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 NORTON ROSE FULBRIGHT

Unlocking the blockchain

A global legal and regulatory guide

Chapter 3: Using intellectual property rights
to protect distributed ledger technology

A preview



Overview

Interest in distributed ledger technology has grown dramatically over the last twelve months. This has triggered growth in investment in businesses operating in this area and marked engagement from all industry sectors (and financial institutions in particular) in distributed ledger technology and its disruptive potential. Such engagement has led to the development of increasingly sophisticated proof-of-concept use cases and notable live deployments.

Against this backdrop, a number of regulators have been focusing on the benefits, challenges and risks posed by distributed ledger technology and how the technology might operate within the existing regulatory framework. Any proposed deployment will need to take into account such regulatory considerations and a range of other legal issues. In view of this, Norton Rose Fulbright's global blockchain and distributed ledgers practice group has produced a global legal and regulatory guide to distributed ledger technology.

This guide will be published in a series of chapters, covering the following topics and use cases:

Topics

- An introduction to blockchain technologies
- **Using intellectual property rights to protect distributed ledger technology**
- The regulatory considerations
- Litigation and dispute resolution considerations
- Competition/anti-trust issues
- Tax considerations

Use cases

- Digitizing the insurance value chain
- Securitisation and trade receivables finance
- Identity (including data privacy issues)
- Clearing and settlement
- Supply chain management
- DAOs (decentralised autonomous organisations)

We hope that you will find this third chapter on using intellectual property rights to protect distributed ledger technology insightful and would welcome the opportunity to discuss any aspect of it with you in greater detail.

If you would like to receive Chapter 3 and register for the subsequent chapters, please contact julie.frizzarin@nortonrosefulbright.com.

Sean Murphy
Global head of blockchain and distributed ledgers
Norton Rose Fulbright

Paul Keller
Partner, Intellectual property
Norton Rose Fulbright

Introduction

“There are lots of unresolved questions about what is patentable and how IP laws intersect with the mostly open source software used in the systems.”

Dugie Standeford, Blockchain Technology Raises Challenging IP Issues, Say Speakers, Intellectual Property Watch, <http://www.ip-watch.org/2016/09/05/blockchain-technology-raises-challenging-ip-issues-say-speakers>, September 5, 2016.

A significant amount of attention is being paid to the disruptive potential of distributed ledger technology (DLT). Many businesses (both customers and suppliers) – particularly those operating in the financial services sector – are making huge investments in DLT-enabled products and/or services. Recently, for example, a new consortium called Enterprise Ethereum Alliance that operates in this space was announced. It had over thirty members at its launch.

In the midst of all of this industry activity, a significant amount of time is now being spent by businesses on analyzing the various legal and regulatory issues impacting upon the DLT space, and rightly so. However, many businesses have not yet considered strategies as to whether to (and how to):

- Protect their investment in the technology by creating enforceable intellectual property rights in respect of it.
- Put themselves in the best possible position to defend themselves from infringement claims in relation to the use of DLT technology by competitors and so-called “patent trolls” (known as non-practicing entities).

Businesses cannot afford to be complacent over these issues. Patent litigation, for example, can frequently be a “fight to the death” where the disputed technology is core to a business. Businesses that develop or use the technology will quickly need to become conversant with its intellectual property implications, and to have a good understanding of the offensive and defensive intellectual property strategies available to them. To do otherwise may be to risk market share or key business strategies.

In this chapter of the *Unlocking the Blockchain: A Global Legal and Regulatory Guide* we consider, first, some intellectual property rights-related use cases for DLT. We then consider whether and to what extent intellectual property rights (in particular, patents, copyright and trade secrets) can subsist in the technology and can be used to protect and enforce proprietary rights in it. Next, the impact that the use of open source software could have on these issues is examined, and the competing “open source vs. proprietary” strategic approaches considered. Finally, as “rights creation” and ownership are likely to be key issues in many DLT developments (which are often collaborative projects), the key issues for businesses desiring to implement an intellectual property rights management strategy in relation to the technology are explored.

In this chapter, although a detailed understanding is not required, it will be helpful to have some familiarity with DLT (and one particular iteration of such technology, blockchain). For more information on how the technology works, refer to our first chapter of the *Guide, An Introduction to Blockchain Technologies*.

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Contacts

Asia



Stella Cramer
Partner, Singapore
Tel +65 6309 5349
stella.cramer@nortonrosefulbright.com



Barbara Li
Partner, Beijing
Tel +86 10 6535 3130
barbara.li@nortonrosefulbright.com

Australia



Nick Abrahams
Partner, Sydney
Tel +61 2 9330 8312
nick.abrahams@nortonrosefulbright.com



Zein El Hassan
Partner, Sydney
Tel +61 2 9330 8196
zein.elhassan@nortonrosefulbright.com

Canada



Anthony de Fazekas
Partner, Lawyer, Patent Agent, Toronto
Tel +1 416 216 2452
anthony.defazekas@nortonrosefulbright.com



Robert Percival
Head of Technology and Innovation -
Canada, Toronto
Tel +1 416 216 4075
robert.percival@nortonrosefulbright.com

Europe



Huw Evans
Partner, London
Tel +44 20 7444 2110
huw.evans@nortonrosefulbright.com



Sean Murphy
Partner, London
Tel +44 20 7444 5039
sean.murphy@nortonrosefulbright.com



Floortje Nagelkerke
Partner, Amsterdam
Tel +31 20 462 9426
floortje.nagelkerke@nortonrosefulbright.com



Jamie Nowak
Partner, Munich
Tel +49 89 212148 0
jamie.nowak@nortonrosefulbright.com



Michael Sinclair
Consultant, London
Tel +44 20 7444 2344
michael.sinclair@nortonrosefulbright.com



Sven Jacobs
Associate, Frankfurt
Tel +49 69 505096 416
sven.jacobs@nortonrosefulbright.com

Latin America



Ramón Ignacio Andrade Monagas
Partner, Caracas
Tel +58 212 276 0014
ramon.andrade@nortonrosefulbright.com

United States



Paul Keller
Partner, New York
Tel +1 212 318 3212
paul.keller@nortonrosefulbright.com

South Africa



Rohan Isaacs
Director, Johannesburg
Tel +27 11 685 8871
rohan.isaacs@nortonrosefulbright.com



Ronald Smith
Partner, Dallas
Tel +1 214 855 8349
ron.smith@nortonrosefulbright.com



Kerri Crawford
Senior associate, Johannesburg
Tel +27 11 685 8929
kerri.crawford@nortonrosefulbright.com



David Barrett
Partner, New York
Tel +1 212 318 3037
david.barretts@nortonrosefulbright.com



Kathleen A. Scott
Senior counsel, New York
Tel +1 212 318 3084
kathleen.scott@nortonrosefulbright.com

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