

What you need to know about blockchain and the law

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The global blockchain market is expected to be \$7.59 billion by 2024. By the end of 2017, funding into blockchain companies was up 340% from 2016, to \$2.4 billion.

According to a Deloitte report, fifty-five percent of a group of C-level executives surveyed said their company would be at a competitive disadvantage if it failed to adopt the technology.

The UK Government is also in the game. Innovate the UK has prioritized blockchain technology in its tech agenda with a competition of £8 million (\$10.5 million) in grants to firms working on health initiatives with blockchain.

One thing is for sure, with new disruptive technology come changes to the status quo, and that means the law has to keep up.

Blockchain and the law

Blockchain has potentially limitless applications, and therefore the laws that apply to online transactions and communications today will continue to apply to those done using blockchain technology. Some areas where we are likely to see complications with the growth of blockchain and, under English law, the need for decisions from regulators and the courts to provide clarity, are data protection, financial regulation, liability, and consumer protection laws.

Data protection: the implementation of the GDPR on 25 May 2018 brings with it codified rights for data subjects to have their personal data erased (the so-called 'right to be forgotten'), and data controllers are required under the GDPR to retain personal data for no longer than is necessary. Transactions on the blockchain are immutable and include potentially the full suite of a data subject's personally identifiable information. Careful thought and consideration will need to be given as to how providers of blockchain-based applications can ensure compliance. Depending on how this technology is adopted and the extent of its proliferation, we may see the legal ground of legitimate interests for the processing of personal data expands to include the necessity that arises from the fundamental characteristics of blockchain technology.

Without going too far down the rabbit hole, the concepts of which party is a data controller and which is a data processor are also likely to become much harder to delineate where transactions and business operate using blockchain technology.

Financial regulation: the majority of the current use cases of blockchain technology relate to cryptocurrencies and token sales. Financial and securities regulators will continue to keep a close eye on this. The FCA in the UK has thus far said that such transactions will have to be assessed on a case-by-case basis to determine whether the activity is a 'regulated activity' or not, and is keeping an open mind about blockchain to avoid hampering its growth and innovation by tying it up in regulatory red-tape.

Another challenge will be determining the legal status of decentralised autonomous organisations (DAOs), which will likely require either legislative or common law clarification.

Consumer protection: consumers have the right to a 14 day cooling off period, which will require some careful negotiation/coding where consumer contracts are implemented using blockchain technology. It may have to be dealt with in 'real world' contracts governing any smart contracts used, imposing contractual obligations on members in a blockchain network to authorise hard forks where a consumer wants to exercise their statutory rights under consumer protection legislation.

Three things to watch with blockchain

- At this stage, probably the number one issue is to not rely on smart contracts. They aren't contracts in a legal sense. Make sure that any

commercial opportunity is carefully thought through and that all parties involved consider their respective legal obligations and liabilities, as they would with non-blockchain-based transactions. We believe it will be essential to ensure that any smart contracts are appropriately regulated by real-world contracts.

- If developing an application or piece of software around a blockchain network, consider who the members of that network are going to be and the ramifications of the 51% rule (i.e., the need to have more than 50% of the members of a network approve any changes/additions to the blockchain). Otherwise, organisations could be developing something that's ultimately not under their control, and this could bring its own set of issues.
- The legal considerations mentioned above should be carefully considered, especially given that the use cases are new and the law untested in respect of blockchain. Some see blockchain technology as just the next big hype, while others expect it will revolutionise every corner of the world. At least in the near term, we expect the reality lies somewhere in the middle, and those innovating and investing in blockchain technology should consider carefully how the introduction of blockchain to their existing technology will change the way they do business, to ensure that hurdles and areas of exposure, both commercial and legal, can be predicted and protected against.