

The Regulatory Challenges of Blockchain Applications in the IP Ecosystem

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Are there regulatory challenges of blockchain applications in the IP ecosystem?

- An answer in three steps:
 - YES...
 - ... HOWEVER...
 - ... IN ANY CASE.

YES

Legal uncertainty

- There are certain features and particular applications of blockchain technology that are **new to the legal system**... thus there are **no straight answers** about their regulation
- **Multi-jurisdictional** character of blockchain networks: even if those answers exist, they can be different in each legal system connected to a blockchain.
- Legal uncertainty is **multi-dimensional**: activities in the IP ecosystem are not only governed by IP-related legislation, but by many other fields of law (e.g. contract law, procedural law, law enforcement issues or personal data protection).

Implications of legal uncertainty

- **Public authorities** might feel reluctant to introduce or promote blockchain solutions
- **Digital entrepreneurs** might feel reluctant to initiate blockchain projects in certain states, or at international level
- **Promoters of blockchain projects** can find huge obstacles to design governance structures (in particular, those connected with several legal systems)

Examples of legal uncertainty

- Absence of a central authority in blockchain systems.
- Pseudonymity/anonymity.
- Personal data protection.
- Legal value of digital registries.
- Smart contracts and tokens

HOWEVER

For legal doctrine, many of the new challenges raised by blockchain...

- are not as complicated to solve as they at first sight seem; or,
- they can be answered by means of extensive interpretation of the existing legal instruments.

Examples

- Absence of a central authority: depends on the design of the blockchain: decentralised-centralised / permissioned-permissionless
- The role of Private International Law in multi-jurisdictional blockchains
- Pseudonymity/anonymity: depends on the design of the blockchain
- Personal data protection: controller/processors are easier to identify in centralised-permissioned blockchain
- Legal value of digital registries: Chinese Internet Courts.
- Smart contracts and tokens: Principle of freedom of contract

IN ANY CASE

Harmonisation initiatives at national and international level

- Efforts to adapt the regulatory framework at national level are welcome...
- ...but not enough: divergences among national legislations may create obstacles to international initiatives.
- Ongoing works at UNCITRAL, UNIDROIT and The Hague Conference of PIL
- Soft-Law Approach.

Thanks!

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