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How Viable is the Use of Blockchain Technology in the Music Industry?

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Intellectual Property is an intangible asset which can include copyrights, designs, patents and trademarks (Oxford University Press, 2015) and provide protection for their creators against theft and plagiarism. Designs and patents cover works of architecture and invention and are therefore less applicable in the music industry, but I have mentioned them for completeness and will continue to discuss copyright and trade marks in more detail.

Trade marks help to protect names, logos, slogans and even sounds. According to the UK government, in order to successfully register a trade mark, it must be unique, and can include words, sounds, logos and colours or any combination of these (GOV.UK, 2017). Once you have registered your trade mark, it gives you the right to use the registered name within certain classifications and prevent others from using your name or designs.

Trade marks are quite pertinent in the music industry, particularly with band names, and there have been a number of cases in the past between parties using the same or similar names, and one party suing the other for 'passing off'. Brands and businesses can spend years accruing what is known in legal terms as 'goodwill'. This is the reputation and perception of the brand and can be an indication of quality and expertise. Passing off is a way of conducting business in such a way as to mislead a consumer into believing that goods or services are that of another business (Oxford University Press, 2015). 'Passing off' as another brand is considered to be using that brand's goodwill in order to profit from it. For example, if I decided that I wanted to start a brand of cola, and then choose to colour my packaging red and use a white logo, 'Coca-Cola' might argue that I am using the goodwill of their long-established brand to confuse potential consumers into believing they are being sold a genuine 'Coca-Cola' product.

Some well-known industry trademark/passing off cases are detailed in 'Music: The Business' by Ann Harrison. The first is known as the Liberty X case (Keith Floyd Sutherland v. V2 Music and Others [2002]). Sutherland, the claimant, was a member of a 1980's funk band called 'Liberty'. He sued V2 music (a record label who had signed a pop group also known as 'Liberty', who were working on their first album) for passing off. The original band had some limited success and claimed they had residual goodwill which should be protected, whereas the new Liberty argued that even if there was, the different spheres of music in which they operated were diverse enough not to be relevant to one another. The judge ruled in favour of the original 'Liberty' and the new group changed their name to 'Liberty X'. However, in contrast, when 'Blue', a Scottish rock group whose last hit was in the late 70s, tried to sue Virgin/EMI and the boyband 'Blue' for damages for passing off, the judge said, "Are you seriously saying that fans of one group would mistake one for the other?". The parties chose to settle out of court after learning the judge's views so early on during the case and both parties were allowed to continue to use the name 'Blue' (Harrison, 2017, pp. 7-8).

Copyright is "The exclusive right to reproduce or authorize others to reproduce artistic, dramatic, literary, or musical works (Oxford University Press, 2015)". In the music industry, this can cover a wide range of uses such as television, film, advertisements, public performance, adaptations, and to make available for rent or sale, to name just a few.

In the music industry, the holder of the copyright is usually the person or entity who paid for a recording to be made. So, in the case of a signed artist, the record label owns the recording. Or, for a completely independent artist who made their album in their bedroom, the artist retains these rights. However, if this independent artist was then signed to a label, the label may try and acquire the copyrights for the artist's existing catalogue as part of the deal (Harrison, 2017).

A distinction should be made between the licensing of rights and the assignment of rights. To assign a right, the 'Assignor' (the holder of the rights) relinquishes the ownership of the rights to an 'Assignee' (the person to whom ownership is transferred), for example, if the rights have been purchased for a cash sum. The licensing of a piece of music is how copyright owners are paid for the use of the work. The 'licensor', is the person or entity who owns the rights, and the 'licensee' is the person or entity who is permitted to use the work, based on a specified set of conditions, usually in exchange for some form of remuneration, however the ownership of the rights themselves are not transferred (Harrison, 2017).

Anyone can try and license a copyrighted work for a range of uses. Unless it is for personal use, one would generally need to obtain some form of license to use music so that its owners are paid fairly for their work. For example, if you want to use a pop song in a television advert you would be required to obtain permission from the publisher, who represents the rights of songwriters and composers, and also contact the owner of the specific recording you want to use. The cost of the license will depend on the length of the extract used, whether it is a 'feature' or just background music, among other conditions. The rights holders may also refuse permission outright if they don't want to give it, for example, if they don't want to be associated with a particular brand. However, obtaining the necessary permissions can begin to prove difficult, especially when one does not know who owns the copyright in the first place (PRS for Music, 2017).

The Performing Rights Society (PRS) and Phonographic Performance Limited (PPL) are collection societies in the UK that sell licenses to businesses and other organisations to allow them to legally play copyrighted music to the public. The money, known as royalties, collected by these societies is then distributed among those who are registered with the societies as having a royalty stake in a piece of music. PRS pays royalties to songwriters, composers and music publishers, whereas PPL pays royalties to the performers and owners of specific recordings. In most cases you must obtain a license from both PRS and PPL in order to legally play recorded music in a public place (PPL, 2017).

Mechanical-Copyright Protection Society (MCPS), a part of PRS for Music, collects royalties when music is used in a physical product, such as a CD or download (even though technically a download isn't a physical 'thing') (Wikipedia contributors, 2017).

Digital Rights Management in the music industry at the moment is as complicated as ever. Each composition and recording needs to be accompanied by information detailing who owns the song, writers and performers among other relevant information, which is collectively known as 'metadata'. Ascertaining the most basic information about a song can be monumentally difficult. The current framework slows down payments because of the large number of people that lay claim to a piece of work and trying to work out who to pay and what to pay can cause issues (Revelator, 2015).

In recent years there has been a call for a change in the way rights and payments within the music industry are managed. Collection societies have been working the same way for nearly one-hundred years and now artists, songwriters, labels and publishers are looking to Blockchain technology for a solution.

Companies such as Revelator promise “to efficiently track music rights and distribute royalties to rights owners (Ogundeji, 2016),” and are using Blockchain technology to do so. Cryptocurrencies (such as Bitcoin and Ethereum) are currencies which exist digitally, without any physical, real world coins or notes (Augur, 2015). Blockchain is a technology which holds a ledger of all these cryptocurrency transactions. This ledger is distributed to all stakeholders and is cryptographically secure from alterations (Revelator, 2015). These companies believe that Blockchain is the answer to the rights management issues facing the industry. Currently there is no standardised format for the management of music metadata, and each collection society has its own way of storing this information, with no obligation to share that information with each other or anyone else. Embracing technology would make the information freely available to view by everyone, and there would be no contradiction of who is to be paid. Blockchain supports what is known as a ‘smart contract’ which is enforced by a computer program. This contract can have the royalty splits encoded within it, and is enforced at the time of payment ensuring that the percentage owed to each party is made simultaneously in micropayments. There is also added benefit of being able to track royalties as the transaction information is recorded on a single ledger and paid immediately. Assigning rights to others will become a much simpler task as a change to the smart contract is all that would be necessary (Revelator, 2015).

In the near future, Blockchain music platforms such as Ujo want to change the way music is licensed so that money generated is paid directly to rights holders, and so that artists can have better control over how they are issued. They hope that people will be able to obtain licenses to play music on radio and use stems (the constituent parts of a track, usually grouped by instrument) in remixes without having to knock on the doors of big record labels to obtain permission (de la Rouviere, 2017). However, the changes that would need to be undertaken by the large number of parties involved would lead to a long and drawn out adoption period in order to be successful.

Another of the main issues that needs to be addressed would be the ease of use for the consumer. As was seen with the release of Imogen Heap’s song ‘Tiny Human’ on the Ujo platform, the purchase process was far too complex – the user being required to leave Ujo to set up an Ethereum wallet, purchase enough Ether to pay for the song, then follow further steps to connect the wallet to Ujo (Hatching Amazing, 2016).

Compared to services like iTunes or Spotify, there are too many steps required to make a purchase – these services have become so successful because of how easy they are to use compared to stealing music using torrent websites (Gerard, 2017). Usually there are no more than two steps to make a purchase once the initial payment information has been stored with these services.

Blockchain is not yet supported by banks or governments, and therefore purchase prices can only be quoted in Ether or Bitcoin, which means consumers have to purchase an amount of these cryptocurrencies in order to purchase Blockchain based music.

While it may be simple for customers already holding an amount of these cryptocurrencies, I would argue that the process is far too confusing for the average consumer to go through these steps when much simpler and more widely trusted alternatives still exist.

There is, however, an obvious advantage to artists – as Imogen Heap correctly said, “I’m the first to upload the song and the last person to receive the money. And it often takes up to two years for that to happen (Khartanovich, 2017).” Collection societies have not yet found a way to streamline their work and information still being processed manually, which is time consuming. The way Blockchain manages and delivers payments would cut out this processing time completely. PRS for Music has however already taken a big step in this area, and is in the early stages of developing a Blockchain based rights management system alongside ASCAP (American Society for Composers, Authors and Publishers) and SACEM (Society of Authors, Composers and Publishers of Music), to aid in resolving conflicts between these organisations and therefore, improve accuracy and speed in paying royalties (PRS for Music, 2017). It is fairly obvious why so many artists and others in the industry are calling for this technology to be adopted, but the consumers, banks and governments are not ready for it. Catastrophically low sales figures of Imogen Heap’s song, totalling \$133.22 (Gerard, 2017), are an indication of the roadblocks deterring consumers. In addition, there is not enough choice of music available on any Blockchain music platform – why would I go through the trouble of buying Ether to purchase the only song available on Ujo, when I can get all the music I want in one place that I’ve used before and trust, using a currency I already have, and understand? The only reason I can think of, is to be part of the group of early adopters trying to support artists, despite gaining no real advantage as an average consumer.

In order for full adoption of Blockchain, the technology would need to be applied retrospectively to all the music ever recorded and released up until now, and there is simply far too much data to process to make it work; there are over five-thousand publisher-owned databases which contain the metadata pertaining to music and compositions (Khartanovich, 2017).

But even if we could consolidate all of this, there are still issues, such as the large amount of royalties owed with no claimant, and works that do not have rights registered correctly payments being made incorrectly (“20-50% of music payments don’t make it to rightful owners”) (Hatching Amazing, 2016). And how would the transition work? When would the societies stop collecting and the Blockchain take over? The large amount of time between play and pay may cause issues and confusion in this area.

In contrast however, I think these Blockchain music services may have a place in a much nearer future for industry professionals who use music in their work such as DJ/Producers, music editors or advertising agencies, who are regularly seeking to license music for various projects. Services like Ujo could streamline the process of paying for, and obtaining these licenses, and the control of these licenses will be at the discretion of the artist.

However, unless a full transfer to Blockchain is made, these platforms could just become another one of thousands of sources of income for some artists, which would not provide any additional ease of use, despite allowing artists to be paid directly for at least some of the uses of their music. In this case, licensees would be benefitting from the technology more than the artist.

In conclusion, at this juncture, users of Blockchain based services would need to sacrifice ease of use and embrace totally alien concepts, with no apparent benefit to them as consumers. Drastic universal changes would need to be made to the current framework of digital rights management in the industry, and financial infrastructure in order for it to be viable, and, while there has been a lot of conversation and excitement surrounding it for a long time now, there is a monumental amount of work that would need to be done. It is interesting to see that collection societies are beginning to work with the technology to develop solutions to their shortcomings, but the system has not yet been rolled out, and only addresses a part of the problem i.e. it's only a solution for internal use and does not help artists with licensing and distribution of their music. By the time there is a universal agreement to jump on board with this technology, perhaps the next big thing will have come along leaving Blockchain redundant. Hence, while it cannot be said with absolute certainty, I cannot envisage a total adoption of Blockchain technology in the music industry in the near future, and think that the amount of resource that would need to be expended to make a complete, functional system, would not be commensurate with the benefits it would bring at this point in time.

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