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Blockchain's Promised Revolution and the Legal Industry

By: Rich May

Despite being a new frontier and a still nascent technology, blockchain promises a revolution that no industry can afford to ignore. The legal industry is no exception. Blockchain technology is increasingly seen as something of true value, separate from the headlines and fluctuations of cryptocurrencies.

Blockchain technology offers secure digital ledgers shared by everyone in a network. Blockchain encrypts transactions and distributes them throughout a network, creating a public record that is virtually impossible to hack. In a typical blockchain transaction, multiple parties verify the transaction instantaneously. After verification, that transaction is added to the end of a string of other transactions forming an immutable chain of historical record. Before blockchain technology, the verification and execution of transactions has typically involved trusted middlemen such as banks and governments. By eliminating these middlemen, and instead relying on distributed verification, blockchain cuts down on failure points and the potential for fraud or abuse. Many believe this still new bedrock technology will result in a paradigm shift in how industries operate and individuals interact.

It is not hard to imagine how universal, secure ledgers of transactions could be beneficial to different legal practices in a variety of ways. Blockchain technologies can be used to build tools and infrastructures to both assist lawyers and to revolutionize traditional practice areas. The potential applications, and implications, of this technology are virtually limitless: In March of this year, the first securities lending transaction was completed using blockchain technology, and fully functioning securities lending transaction platforms are expected to be rolled out around the end of 2018. Blockchain will also make it possible for creators to anchor their intellectual property in immutable records allowing them to track first use and manage license rights. Similarly, digital ledgers can be used to create permanent records of custody chains. The real estate industry could be revolutionized in numerous ways, including by replacing the current registry system. Estate planning could develop clear and self-executing infrastructures. Traditional risk factors for fraud and theft could be made largely irrelevant in many practice areas as true verification becomes possible. Internally, law firms are already building blockchain systems for time-keeping,



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filling deeds, and handling mergers and acquisition transactions. Furthermore, as a result of all of these changes, there will be the need for specialized legal practitioners literate in the new reality of “blockchain law.”

It would be impossible to cover all of the potential applications of blockchain in one article. In future posts I intended to explore such applications in greater detail, particularly as they might impact the legal profession. One example of blockchain technology intersecting with legal practice will be the rise of smart contracts. Smart contracts represent a potential advancement across many industries and areas of practice. Cutting monitoring and enforcement has appeal as it would reduce transaction costs. The idea of coding a program to contain the terms and triggers of a contract is not a new one, but the technology of blockchain is particularly well suited to make this possibility a reality. However, there are many barriers before this technology could be widely utilized. One such barrier is that smart contracts are inherently not “smart.” It might be possible to mesh AI with smart contracts in the future, but on a fundamental level, these contracts are only as good as the code they are written with, much as traditional contracts are only as good as their drafting. It is possible that traditional contract attorneys will still be required to properly draft good smart contracts. The inflexibility of smart contracts also means they cannot adapt to ambiguity or unexpected situations where many of the still-valid tenets of contract law ought to control. Self-execution will not save smart contracts from a need for enforcement and dispute resolution in such scenarios; indeed, the unanticipated has always caused disputes as to proper enforcement. It may be a long time before all the problems of smart contracts (and blockchain) are solved to a sufficient degree such that average users and lawyers can take advantage of this technology.

There still exist basic questions about the promised revolution of blockchain. When will it come? How significant will the changes be? Or, even, will there be any noticeable change at all? It is certain that blockchain will not be widely adopted without first addressing significant challenges such as scalability, centralization, and usability. Beyond these questions, there is legitimate debate as to whether the advent of blockchain will be ultimately good, bad, or neutral for legal professionals (and the legal profession). What is clear, however, is that lawyers who stay current with these challenges and potential solutions will undoubtedly be better off than their peers. Blockchain technology holds the promise to make the practice of law more efficient and more accessible. Practitioners who ignore the promised revolution do so at their own peril.

Anyone with questions can contact Rich May, P.C. attorney Nathaniel Donoghue.

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