

BLOCKCHAIN: THE FUTURE LEGAL IMPLICATIONS OF ITS TECHNOLOGY IN THE MUSIC & ENTERTAINMENT INDUSTRY.

Rohan Kumar

Legal & Business Affairs Essay

Student Code – 2013881

Lecturer – Ian Penman

Blockchain Technology

TABLE OF CONTENTS

BLOCKCHAIN: The future legal implications of its technology in the Music & Entertainment Industry.....	1
Introduction	3
Definition	3
Underlying Benefits	4
Commercial Uses	5
Smart Contracts.....	5
Asset Traceability	6
Payments/Royalties and Licensing	6
Digital Currencies	7
Legal Implications	7
Jurisdiction	7
Post Brexit/article 13	8
Intellectual Property	8
Data privacy.....	9
The enforceability of smart contracts	9
Summary	10
References	11

INTRODUCTION

In the past 20 years the Music Industry has undergone several vast changes. As a consequence of digital music, the streaming of musical assets and of course piracy, the entire Recording Industry has had to re-shift their model to suit an evolving technological landscape (Sciaky, 2019). While these phenomena seem like disruptors, the shift in focus has allowed for the vast consumption of Music and other Creative Content across many platforms, including mobile phones. Approximately 90% of households in the UK now own a mobile smartphone (Statista, 2019) and according to GSMA real-time intelligence data, there are currently 5.24 Billion people worldwide that connect to a mobile smartphone (BankMyCell, 2020). This explosion of content leads to inevitable accounting and auditing errors with so many digital assets spread across multiple platforms and devices. The management, traceability and accountability of these digital assets has never been more important than now.

One disrupter has the potential to revolutionise the future of the Music & Entertainment Industry. Since its introduction in 2008, Blockchain Technology has slowly been seeping its way into the public lexicon, and while lauded by experts and scholars alike, little has been done to implement the technology into the Entertainment Industry, especially by the main competitors in the market (Sciaky, 2019). Most people will have heard of Blockchain through Bitcoin and its association to digital cryptocurrencies, but as this paper will show, this is just one of its many uses.

This research starts by defining the concept of Blockchain Technology and the main underlying benefits it holds. To bind the analysis, this paper will also show the Commercial Uses and current Legal Implications of Blockchain Technology on the wider Music & Entertainment Industries.

DEFINITION

Blockchain is a system of recording information in a way that makes it difficult or impossible to change, hack, or cheat the system (Euromoney Institutional Investor PLC, 2020).

Blockchain in its essence is a system that keeps a record of all transactions that is duplicated and distributed across many devices on peer-to-peer networks. Every block of data in the chain contains

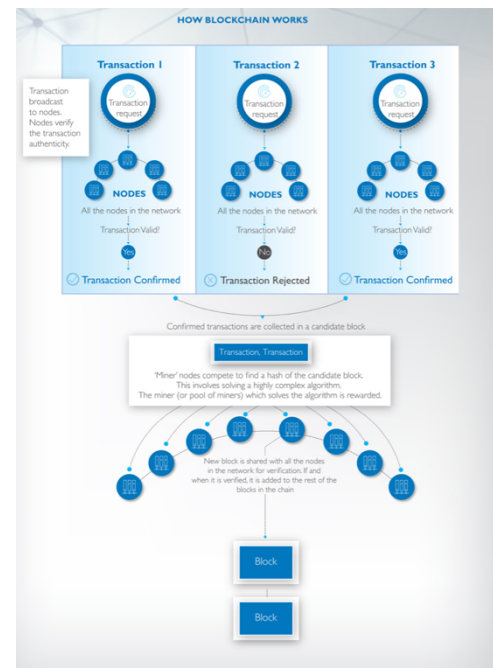
a transaction, and with every new entry a record of that transaction is added to every participant's ledger (Investopedia, 2020). The decentralised database managed by multiple participants is known as Distributed Ledger Technology (DLT) and this will be further explored in the underlying benefits shown below.

UNDERLYING BENEFITS

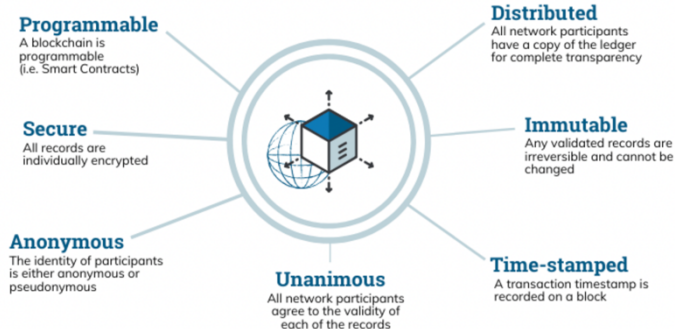
Blockchain Technology, and its rapid acceptance in the Music Industry will allow for many tangible benefits for Labels, Publishers, Artists & Content Creators alike.

Distributed Ledger Technology (DLT) is **Decentralized** with the added benefit that Blockchains may either be privately or publicly distributed. This will eliminate the need for middle men in transactions and benefit businesses through greater transparency, enhanced security, and easier traceability. The **Immutable** nature of DLT mean once a transaction is recorded into the Blockchain, it can't be deleted or modified. (Euromoney, 2020)

By simply looking at a Blockchain ledger, any user has the ability to verify and check the data in that Blockchain is correct or whether it may have been tampered with. A blockchain therefore offers transparency and eliminates or reduces the need for intermediaries and physical records where it is used. (Thomson Reuters, 2020).



The Properties of Distributed Ledger Technology (DLT)

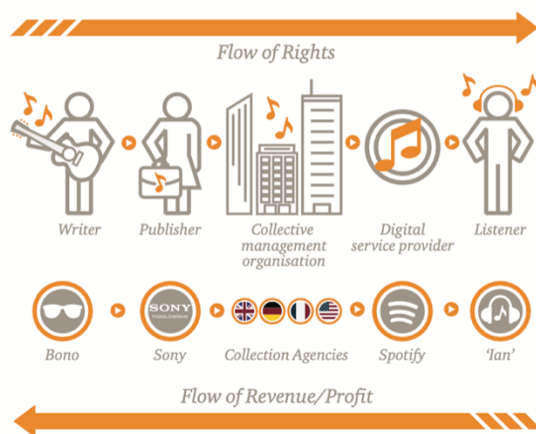


Euromoney Learning 2020

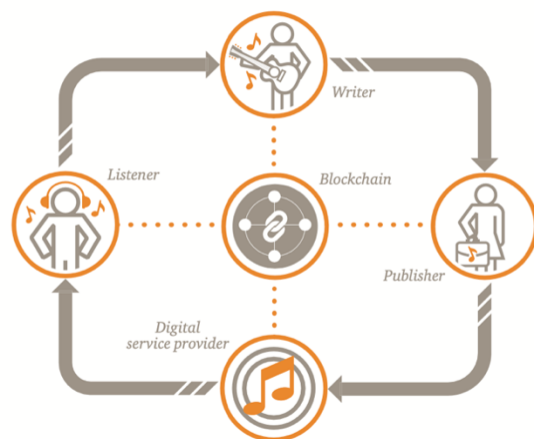
COMMERCIAL USES

Blockchain Technology is already finding solutions to the inherent difficulties faced when dealing with auditing IP in the Music Industry. In Europe alone, there are currently 28 collection societies collecting royalties for public performance rights and mechanical recordings in 28 different markets. This inevitably allows for inaccurate reporting or slower payment of royalties, which in turn leads to a disconnect between the artist(s), the owners of the music content and the end consumer itself (Blockchain: Recording the music industry, 2020). By exploiting the commercial uses shown in this section, all stakeholders in the process of creating art have the ability to build trust & accountability.

Without Blockchain



With Blockchain



SMART CONTRACTS

Smart Contracts are self-executing computer programs or a transactional protocol that relate to the terms of a contract or agreement (Fries; P. Paal, 2019). In the case of Royalty Distribution, future Smart Contracts can include the percentage splits between various rights holders, and immediately pay and distribute those funds (IEEE Innovation at Work, 2020). This ability to directly and transparently add revenue to struggling independent artists will have a major impact, not just financially but creatively too.

ASSET TRACEABILITY

Fighting forgery and IP Theft in the Entertainment and Music Industry will be made much easier in the future, thanks to asset tracking using Blockchain. Companies like Everledger.IO are currently helping to stop counterfeit fine wine, which continues to be a growing challenge in the Asian markets. As much as half of all French wine sold in China is believed to be fake (Kuo, 2020).

Worldwide, nearly a third of all alcoholic drinks are mislabelled, counterfeit or fake, according to the International Center for Alcohol Policies (ICAP, 2020).

Everledger helps clients to create a unique digital identity for every bottle, using Blockchain, near-field communication (NFC) and (The Internet of Things, IoT) Big Data (Everledger, 2020). They work closely with customers all along the supply chain with the ultimate goal of building ever more authenticity in the global industry. Until now, the industry could only identify a counterfeit rather than certify an authentic bottle. With Blockchain-enabled certification, growers and brands can take back control of their craft.

PAYMENTS/ROYALTIES AND LICENSING

Blockchain Technology utilized in the payment and licensing of royalties is in its infancy. However, A recent joint partnership between Blockchain start-up EY & Microsoft announced a solution for managing content rights and royalties (Morris, 2020). While only initially working with Microsofts' Xbox, the system has the potential to work with most royalties, including music and movie assets.

In the past, Games Companies that publish games on Xbox Live enter into licensing agreements with Microsoft. Microsoft would then provide sales reports to publishers, but that process took upwards of 45 days. By writing the transactions to a Blockchain transparency is improved, and publishers can access data almost in real-time. Furthermore, there's a reduction in the time taken to reconcile royalties between Microsoft and the publisher (Morris, 2020).

The Head of Blockchain Innovation at EY, Paul Brody recently said they're "able to take out two-thirds of the cost of managing a rights and royalty system. Furthermore, the system shortens the time taken to inform publishers about royalty earnings by up to 99% (EY, 2020)."

DIGITAL CURRENCIES

Cryptocurrencies are well spoken about and known when it comes to exploiting Blockchain technology. The most popular, Bitcoin introduced itself as a viable decentralised, P2P digital currency in 2008 and the market has shown more and more growing confidence in its intrinsic value over the years. As recently as this month, JPMorgan added weight to this fact with a report showing Institutional Investors flocking to bitcoin, putting pressure and dropping the price of Gold (Grafteo, 2020). Because most transactions of crypto are generally made between two parties without any middlemen the transactions are usually instantaneous and low-cost. They make international transfer and forex conversion much easier and simpler too (Piper, 2020).

LEGAL IMPLICATIONS

The application of Smart Contracts & other Blockchain Infrastructure in the Music Industry will have a wide range of Legal Implications. And while the UK Government and Regulators have together taken a flexible yet balanced approach to the use of Blockchain Technology (Clarke, 2018), both have stressed the need for caution, emphasising the need to manage the range of risks observed in the crypto asset market, and to ensure that UK financial markets remain safe and transparent (Piper, 2020).

JURISDICTION

Blockchain has the ability to cross jurisdictional boundaries as the nodes on a Blockchain can be located anywhere in the world. (Piper, 2020) For this reason, many complex jurisdictional issues will require consideration in relation to contractual relationships.

This issue is now compounded with the implications of Brexit and the Withdrawal from the EU and its relevant regulatory standards. In an example given by DLA Piper in a 2020 report, they warn that transactions made on Blockchain networks could potentially fall under the jurisdiction(s) of the location of each and every node in the network. This could result in the Blockchain needing to be compliant with an unwieldy number of legal and regulatory regimes (Piper, 2020).

Brexit is another huge shadow over the macro environment, for all British multinational companies that want to trade in multiple jurisdictions and territories after leaving the EU. Freedom of movement of People and Freedom of movement of Goods may well be affected in the transition period and this is bound to have tangible consequences for the entire British Music Industry (UK Music, 2019).

Copyright is also a fundamental concern and of huge importance to all stakeholders in the Music Industry. It not only enables creators to obtain financial reward for their content, but it also works to incentivize businesses to invest in more creative content. (Brexit: UK Music's Key Concerns - UK Music, 2020) As it currently stands, UK domestic legislation is based on the EU Copyright directives and framework. While there was uncertainty surrounding the legal framework and to address the issues surrounding it, the UK Government introduced a new Amendment to an Act titled "Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019 (Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019) under the powers of the European Union (Withdrawal) Act 2018." (Changes to copyright law from 1 January 2021, 2020) The aim of These regulations is to remove or correct references to the EU, EEA, or member states in UK copyright legislation to preserve the effect of UK law where possible.

The UK Government have made a point to state that "most UK Copyright work including books, films and music, will still be protected in the EU and the UK because of the UK's participation in the international treaties on copyright" (GOV.UK, 2020).

For the same reason, EU copyright works will continue to be protected in the UK. This applies to works made before and after 1 January 2021. (GOV.UK, 2020).

INTELLECTUAL PROPERTY

There is inevitably value in the Blockchain, and ownership of Intellectual Property within any database will most likely require serious consideration into the future (Piper, 2020). In terms of legal disputes, having a digital ledger which automatically logs when a digital asset is created, licensed or even assigned will add value to IP Rights holders. The ability to automate transactions and use smart

contract technology in combination with an artist's Intellectual Property will mean immeasurable cost saving benefits and will allow Rights Holders to fully exploit digital assets.

DATA PRIVACY

One of Blockchains' Unique Selling Point is its' immutability; the ability for data that's stored never to be altered or deleted. While this has huge upsides for auditing and tracing payments and royalties in the future, this will have clear implications for Data Privacy (Piper, 2020) in particular "where the relevant data is personal data or metadata sufficient to reveal someone's personal details." If UK companies choose to continue trade in Europe post-Brexit, care should be taken in recently enacted EU "right to be forgotten" law (Bailey, 2020), officially known as General Data Protection Regulation (GDPR). One solution George Bailey, CRO of Digital Supply Chain Institute (DSCI) has suggested is to keep it private, don't get personal & set up the consent, rules & permissions up front (Bailey, 2020). While most current Blockchain networks are open, private closed networks with permissions is a good starting place, on the road towards compliance with the GDPR. Encryption to handle personal information on a closed network, and making sure people agree to your terms and consent to their data being used will also go a long way in complying with EU's GDPR.

THE ENFORCEABILITY OF SMART CONTRACTS

As Blockchain Technology makes use of smart contracts technology into the future, less third party and intermediaries will be needed to confirm and audit these digital transactions (Piper, 2020). While this has the ability to lower costs and raise the efficiency of many systems, it also raises significant legal questions regarding Regulation and enforceability of smart contracts (Bowles, 2020). Some legal certainty around this issue was forthcoming thanks to the UK Jurisdiction Taskforce (UKJT), a panel that was established by the UK Government, the Law Society and the English Judiciary. After public consultations, their findings were published in a Report (Legal statement on cryptoassets and smart contracts, 2020). A key finding they came to was that smart contracts are capable of satisfying the requirements of English Law contract forming principles (Bowles, 2020) and as such, smart contracts can be enforced by courts. This affirmation not only brings legal certainty but will aid in improving market confidence for future investors or developers of Blockchain Technology that could directly benefit the Music Industry.

SUMMARY

In summary, Blockchain Technology has found a way to mature and develop from its early days as a haven for illegal purchases on the dark web (Bradbury, 2020). While there is a long way to go before it is fully implemented across The Entertainment & Music Industry, many companies are slowly adopting, developing and innovating exciting Distributed Ledger Technology that will shape the industry and the major players in it for years to come. As Blockchain Technology is cleaning up its image and getting praise from Government Bodies (GOV.UK, 2020), it will have time to build more trust and confidence before the technology's inevitable saturation into the marketplace. The uncertainty of the near future with Brexit and Covid-19 implications will resonate for a period of time, but innovative companies that utilise technologies like Blockchain are the future of the industry.

Blockchains' simple ability to provide increased transparency and traceability for all the content creators, producer, artists and entertainers in the industry will inspire a renaissance in creativity and will let these artists spend more time focusing on the simple. Creating.

REFERENCES

(Music in the Air: The Show Must Go On, 2020)

Goldman Sachs. 2020. *Music In The Air: The Show Must Go On*. [online] Available at: <<https://www.goldmansachs.com/insights/pages/infographics/music-in-the-air-2020/>> [Accessed 10 December 2020].

(Music By Numbers 2020 - UK Music, 2020)

Ukmusic.org. 2020. *Music By Numbers 2020 - UK Music*. [online] Available at: <<https://www.ukmusic.org/research/music-by-numbers-2020>> [Accessed 10 December 2020].

Statista. 2020. *UK: Mobile Phone Ownership 1996-2018 | Statista*. [online] Available at:

<<https://www.statista.com/statistics/289167/mobile-phone-penetration-in-the-uk/#:~:text=Currently%2C%20approximately%2095%20percent%20of,reported%20owning%20a%20mobile%20telephone.>> [Accessed 10 December 2020].

(Sciaky, 2019)

Sciaky, D., 2019. *The Digital Transformation Of The Music Industry Through Applications Of Blockchain Technology*. [online] Diva-portal.org. Available at: <<https://www.diva-portal.org/smash/get/diva2:1375894/FULLTEXT01.pdf>> [Accessed 10 December 2020].

https://www.digikey.co.uk/en/articles/build-security-into-blockchain-applications-part-1?utm_adgroup=&utm_source=google&utm_medium=cpc&utm_campaign=Dynamic%20Search_EN_Product&utm_term=&productid=&gclid=Cj0KCQiAwf39BRCCARIsALXWETyLLMlctDyoaqlzzbU8XrBUFA3NY7pmyCBikw3oY7dM3jEYEXjjedAaAiJdEALw_wcB

(Glossary - Blockchain, 2020)

Uk.practicallaw.thomsonreuters.com. 2020. *Glossary - Blockchain*. [online] Available at: <[https://uk.practicallaw.thomsonreuters.com/w-005-9053?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-005-9053?transitionType=Default&contextData=(sc.Default)&firstPage=true)> [Accessed 10 December 2020].

Pwc.co.uk. 2020. *Blockchain: Recording The Music Industry*. [online] Available at:

<<https://www.pwc.co.uk/entertainment-media/publications/blockchain-recording-music-industry.pdf>> [Accessed 10 December 2020].

Lee, Sherman. (25 Apr 2018). [*Embracing Blockchain Could Completely Change The Way Artists Sell Music And Interact With Fans*](#). Forbes.

Dredge, Stuart. (24 Jan 2018). [*What Could Blockchain Do for Music?*](#) Medium.

Fries, Martin; P. Paal, Boris (2019). *Smart Contracts* (in German). Mohr Siebeck. [ISBN 978-3-16-156911-1](#). [JSTOR j.ctvn96h9r](#).

(Morris, 2020)

Morris, N., 2020. *EY And Microsoft Announce Royalties Blockchain - Ledger Insights - Enterprise Blockchain*. [online] Ledger Insights - enterprise blockchain. Available at: <<https://www.ledgerinsights.com/ey-microsoft-royalties-blockchain/>> [Accessed 10 December 2020].

(Piper, 2020)

Piper, D., 2020. *BLOCKCHAIN: BACKGROUND, CHALLENGES AND LEGAL ISSUES*. [online] Dlapiper.com. Available at: <https://www.dlapiper.com/~media/files/insights/publications/2020/12/excellence_client-paper_blockchain.pdf?la=it&hash=8C004CAF4F59D7CAD65A018ED856E443E5876911> [Accessed 10 December 2020].

(Grafteo, 2020)

Grafteo, E., 2020. *Bitcoin's Intrinsic Value Will Rise In The Coming Months While Gold May Struggle As Institutional Investors Flock To Crypto, Jpmorgan Says*. [online] markets.businessinsider.com. Available at: <<https://markets.businessinsider.com/currencies/news/bitcoin-price-gold-may-struggle-institutions-flock-to-bitcoin-jpmorgan-2020-12-1029879043>> [Accessed 11 December 2020].

(Bailey, 2020)

Bailey, G., 2020. *Blockchain And EU Privacy Laws: A Three-Step Guide To Compliance*. [online] Forbes. Available at: <<https://www.forbes.com/sites/georgebailey1/2019/02/22/blockchain-and-eu-privacy-laws-a-three-step-guide-to-compliance/?sh=6d59b59229c0>> [Accessed 11 December 2020].

(Investopedia, 2020)

Investopedia, 2020. *Blockchain Explained*. [online] Investopedia. Available at: <<https://www.investopedia.com/terms/b/blockchain.asp>> [Accessed 11 December 2020].

Bowles, C., 2020. *Smart Contracts – Legally Enforceable? - EM Law*. [online] EM Law. Available at: <<https://www.emlaw.co.uk/software-technology/smart-contracts-legally-enforceable/#:~:text=A%20smart%20contract%20is%20not%20per%20se%20a%20legal%20contract.&text=Accordingly%2C%20in%20a%20practical%20sense,wider%20and%20more%20traditional%20framework.>> [Accessed 11 December 2020].

(Legal statement on cryptoassets and smart contracts, 2020)

35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com. 2020. *Legal Statement On Cryptoassets And Smart Contracts*. [online] Available at: <https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/6.6056_JO_Cryptocurrencies_Statement_FINAL_WEB_111119-1.pdf> [Accessed 11 December 2020].

(Bradbury, 2020)

Bradbury, D., 2020. *Silk Road And Beyond: Bitcoin's Complex Relationship With The Dark Web*. [online] The Balance. Available at: <<https://www.thebalance.com/what-is-a-dark-market-391289>> [Accessed 11 December 2020].

<https://www.euromoney.com/learning/blockchain-explained/what-is-blockchain>

https://opus.lib.uts.edu.au/bitstream/10453/127958/1/Ryan_TIMReview_October2017.pdf

<https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/UK-takes-significant-step-towards-legal-certainty-for-blockchain-technology-and-cryptocurrencies.pdf>

<https://www.weusecoins.com/assets/pdf/library/Bloomberg%20Report%20Lee%20Long%20-%20Blockchain%20Technology%20BNA%20Banking.pdf>

<https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/united-kingdom>

<https://www.ifc.org/wps/wcm/connect/da7da0dd-2068-4728-b846-7cffcd1fd24a/EMCompass-Note-63-Blockchain-and-Legal-Issues-in-Emerging-Markets.pdf?MOD=AJPERES&CVID=mxocw9F>

<https://www.lawsociety.org.uk/en/topics/research/blockchain-legal-and-regulatory-guidance-report>