



**The Journal of Robotics,
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Blockchain and Trademark Law: So Perfect Together?

Michael DeBlis*

We are still years away from blockchain software becoming a primary part of our lives, let alone in the law. However, it is interesting to consider how advances in technology would impact how we address legal issues. This article considers how the benefits of blockchain can be applied to trademark law.

We all have heard the term “blockchain” if we pay any kind of attention to the financial news. We have heard it in the context of cryptocurrencies like Bitcoin, the volatile currency that exploded in value a few years ago and made internet geeks into millionaires. What would the experience of using cryptocurrency tell us about the future of trademark and copyright law?

Comprehending Blockchain

First, let’s understand what a blockchain system is and what it does. Blockchain is a software program that powers cryptocurrencies, such as Bitcoin. It stores encrypted information across a network of interconnected computers. The system is decentralized and distributed in a way where everyone can use it, observe it, and monitor it. No one person or body controls a blockchain. The encryption math ensures that the information stored on a “block” cannot be altered or destroyed. The “chain” in the blockchain verifies each bit of information in the block (with the code for the encryption). In the Bitcoin example, if you want to buy something, you will slide backward down a chain to find the block containing your “coins.” Then the blockchain will verify that you have enough, that the transaction is completed, and that there is an encrypted record of your purchase.¹

Cheerleaders for cryptocurrency find several positives from the technology:

- Security;
- Broad access;

- Low operation costs;
- Ease of settling transactions and disputes; and
- Decentralization.

Yet, how can these benefits be applied to trademark law?

Security

The information stored on the blockchain is encrypted and difficult (impossible, if you ask blockchain zealots) to forge. If you have a product with a UPC code or other unique identifiers, it should be easy—theoretically—to prove what is real and what is fake. There would exist some method of connecting the unique identifier with the information stored on the blockchain. Your trademark would then be safe from counterfeiters trying to sell copies, because anyone could verify it.

The technology could possibly apply to business-to-business competition. Say you have a part of a new cellular phone that will revolutionize the industry only to find that a competitor comes out with a product with nearly the same function. It may be possible to imbed a unique identifier somewhere in the product that proves its origins.

You may not have to go *Mission: Impossible* high-tech to achieve the same result by using the “Senior User” standard currently employed in the law. Trademark rights go to the person who can prove they were the first to use a protectable item or action in commerce. You can go to market and note the first date of use and the circumstances of that first use on the blockchain. Anyone with access can easily determine the first use.

Broad Access

The information on the blockchain is easily accessible and widely distributed. It is the antithesis of the international system of trademark registries where each country has their own repository and their own rules, not to mention the trademark protections brought about by treaties between multinational organizations and trade blocks.

The blockchain could provide a simpler way to protect your trademark by providing a decentralized, yet easily accessible

trademark registry. The ease of access to information on the blockchain would theoretically streamline the process. Registering a trademark and disputing claims, even internationally, would be easier, determined by a few clicks. You would not need to deal with the disparities between laws and regulations for different entities.

Low Operation Costs

With a decentralized network of information regarding trademarks, you would significantly reduce working hours to protect and maintain trademarks on intellectual property (“IP”). It would also reduce costs for governmental organizations responsible for maintaining registries and adjudicating disputes. Just as Bitcoin promises to eliminate the need for a central bank, blockchains for trademarks promises to eliminate the need for such a massive U.S. Patent and Trademark Office.

Ease of Settling Transactions and Disputes

One interesting idea regarding the use of blockchains comes from licensing and is akin to “in-game” purchases in video games. You may license a product or likeness for use in a mobile game. Normally, you would work out some deal where you are paid a certain fee to use your likeness for the game. With the blockchain monitoring the game, you would get paid automatically each time your likeness appears. You would not have to worry about whether you would not get paid fairly because each instance would be recorded on the blockchain as an encrypted, verified transaction.

Former UCLA basketball player Ed O’Bannon sued EA Sports² (and the NCAA), claiming he was not compensated for the use of his likeness in one of their video games. O’Bannon settled with EA Sports for a flat fee. Perhaps with blockchain software, he and other former college hoopsters could have earned more.

Settling a dispute also would be simpler. Much like the Senior User scenario described earlier, a blockchain could store any information related to the use of your IP, likeness, or trademark. Disagreements over first use, forgeries, or issues regarding similarity or nominative use can be easily settled by observing information held in the blockchain. Could these matters possibly be settled without the need for legal counsel?

The Practical Considerations of the Future of Blockchain and Trademark Law

Not so fast. While many would like to eliminate attorneys from the trademark process, even these technological advances may not end the need for lawyers to be involved in trademark matters.

Blockchains do not allow for the vagaries of law, it only stores and releases information. That information must be interpreted. We can observe the same facts and come to different conclusions. One may still need to make an argument in court to resolve issues.

The various countries and economic organizations may wish to retain their historical view of trademark law. They may find it simpler to continue to operate as they have in the past—and make the same profits from regulations. Attorneys who understand and can manage trademark disputes between entities in different countries may continue to be necessary for companies that deal in international commerce.

In the end, the market may be skeptical of blockchain, especially if cryptocurrencies prove to be less than impressive. Not only would industries have to be convinced, so would governmental entities and elected officials. You would have to convince people who may not have the best grasp of emerging technologies to adapt an emerging technology that seems mysterious and does not have the best reputation (the scary dark web³).

Inevitably, a governmental entity would step in to make rules regarding how the blockchain could be used to manage trademark rights. A trademark attorney would continue to be an integral player in protecting rights and handling disputes, as there would be rules to interpret and a process to follow.

We are still years away from blockchain software becoming a primary part of our lives, let alone the law. However, it is interesting to consider how advances in technology would impact how we address legal issues.

Notes

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1. https://www.youtube.com/watch?v=SSo_EIwHSd4.

2. <https://www.si.com/college-basketball/2016/03/15/ed-obannon-trial-ea-sports-settlement-average-1200>.
3. <https://www.thebalance.com/what-is-a-dark-market-391289>.