

Legal and Business Affairs (BMTY7002) – Ian Penman

Essay

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With new start-up companies within the music industry using Blockchain, the music industry could be set to be revolutionised but are the full legal implications being considered within these new business models?

Since 2011, Blockchain has become ‘the world’s most popular way to buy, sell and trade crypto’, according to its website (Blockchain 2022), and with this new-fashioned way of using money comes new concepts of how to monetise on existing ideas. The music industry is ever changing and, with this, brings about ever changing ways to consume music. This essay will focus on the intricacies of Blockchain and how its technology can be used within the music industry, specifically focussing on copyright. The analysis will include an investigation into the full capabilities of Blockchain regarding copyright protection as well as the limitations it may have as an investor tool, thus potentially harming copyright within music. For this, existing music laws need to be taken into consideration, as well as how they relate to music in a digital setting – this knowledge is imperative to be able to analyse the legal implications of using Blockchain within a music framework. The analysis will then extend to focussing on two new businesses within the music industry that use Blockchain at their core and analyse the benefits and limitations they bring, using this to then consider any legal implications their business model, and thus Blockchain, could impose. The aim upon conclusion will be to determine just how much potential Blockchain has in its ability to either protect copyright or provide concerns for legal complications.

Before continuing with the analysis of the title of this essay, it is important to first identify the way Blockchain works in order to then fully understand its potential or, indeed, its limitations. Youtuber ‘The Music Man Podcast’ explains that the key function of Blockchain is to establish ‘the identity and authenticity’ of digital products (2020: 0:26-0:32). Blockchain does this via ‘smart contracts’ based on code that essentially record ‘transaction data and value transfers’ (Gatto and Bear 2018, p.2). The ‘smart contract’ part of its functionality is not a traditional contract with sought for legal advice and signatories, but an automatically generated code where the ‘operational terms are written into and executed by the lines of the code’ (Gatto and Bear 2018, p.2). So, within the context of digital music sales, with its unique reference numbers, each transaction of music using Blockchain technology has the potential to place immediate protection on the original copyright and ‘put an imminent end to music piracy’ (Fintelics, 2021: 3:19-3:23). Therefore, it seems sensible for music to be sold this way as the technology could ensure no more copyright disputes or piracy issues again, if used correctly. As piracy and the invention of platforms such as *Napster* caused the music

industry to be in a state of ‘meltdown’ just after the turn of the century, it is surely in the music industry’s interest to adapt this technology, as the digital circumvent of supplying free music not only infringed heavily on copyright protection but also, more to a major label’s interest, financial revenue (Bonner and O’Higgins 2010, p.1342).

This then poses the question, with the digital revolution at the turn of the century having changed the way in which we consume music (The Economist 2016: 0:43-0:54), have music laws kept up at the same pace? An article published by *Sound on Sound* in 1999, in ‘the middle’ of the digital revolution, warns that, due to the internet being a ‘global phenomenon’, ‘loopholes in copyright law anywhere in the world could undermine copyright everywhere’ (Poyser and Johnson 1999). The article goes on to explain the beginnings of websites that were being launched to abuse copyright protection, and this was a while before the aforementioned Napster, but their concern in the above citation regards to written and enforceable laws that already exist that need to compete against this ‘new’ global phenomenon (the internet). Oliver and Lalchev, quoting Baskerville et al, question the clout of music laws in general, mentioning that “‘laws governing copyright have never been able to keep fully abreast of changes in the way music is produced, communicated, bought, and sold’ [...] especially via the internet’ (2021, p.84). This would suggest that music laws themselves are not solid enough to be evolved as quickly as the internet evolves. A small example of this is noting that copyright law within music differs to other artistic copyrights, which award rightsholder ownership to the ‘authors’ of those works but, in music, internationally, ‘sound recordings grant ownership to the ‘producer’” (Osborne 2021, p.30). This is arguably due to the capitalist way in which the music industry is run, largely by the major labels, who can be seen as the ‘producer’ of the work and thus, by law, hold ownership of songs performed by their signed artists. But the vagueness within the law itself leaves things very open for interpretation, which isn’t very robust in an ever-changing digital society.

Therefore, if Poyser and Johnson raised concerns in 1999 about the stability of music law against the internet, which was then followed by piracy-streaming platforms causing disruption in the early 00s, with Baskervilles’ comments subsequently being made in 2017, it is indeed questionable as to how the law aims to protect the creator in this new digital format. Of course, the Blockchain technology is meant to do this itself but with all the above in mind, we now need to consider how Blockchain is already being used in the music industry and what the current legal implications of this use could be.

With new technology, new ways of consuming music and new ways of doing business, this certainly provides a lot of opportunity for keen entrepreneurs. One company who have latched on to the best of Blockchain's ability and combined this with the creation of, and financial transaction of, music is *Arpeggi*. According to the website *Music Business Worldwide*, Arpeggi claim 'to be the first blockchain music creation platform, allowing creators to compose, collaborate and sell their music on the Blockchain' (Stassen 2022). This innovative new company keeps its eye on the way Blockchain allows for the creation of digital music to keep its copyright and wants their site to be a platform for music creators, swiftly overlooking the usual consumer of Blockchain – the investor.

“Arpeggi ensures artists receive proper credit when their work is used, creating a new paradigm for music creation: artists can now promote their music for creative reuse instead of restricting it.”

(Arpeggi in Stassen 2022)

Looking at the company's website, they are very clear about how Blockchain is used: 'to track who, where, and how your sounds have been used' which, as a creator, automatically creates comfort and intrigue as to how this website and this technology could be advantageous (Arpeggi 2022a). The company provide a music producer with tokens for their creations and explain that the user is entering an 'ecosystem' of creators, focussing on the 'permissionless' side to using others' work – i.e., no legal protocol as everything is contained within the NFT (Non-Fungible Token) via their online tool (Arpeggi 2022a). They say that they do not currently offer monetary reward for use of works in the form of royalty payment but is something 'on the development roadmap' (Arpeggi 2022b). With everything being created and sold via their site and protected by Blockchain technology, at first glance, this seems to limit most legal implications as there are no third parties to consider – i.e., having to upload something from elsewhere. Those who sign up for the site are aware of its purpose and willingly enter the 'ecosystem' of producers creating for other creators (Arpeggi 2022a). This new business model therefore demonstrates that, with the right forward thinking and understanding of technology, and of the music business as a whole, there are definitely reasons to be excited about the use of Blockchain within the music industry.

However, another article posted on the same website just a month earlier details a company called *Opulous*, one in which does the opposite of the abovementioned and focusses on the way in which fans and non-copyright holders can use Blockchain to become investors and thus, have a stake in copyright. Enabling 'individual investors to acquire fractional royalty streams in new releases' (Ingham 2022), it optimises the faceless use of this new type of

currency and seeks to earn from original copyright. More to the point, the company have created its own cryptocurrency and seek to buy full catalogues from artists (Ingham 2022). By buying this repertoire outright, it acknowledges the initial copyright that it needs to address and pays the original creator accordingly however, presumably, this catalogue is now theirs and users of their site, using their cryptocurrency, then invest in this new catalogue – thus, lining Opulous’ pockets and not the original copyright holder.

Opulous’ business model is not as clear from its website as Arpeggi, i.e., it seems from its ‘Litepaper’ to be a tool for an investor to support an artist and earn rewards via the cryptocurrency (Opulous 2022a). However, CEO Lee Parsons states:

“Music copyrights are perhaps the fastest-growing asset in the investment space, but have up until now only been available to large entities like banks and family funds. Through this project, Opulous is giving anyone the chance to invest in music and enjoy steady rewards.”

(Parsons in Ingham 2022)

Using the word ‘copyright’ at the beginning of his statement but finishing instead with the term ‘rewards’ creates a little ambiguity. The wording of this can imply that the investor could become a copyright holder and thus earn from royalties – this is very different to investing in the artist via crowdfunding and earning rewards which is more what its website suggests. This is a noteworthy point however as, if a financier is investing on the belief they could own part of the copyright, this could lead to a great deal of legal implications.

As stated previously, Blockchain technology uses what is called ‘smart contracts’, however it is important to remember that these aren’t legally binding (Gatto and Bear 2018, p.2). Gatto and Bear also explain that cryptocurrencies can be subject to securities laws, explaining that:

“An offering will be considered an investment contract if: (1) there is an investment of money, (2) the investor has an expectation of profits” (Gatto and Bear 2018, p.6)

By Opulous therefore offering investors to ‘own a real piece of the music’ (Opulous 2022b) they surely offer the above, with the attraction of the investment being able to earn profit from the copyright they invest into. In fact, Stassen’s 2021 article for *Music Business Worldwide* confirms that Opulous, and its sister company Republic, do refer to their offerings as S-NFTs – Security NFTs, taking into account the Securities Act of 1933 (Stassen 2021).

What we also must consider is that, if the investor does indeed become copyright holders of the artists' work, that would raise concerns if the artist wished to re-work that song or another composer wishes to use the artists' work as a sample, they would have to gain permission from all the named investors before being able to continue with any further work (Gatto and Bear 2018, p.6). Contrary to Arpeggi, who use protection of copyright by providing the tool to make the music, Opulous seem to solely offer investments in artists' studio-produced music. Therefore, would Opulous provide the framework for copyright permissions with each individual investor or is this something that the artist themselves would then have to concern themselves with? Equally, if just one copyright holder, i.e., investor, declines to permit further use of the work, it could then restrict the flexibility of the artist they are investing in.

Above these speculative matters, it is also significant that Opulous have already been in the news for trademark infringements, i.e., the case of Lil Yachty who claims not to have given permission for his name to be part of Opulous' initial offering of artists to invest in (Cooke 2022). Although there seems yet to be a resolution to this case, this news piece on top of the other legal implications they could come up against, does provide concern; start up initiatives are seeing the benefit of Blockchain but perhaps do not have a fully thought through business model that could protect them from all sides.

Taking into consideration all the above, comparatively, both Arpeggi and Opulous demonstrate exciting new uses of Blockchain within the music industry. However, with the latter, regarding the questions raised in the above assessment, this does create doubts of whether it can fully withhold the legal implications of its model. With this said, it is too early to really judge the benefits or otherwise of Arpeggi, however promising they appear.

It is clear from this analysis that Blockchain can open a world of opportunity within the music industry and for a copyright holder. If companies like Arpeggi manage to breakthrough to a wider scale, this could prove monumental for music creators – this is, of course, once Arpeggi have mastered their royalty payment scheme. The strong capability that Blockchain holds, in terms of giving an artist more autonomy and ownership of their work, is definitely something that could become a disrupter to the music industry as it currently stands; although the collective mindset of the artist as a whole needs to be adapted in order to make this change (The Music Man Podcast 2020: 7:30-7:36). However, it could 'still take years to properly manifest and align' this (Allen 2022). Along with Opulous' potential to lead to messy copyright disputes and the apparent fragility and ambiguity of music copyright laws in

a digital music setting, there are question marks over how well either model would withstand in a legal context.

So, to consider a conclusion to the pinnacle of the title question ‘... are the full legal implications being considered within these new business models?’, it is clear that entrepreneurs are recognising the potential that the technology holds to protect copyright, which is promising. However, the more popular, investor NFT model, has raised too many concerns to answer the question with confidence that it can break through the music industry as it currently stands. Whether any of the new Blockchain-using business models will indeed revolutionise the industry is yet to be seen; as Nick Raphael says in The Economist video *The Music Industry and The Digital Revolution*, “it’s always survival of the fittest” (2016:1:53-1:56).

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