PayCash developed a fully anonymous electronic cash system from Russia.

4. Payme.com is a user-to-user central account system.

5. PayPal allows user- to- user payments, where the payer uses a credit card or checking account to pay money into another user's account.

6. PocketPass is a prepaid account, usable for online payments, user-to-user payments.

7. Internet Dollar is a code based on electronic money. A consumer pre-pays to buy Internet Dollar code and then is used to pay others.

8. Evo Cash – the "electronic verification order of cash" that transfers digital currency.

Most payment services such as PayPal, Internet Dollar and Evo, allow consumers to send money to anyone who has an e-mail account virtually anywhere in the world. Each company designates the participating countries. The process utilizes traditional credit card and Automated Clearing House (ACH) authorization and transfer networks to direct debit or credit a checking account or credit card to fund the private currency accounts. A sample of account opening procedures from an Internet currency company:

1. Potential customers (consumer and business) must register with the service using a credit card or checking account number and e-mail address.

2. The account numbers are verified by either a credit card authorization or a test transaction via the Automated Clearing House (ACH) to electronically debit a customer's checking account. Note: The ACH process sends checking account numbers with the bank's identification code (referred to as the routing and transit number, a code that identifies the

financial institution in the Federal Reserve System) and amount of the debit and/or credit to checking or savings accounts at other banks in the United States.

International customers must use credit cards. The payment service obtains authorization for the credit cards and ACH debit to fund the e-mail account.

3. Approval can take a few hours or a few days depending in the service. Once approved, the account is created and ready to send and/or receive funds.

4. A consumer then can e-mail e-currency to a friend. The payment service debits the sender's account and transmits the payment via an e-mail notification. In order to complete the transaction, the recipient must also be registered with the payment service. The recipient fills out an attached form to receive either a paper check, an ACH credit to a checking account or a credit to the credit card account they have chosen as their link to the service. There is also the option to leave the amount in the individual payment service account for web purchases at participating merchants and future e-mails.

Risks Associated With Alternative Internet Payment Systems

There are a number of risks associated with alternative Internet payment systems. Law enforcement and federal regulators are now paying more attention to two features that form the foundation of these types of products:

1. The anonyminity associated with having an alternative account using fraudulent bank accounts and/ or identity theft.
2. The ability to transfer private currency via e-mail using secondary financial networks without regulatory control.

It is difficult to determine the full scope of transfer activity. There are only industry estimates such as the study referenced in the beginning of this article, which estimate 100 million person-to-person (P2P) transactions in 2002. In the late 1990's, electronic Commerce was considered a new avenue for economic growth and innovation. The philosophy was to allow the industry to create without government intervention.

"On July 1, 1997, President Bill Clinton and Vice President Al Gore issued a visionary policy statement entitled " A Framework for Global Electronic Commerce". Noting that Internet commerce could total tens of billions of dollars by the turn of the century, the President asserted that, " for this potential to be fully realized, governments must adopt a non-regulatory, market-oriented approach to electronic commerce…the President identified electronic payment systems as a key component of a vigorous electronic marketplace…President Clinton also noted that the commercial and technological development of electronic payment systems is changing rapidly, making it hard to develop timely and appropriate policy…he advocated that electronic payment experiments be monitored on a case by case basis…However, Clinton recognized that, in the long term, government action might be necessary to ensure the safety and soundness of the electronic payment systems, to protect consumers, or to respond to important law enforcement objectives…"[ix]

Money Laundering

As payment volumes for alternative Internet payments increase, federal law enforcement and government regulators have initiated studies and published opinions as to the risk of the new programs. Most non-bank entities such as travelers check

companies, money transfer services such as Western Union and currency exchange businesses are required to follow government reporting procedures because they are defined in the statutes; alternative Internet currency is not.

The primary federal reporting law, The Bank Secrecy Act (BSA), imposes standards for financial institutions to monitor and report suspicious currency transactions and activity to deter money laundering and other criminal enterprises. Money laundering is the transfer of the criminal proceeds of crime (e.g. cash or its representation: wires, checks, loans) into or out of accounts through the United States and its financial institutions to entities throughout the world. The BSA requires extensive record keeping so that a paper trail is available to reconstruct individual transactions in the event of an investigation by law enforcement or other regulators. Here are the two primary reports that must be filed under the BSA to the Departments of Treasury and Justice described in brief:

1. Currency Transaction Report (CTR)- must be filed for any transaction involving $10,000 of cash withdrawn or deposited in any type of bank account. This also includes multiple funds transfers under the $10,000 that may be deemed unusual to the same accounts or multiple accounts controlled by the same entity.
2. Suspicious Activity Report (SAR) – requires financial services organizations to report suspicious activities of accounts that may go beyond the CTR requirements.

The Bank Secrecy Act (BSA) also classifies those institutions that must report to the Department of the Treasury:

" (A) Any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in

currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank, or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) Any other person engaged as a business in the transfer of funds.

(ii) Facts and circumstances; Limitation. Whether a person ``engages as a business'' in the activities described in paragraph (uu)(5)(i) of this section is a matter of facts and circumstances. Generally, the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with a bona fide sale of securities or other property), will not cause a person to be money transmitter within the meaning of paragraph (uu)(5)(i) of this section.

(6) United States Postal Service. The United States Postal Service, except with respect to the sale of postage or philatelic products.

(vv) Stored value. Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.[x]

This means:

- Money Orders
- Travelers Checks
- Money Transmission
- Check Cashing
- Currency Exchange
- Currency Dealers
- Stored Value

The alternative Internet currencies avoid this regulatory requirement because the transactions are processed outside of the United States Federal Reserve banking system. They could, however, submit SARs on a voluntary basis. P2P transfers can be executed

without any third party (such as a bank) to identify the sender and receiver by bank account as in the case of traditional bank payment transactions. There is no audit trail identifying which financial institution(s) sent or received the funds. If there is, some private currency companies may only store information for 30 days. The initiator of the payment transfer and payee need only to have access to e-mail to send and receive units of value. The method is referred to as *disinter mediation*. It creates a perfect scenario for the criminal element to move illicit funds around the world. The money is out of the United States without government or financial records to trace the funds. The scenario sets the stage for low dollar; high volume transactions that can quickly move potentially thousands of illegally obtained dollars throughout the world.

> " In recent years…trends suggest that money launderers have moved away from strongly regulated institutions with higher levels of internal controls such as banks, towards less strongly regulated sectors such as the non-bank financial institution sector and non-financial businesses."[xi]

In 2000, the Financial Crimes Enforcement Network (FinCEN), a unit of the Department of the Treasury, published "The Survey of Electronic Cash, Electronic Banking, and Internet Gaming". The survey documents reviews conducted in 1996 and 1997 by various Treasury law enforcement agencies and banking regulators of the potential impact to financial crimes with electronic cash and stored value technologies. Participants included the FDIC, Federal Trade Commission (FTC), Office of the Comptroller of the Currency (OCC), the Secret Service, and Internal Revenue Service. At

that time, all participant agencies agreed to allow the electronic currency to develop without government intervention and support self-regulation in the industry.

The National Money Laundering Strategy of 2000 called on the Departments of Treasury and Justice and the federal financial regulators…" to continue outreach to the private sector to ensure that anti-money laundering safeguards respond to the new technologies.[xii] Federal government entities agreed at the time, that alternative Internet payment systems are still at the early stages of development, which would make it difficult to develop policies and regulations.

Even though the federal government proclaimed a "wait and see" attitude in 2000 - that is attitude is not the same in 2002.

After the events of September 11, the 2002 National Money Laundering Strategy has altered its focus. Alternative payment systems are discussed at length. Although private Internet currencies are not specifically mentioned, there is the recognition that the federal government should expand the types of financial institutions subject to Bank Secrecy Act.

"Terrorist groups have also sought to move their funds outside the traditional and highly regulated and supervised, Western banking network. The underground banking system that terrorists frequently use rely entirely on trust between parties to a transaction, Oftentimes, these transactions do not leave a paper financial trail comparable to the one that would have been left if the transaction had taken place in a traditional financial setting, such as a bank."[xiii]

A priority of The Strategy is to concentrate on informal value systems as a means of moving money. There are numerous references to hawala, a system where transfers of money take place based on communications between networks of dealers within a specific regional ethnic affiliation. However, all non-traditional remittance systems will be studied to understand how they are used to move criminal proceeds.

The possibility of increased regulatory oversight will also be assessed. Until the studies are complete, alternative payment systems will continue to operate without federal regulation and financial industry oversight.

The Current Industry and Regulatory Climate

As one of the few successful and surviving alternative electronic currencies, PayPal has come under regulatory scrutiny as a payment transfer system. The primary question is - are they conducting banking business? If they are, should the company come under the jurisdiction of the Federal Deposit Insurance Corporation (FDIC)? The FDIC is a subsidiary of the Federal Reserve Banking system that insures member banks throughout the United States. Deposits in banks are insured up to $100,000 per account by the United States government in the event of a bank failing or other catastrophic event. If that were the case, PayPal would be federally regulated.

PayPal insists it is not a bank, which is stated in the customer Terms and Conditions in the section "The Legal Relationship between You and PayPal":

"…You acknowledge that PayPal is not a bank and the Service is a payment processing service rather than a banking service, and PayPal is not acting as a trustee, fiduciary or escrow with respect to your funds, but is acting only as an agent and custodian.

You are not required to keep funds in the PayPal system (i.e. carry a balance on your PayPal agency account) in order to use this Service. If you do carry a balance in your PayPal account and do not enroll in the PayPal Money Market Reserve Fund, PayPal will pool your funds together with funds from other users and place those funds in accounts at one or more FDIC-insured banks."[xiv]

The FDIC recently issued and opinion that PayPal does not hold customer funds itself so the payment service hopes this will help convince some state regulators who have put pressure on them to obtain bank charters. The CEO, Peter Thiel continues to insist that PayPal is not or will ever be a bank.

"The FDIC defined PayPal as a "Bank Secondary Systems", where the electronic value is created by a third party and the funds underlying the electronic value are ultimately held by such third party. In such systems, depository institutions act as intermediaries in collecting funds from customers in exchange for electronic value…"[xv]

Even though the Federal government has adopted the "wait and see" attitude, states are taking the initiative to revise current money services/transmission regulations to include alternative Internet payments. Individual states are beginning to pursue PayPal by attempting to regulate their activities. Louisiana's banking regulators shut down Pay Pal's service in February 2002. New York, Arizona, California, Colorado, Idaho, Massachusetts, Maryland, Texas, Virginia, Vermont, and the District of Columbia have notified PayPal that it must register for money transmission licenses. The company has been granted licenses in three states and is applying in twenty-seven others. The biggest

threat for PayPal is that state regulators may determine that it has been operating an illegal banking business, which could result in substantial penalties to the organization.

On June 7, 2002, PayPal announced that the New York Banking Department concluded:

"based on a review of PayPal's business model and the relationship between PayPal and its customers created by the PayPal User Agreement, that PayPal is not currently engaged in illegal banking. The Department also encouraged PayPal to submit an application to obtain a New York money transmitter license as soon as practicable. The company expects to submit an application by the end of the month."[xvi]

For the past two years, PayPal has been able to maintain its viewpoint that it does not operate as a financial institution. However, now that states are taking steps to regulate the operation, PayPal will have to initiate a monitoring, control and record keeping system for reporting transaction activity to the state governments.

What are money transmission or money service businesses? The most well known is Western Union Moneygram. The service wires money to individuals throughout the world. Money order services, traveler's checks, and check cashing establishments are also included in this category. There is no customer depository relationship in money service business operations, just specific functions that transmit US currency, issue certificates of value (money orders, travelers checks) or cash checks.

In addition to being defined in the BSA, MSBs are under the jurisdiction of state law, termed *Money Services Acts*. The oversight plays a key role in the fight against money laundering.

Money Services Acts in each state require the business to be licensed. In order to obtain a license, the companies must submit to an investigation, document proof of financial security, and other background checks. All are subject to onsite inspection by state regulators to audit records such as:

1. A record of each payment instrument or stored value obligation sold
2. Bank statements and bank reconciliation records
3. Records of each payment instrument and stored value obligation paid within the three year period
4. Money laundering reports must be filed with the state attorney general's office that are filed under federal currency reporting and suspicious activity and other federal and state laws pertaining to money laundering.[xvii]

PayPal's operation is so new to the financial services industry that regulating it at the state level as a money transmission service, or under state banking regulations, will place it under the same scrutiny as traditional money transmitters.

The task to incorporate alternative Internet currencies as a legal definition is the responsibility of The National Conference of Commissioners on Uniform State Laws. The group, in existence for over 100 years, has more than 300 lawyers, judges, and law professors appointed by the states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. They draft proposal for uniform laws (such as the Uniform Commercial Code), and work toward the adoption in their state legislatures. The organization was requested by Congress to draft legislation in August 2000 to require money service businesses (MSB) to register with state and territorial regulators and adhere to safety and

soundness requirements. The other objective was to incorporate the various alternative Internet payment systems into the "Uniform Money Services Act". Congress has not acted on the draft proposal; however, it has been adopted by all the states that regulate money service businesses. A portion of the draft:

1. "Online payment companies that hold customer's funds for their own account rather than serve simply as clearing agents should fall within the scope of the Act. By contrast, entities that simply transfer money between parties as clearing agents should clearly fall outside the scope of the safety and soundness statute. The definition of money transmission should be revised to reflect this distinction.
2. The definition of "money" and related definitions should be revised to reflect that certain payment service providers employ a form of value that is not directly redeemable in money, but should be appropriately regulated for safety and soundness.
3. To the extent possible, the revised definitions should not encompass entities that engage in pure barter activities but should encompass an issuer of monetary value that could be redeemed by multiple merchants for goods and services.
4. To the extent that Internet money services choose to engage in money services, they should be subject to regulatory jurisdiction if they meet the threshold for "engaging in business with customers domiciled in a particular state…[xviii]

The proposal included the definition in the statute of: " *Monetary Value*: means a medium of exchange, whether or not redeemable in money. This definition does not include value that is only redeemable by the issuer in the issuer's goods and services or is only redeemable within a limited geographical area."[xix] State regulators have taken the initiative to understand how alternative currencies impact consumers and the potential risks they face without federal government compliance. The Money Services Act is the only statutory control at this time that impacts private money transfer services by mandating record keeping and transaction audit trails to support law enforcement efforts in the fight against money laundering.

It should be noted that there is progress in regulating Alternative Internet currencies in the United States. State regulators are ahead of the Federal government, but as discussed,

that will be changing based on the priorities of the 2002 National Money Laundering Strategy.

International Concerns

There are however, alternative Internet currencies that operate outside the United States that may be difficult to monitor and control. Two private currencies systems have begun operations within the recent year; one is offshore, (possibly Dominica) and the other is in Israel. A short description of each follows, it should be up to the reader to determine the potential risk…

1. www.evocash.com - defined as a dynamic digital currency system, an evo is equal to one US dollar. It can be used for P2P and any other transfers between entities such as merchants that accept evos. Evo is privately owned by an offshore company whose major shareholders include private offshore banks and financial institutions. The customer agreement clearly states that evocash is not a bank and does not follow any banking regulations. The agreement is governed by the laws of the Commonwealth of Dominica, an off shore haven known for suspicious banking activities. The company offers various ways to fund the evo account. As a "customer service" Evo will accept only a *minimum* transfer of $10,000 from an off shore (non-US) wire transfer. [xx]

2. www.internetdollar.com – is a code based electronic money, which means that a value is represented by a code that is stored in the database. Based in Israel, the US is the market focus. The site has a list of 30 new customers. Thirteen are from the United States. The rest are from countries such as Romania, Paraguay,

Turkey, South Africa, Pakistan, Indonesia, the United Kingdom, and New Zealand.[xxi]

If alternative currencies issues by private companies in the United States were considered risky, alternative Internet currencies owned by organizations outside should be worthy of extensive review.

The Future

What have the alternative currencies created? They have created a parallel processing system to the traditional financial payment networks. As P2P payments expand worldwide, the question becomes, can the alternative systems effectively continue to grow outside the huge infrastructure already in place in traditional electronic banking payment system. One area of growth in P2P is online auctions, especially in the United States. As P2P expands to international markets, the emphasis will be on consumers sending money cross border to each other.

Industry experts predict that private payment systems cannot survive independently outside the banking networks. Others say that it is inevitable that companies such as PayPal may not survive if it must operate under the jurisdiction of state regulations such as the Money Services Act. Regulatory controls can be expensive to implement and would be passed on to the consumer.

Traditional banks may also purchase alternative payment companies in order to compete in a new avenue of transaction processing. Competition has also developed from the card associations. For example, MasterCard has approved system specifications and infrastructure changes to support person-to-person money transfers where the recipient receives funds credited to their credit card account. Integrating private payment services

into the mainstream would eliminate the element of anonymous transactions because the debits and credits that post to the consumer's account would have a distinct audit trail in the card authorization system.

Recommendations

Alternative Internet payment systems must be monitored. As volumes increase worldwide, it is inevitable that government regulatory bodies, particularly on the federal level in the United States, will impose standards to alternative payments. It is not sufficient for federal law enforcement to hope for cooperation from the money transfer service to report suspicious activity if it is deemed appropriate by staff since there is no third party (disintermediary) to corroborate the information.

The federal government must revise the current hands-off philosophy of allowing new technology to grow and depend on industry self governance. There can no longer be a "wait and see" attitude to help support unregulated e-commerce growth. Federal banking statutes need to be amended to include alternative Internet payment currencies in the mandatory reporting requirements of the Department of Treasury, Federal Deposit Insurance Corporation (FDIC), and Department of Justice. Specifically:

1. Using the framework of the Money Services Act adopted by the states, the federal government should define what constitutes "monetary value" in addition to United States currency and add it as a category to federal law. Congress needs to act on the draft legislation developed by the National Conference of Commissioners on Uniform State Law. The most logical place would be under the category that also utilizes a private or secondary network - money transmission

service. There would be no need to create a new one. Money services adhere to federal regulatory requirements since the networks move cash around the world.

2. With the legal definition of alternative payment service legislated, the Bank Secrecy Act (BSA) can be revised. For example:
    a. Title 31—Financial Recordkeeping and Reporting of Currency and Foreign Transactions (Bank Secrecy Act). Add to definition section under Money service business, which already includes traveler's checks, etc. This would require reporting to the Department of the Treasury any suspicious movement of funds to countries on a watch list by the United States or unusual patterns of transaction activity between customers.

Adding reporting and record keeping of transactions will take substantial time, effort, and financial investment to implement regulatory constraints. It may create a crisis for the industry to provide the low cost anonymous service that was attractive to consumers. However, in today's environment the emphasis on monitoring any type of financial activity is a priority with the federal government. Alternative Internet payment systems may not be able to stay independent and without regulation for much longer.

Notes

[i] Turk, Geoffrey, Money and Currency in the 21st Century, July 1997. Available: http://www.goldmoney.com/futuremoney.html

[ii] TowerGroup, " While Internet Person-to-Person Payments Volume Remains Low, P2P Providers are Expanding in Unexpected Ways" (May 1, 2002). http://www.towergroup.com/public/presscenter/pressreleases/050102.htm

[iii] Law, Laurie. Sabett, Susan. Solinas, Jerry. (1996, June 18). How to Make a Mint: The Cryptography of Electronic Cash. p.3. *National Security Agency-Office of Information Security Research and Technology, Cryptology Division.* Available: http://jya.com/nsa.mint.html. [2002,February 18].

[iv] Barron's Law Dictionary, Giftis, Stephen H. p.498.
[v] U.C.C. §1-201(24) (1995).
[vi] Ibid.
[vii] Matonis, John. (1995, April) *Digital Cash and Monetary Freedom*, F.A. Hayek, Denationalization of Money – the Argument Refined. Institute of Economic Affairs.1978, [Online]. Available: http://inet.nttam.com. [September 2001].
[viii] Ibid .16 page 2.
[ix] Macintosh, Kerry Lynn. (Summer 1998). How to Encourage Global Electronic Commerce: The Case for Private Currencies on the Internet. Harvard Journal of Law and Technology. 11 Harv.J.Law & Tech 733. Available: http://www.lexis.com. [August 31, 2001].
[x] Title 31 ,,,,,,,,,
[xi] Financial Action Task Force (June 1998) [online]. www. FATF/ treas/gov.htm. [November 15, 2001].
[xii] US Department of the Treasury, Financial Crimes Enforcement Network, 2000. A Survey of Electronic Cash, Electronic Banking, and Internet Gaming. p.9 Available: http://ustreas.gov/********
[xiii] 2002 National Money Laundering Strategy(July 2002). p.3
[xiv] PayPal Terms and Conditions, p.2 . (Www.paypal.com)
[xv] FDIC: laws, Regulations, Related Acts – General Counsel's Opinions. General Counsel's Opinion No.8-Stored Value Cards. (2002) Available: http://www.fdic.gov/regulations/laws/rules/5500-500.html. [February 16, 2002].
[xvi] PayPal-Investor Relations. "State of New York Finds PayPal Is Not Engaged in Banking". (August 15, 2002). http://www.paypal.com
[xvii] Uniform Money Services Act. (August 2000). National Conference of Commissioners on Uniform State Laws. Available: http://www.law.upenn.edu/bll/ule/moneyserv/ms00ps.htm. [February 4,2002].
[xviii] Ibid, 32.
[xix] Ibid 32.
[xx] http://www.evocash.com (August 1, 2002).
[xxi] http://internetdollar.com (August 1, 2002).

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