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BLJ: Blockchain technology could have IP law applications

SPECIAL REPORT: Intellectual Property

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Despite being the new kid on the block in terms of technology, blockchain could start playing a role in traditional intellectual property law.

One impact is in copyright protection, said Denis Sullivan, a partner at Barclay Damon LLP.

“You might find a photograph on the internet and think, ‘Oh, I can use this.’ It may be copyrighted but you wouldn’t necessarily know,” he said. “Even if you’re willing to pay someone for the use of it, it’s really hard to find out who owns it. On the other hand, it’s really hard to find out if someone is stealing your work because it’s not organized.”

Blockchain could present a solution, according to Sullivan. As an open ledger that can be used to record and track transactions on a shared database, a worldwide database could be created using blockchain.

“If you created a work and were able to instantly upload it to the blockchain and say, ‘I created this on April 29 and here it is,’ that would be a permanent and indisputable record of when that was created,” he said. “If someone wanted to see it or access it, there’d be a record of someone accessing it and copying it. You could instantly know that someone has accessed it and more easily track them down to stop them from copying it or get some money out of them.”

Blockchain is mostly talked about in regard to cryptocurrency, he said, but it has other applications in health care, financing and other areas. And down the road the technology could be used to catalog IP in the case where someone wants to pay for royalties.

“They could do it within the blockchain and it would be more efficient,” he said. “It could be on a worldwide basis instead of country specific.”

In order to use blockchain for IP, someone is going to have to make the investment to do so, Sullivan said. The U.S. Patent and Trademark Office would have to buy in and there’d have to be a “groundswell of support,” he said.

“Right now it’s an interesting concept, but it’s still a ways away,” he said.

In terms of patentability, there are discussions about whether the technology is an abstract idea or more than that, said Laura Colca, a partner at Goldberg Segalla. For instance, she said, does it introduce “additional elements to implement the abstract idea?”

“The problem that arises when blockchain technology is patented is that big companies can amass a portfolio of patents and then attempt to enforce them against smaller companies that do not have the resources to fight the litigation,” she said.

John Del Vecchio of Del Vecchio & Stadler LLP said blockchain technology is moving so quickly that stuff written three months ago is obsolete already.

“It’s really growing so fast,” he said. “People are finding new applications for it so quickly. It’s just billowing out there.”

While people know about blockchain and how it can change different areas of society, there is an issue, Del Vecchio said.

“The problem is getting the technology to where it needs to be,” he said. “It’s also having the people in place to know how to use the technology.”

The underlying software is “open source,” according to Del Vecchio, which means it’s free to use.

“It’s not going anywhere, and it’s going to get bigger over time,” he said. “We’re at the infancy of blockchain.”

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