Kluwer Copyright Blog

Tokenizing Copyright: Can Blockchain help with Arts Funding?

Rita Matulionyte (Macquarie Law School) · Thursday, October 31st, 2019

Blockchain is certainly a hot topic. For creative industries, Blockchain has the potential to improve licensing of rights as well as tracking of infringements. It also has potential in arts funding. Some artists and art organizations have already tried to tokenize art works and artists in order to attract crowd funding. The online platform Maecenas has tokenized a multi-billion dollar Andy Warhol painting and sold it on Blockchain. Gramatik, an international electronic dance musician and independent producer, has tokenized his future intellectual property; by selling his GRMTK tokens he raised $2.25 million in the first twenty-four hours, and valued the token at $9 million.

The question for copyright lawyers is can copyright be tokenized?

Tokenizing copyright: what does it mean?

Before diving into legal analysis, let's make sure everyone understands what copyright tokenization is. Imagine somebody has a great idea for an artistic project, say, a film. They need X amount of money to produce it. Instead of trying to apply for grants or borrow money from relatives and friends (apparently the two most popular ways to fund art, at least in Australia), they decide to tokenize the future copyright in the movie. Namely, the artist (promotor) issues tokens that represent shares of copyright in the future work. Investors buy these copyright tokens (using either a fiat currency or cryptocurrency) by signing a smart contract on an online tokenization platform, and thereby acquire equity in the copyrighted project. The money that investors pay for tokens is used to fund the production of the film. If the film is financially successful, investors get a share of profits that corresponds to the value of tokens they bought; they are also able to trade

tokens on online cryptocurrency platforms. One of the platforms that intends to offer tokenization of innovative ideas is Innovation Network.

Is it legally possible?

The big legal issue for such tokenization platforms is securities regulation. In contrast to traditional utility tokens, security tokens need to comply with securities regulations in jurisdictions where they are offered.

For copyright lawyers, the question is whether such tokenization of copyright is possible from a copyright law perspective. Three questions are of particular interest here:

- *Can one assign future copyright?*
- *Are there any legal requirements for rights assignment contracts? Can smart contracts fulfil these requirements?*
- *Can copyright, or shares of it, be assigned to and owned by many different persons?*

The short answer to these three questions – it depends. It is probably possible in jurisdictions where copyright contract law is based on the *laissez faire* principle (common law countries like Australia), and it is more difficult in jurisdictions that have strict regulations for copyright contracts, namely most continental law jurisdictions.

Common law perspective

Let's take Australia as an example and answer the three questions above. Firstly, under Australian copyright law, it is possible to assign future rights in copyright. The only requirement is that the agreement should be in writing and signed. Australian courts have generally accepted that smart contracts can fulfil written form and signature requirements. Legal problems may arise if smart contracts are anonymous and thus the real identity of the signing person cannot be verified. This problem can be solved if smart contracts are designed in a way that allows verification of the identity of the person signing. Finally, Australian law is quite flexible regarding multiple ownership of copyright. Although the traditional joint authorship, or co-ownership, relationship that is strictly regulated under Australian Copyright Act 1968 would not be suitable for copyright tokenization scenarios, Australian law does not prevent other contractual multiple ownership arrangements. Party autonomy rules.

Continental law perspective

With continental law countries such as France, Hungary or Poland, the situation gets more complicated. First, these countries expressly prohibit general transfers of rights to future works. In order to overcome this legal burden, the works in which future rights are transferred should be clearly specified. This may work for some tokenization projects but not for others. Second, in a number of continental jurisdictions, assignment of copyright is regulated. For instance, in France copyright assignment contracts must specify duration, place of exercise, and the amount of remuneration for each of the rights transferred. If this is not addressed in the rights assignment contract, the default position of the courts is to construe the contract strictly, such that the rights assigned by the assignor might be narrower than intended by the parties. To make life even more complicated for Internet businesses, each country has different requirements for copyright assignment contracts. Finally, copyright joint-ownership rules are regulated differently in different jurisdictions. Generally, they are not suitable for copyright tokenization scenarios. For various

reasons, lawyers often suggest falling into the trap of a joint-ownership relationship. The alternative offered is that one party be the owner of the intellectual property rights and grant the other party a very broad royalty-free, non-exclusive worldwide license. It is questionable how this solution could fit the copyright tokenization scenario. All investors want to be owners of their tokens (shares of copyright) and be able to resell these tokens on cryptocurrency exchange platforms. Lawyers will have to search for creative solutions in designing contracts that accommodate the interests of all parties in a copyright tokenization scenario.

Conclusions

It seems that copyright law does not entirely preclude copyright tokenization but certainly makes it complicated. Parties would need to heavily rely not only on smart contracts, but also on smart lawyers. Lawyers will need to know copyright laws of multiple jurisdictions in which copyright tokenization platforms intend to function, and draft innovative copyright transfer contracts that find their way among diverse legal regulations.

This blog post is based on the following article:

R Matulionyte, 'Can Copyright be Tokenized?' *European Intellectual Property Review* (accepted for publication) Available at http://ssrn.com/abstract=3475214.

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