Copyright and the blockchain

By Andrés Guadamuz

Whilst I have written extensively about the blockchain in the past, copyright itself has not really been of much interest to the research community, perhaps because the use cases have not been very prevalent in the media.

If we define the blockchain as an immutable decentralised database, then it could be easy to see some potential uses of the technology for copyright, and for the creative industries as a whole. Blockchain technology has been suggested for management of copyright works through registration, enforcement and licensing, and also as a business model through micropayments and tracking use. I will go through these without mentioning many specific existing implementations and projects.

However, the actual application may depend on the exact definition of what is a blockchain, and this is not particularly easy as sometimes variations are used. For the purpose of this article I will use Google's definition: a blockchain is “a digital ledger in which transactions made in bitcoin or another cryptocurrency are recorded chronologically and publicly.”

Registration

Perhaps one of the most cited copyright uses for blockchain is that of registration. Unlike other IP rights, copyright subsists without registration, although some jurisdictions require it for enforcement of rights. Nonetheless, voluntary registration of some sort can be useful in some instances, and there are those who still advocate for the usefulness of copyright registration in a variety of situations. Registers can help to diminish the problem of orphan works, but also having some sort of registering authority can serve as a filter of what is an actual work protected by copyright.

Assuming that some creators will want to register their work for whatever reason, the potential existence of an open database of copyright works that is also decentralised makes some sense. A blockchain registration system would allow an author to provide robust evidence of ownership and would also give the user a unique identifying address. A registration service could also act in conjunction with other management elements, such as allowing payments.

Whilst a decentralised and immutable record of ownership may sound appealing, there are quite a few issues. The most obvious one is making sure that the work's owner (or an authorised agent) is indeed the one registering the work. Existing centralised registration schemes have a procedure in place to check claims of ownership, and while it may be slow, the system ensures that a certificate is awarded to a legitimate author. A decentralised service would have to have some sort of authority that ensures that an ownership claim is not entered by an illegitimate actor, but then that would defeat the purpose of the decentralised ledger. Moreover, once entered into the blockchain, the record is immutable, in which case wrong authors would be forever recorded.

There may be ways around some of these issues, but the solutions may mean that the technology is not really a blockchain, but something else.
Enforcement

Another proposed use of blockchain technology in copyright is as an enforcement mechanism, particularly as part of a digital rights management scheme. The idea is to have a work represented as a unique address on a blockchain (which could also be attached to a registration system), and that this would inform the owner when a work is used. Under this system, browsers and media players could be built to only play and/or display authentic works registered on the blockchain. Sony has already patented such a technology, and there are other organisations exploring similar proposals, such as the JPEG standard committee.

Of all the copyright-related issues, this is the one that scares me the most because of the potential for misuse. This issue is connected to the registration problem highlighted above, and it would be one in which a person maliciously makes an ownership claim to a work they do not own. The Sony patent gets around this problem by relying on a registration authority, so we are back to having a centralised system that issues ownership keys, which again goes against the decentralised notion of a blockchain.

But the main problem is that a blockchain DRM could prove to be extremely detrimental for users by severely limiting copyright exceptions. One of the main criticisms of Art 13 of the proposed European Copyright Digital Market Directive has been that it imposes the deployment of filtering mechanisms to intermediaries, the so-called censorship machines. Now imagine such a filtering system using blockchain technology, where no fair dealing and fair uses are allowed: no parody, no educational use, no commentary, and no reporting. All because the machine says no. There is no recourse in case the system makes a mistake because the blockchain is immutable and distributed.

Computer says no. Forever.

Micropayments

One of the most talked-about potentials for the creative industries with regards to cryptocurrencies and the blockchain is that of empowering a micropayment marketplace for copyright works. Imagine a future in which, thanks to blockchain registration and DRM, every time a song is played, a movie is watched, or a picture is copied, there would be a permanent record of that use in a public ledger, and the use could be charged to the user’s electronic wallet. This would immediately erase piracy and allow creators to obtain a monetary reward through cryptocurrencies.

One of the early adopters of this idea is Imogen Heap, who managed to get quite a lot of traction in the press due to her use of blockchains in the release of her song Tiny Human. However, the experiment only produced a tiny return of about $133, hardly a ringing endorsement of the model. Having said that, there are indications that some big players are really looking into the use of the technology in some form or another, with Spotify having purchased music blockchain startup Mediachain.

While micropayments may seem like another fantastic test case for the blockchain, there are quite a few issues. The first one is that, for all their early promises, cryptocurrencies have proven to be a terrible method of payment due to lack of scalability, slow transaction rates, and potential high transaction costs. The reason for this is the need for blockchain technology to rely on every transaction being recorded, as well as the need to reward miners and nodes in the system. Bitcoin is no longer a viable payment system for micropayments, and its use in commercial transactions continues to fall. Other cryptocurrencies have been plagued with scalability issues, with the Ethereum network being clogged up when digital apps become very popular. Now imagine a global system designed to record and conduct all sorts of transactions for digital content, and you will start to see that scalability could be a very real issue.

Some technical solutions have been suggested to alleviate the scalability problem, such as off-chain transactions and the creation of a micropayment network on top of existing cryptocurrencies. However, at the time of writing such solutions have not been fully developed, and some contend that they may not even be viable.

In the end, the main problem may be one of business models and commercial realities. Subscription systems such as Spotify, Netflix, Apple Music and Amazon Prime have proven extremely successful because consumers hate micropayments. Why then should we try to rely on slower, more cumbersome and untested systems that do not offer user improvements?

Licensing

In my opinion, licensing could be one of the most viable uses of blockchain technology in copyright through the implementation of smart contracts, if deployed in a limited manner. At the most basic form, smart contracts are instructions written in code in the blockchain; they can be used for parties that have no previous interaction to conduct legal transactions with one another.

A licence is simply a legal document that allows a user to perform an action otherwise restricted by copyright. For example, my blog is released under a Creative Commons licence that allows everyone to copy, distribute and even re-publish it for non-commercial purposes. A smart-contract implementation...
of such a licence would allow me to write those terms into immutable code on the blockchain, and if someone wanted to re-use my content commercially, then this could be transacted automatically through the licence.

There are a few issues with this, but they tend to be similar to the problems faced by smart contracts in general, and this is not the place to elaborate too much on those (stay tuned). The immutable nature of the code can be problematic in case of bugs, and also it becomes difficult to change one’s mind on already existing contracts. There are also the problems of scalability described, but for the most part, licensing does not require a central authority, unless a person tries to licence something that does not belong to them, in which case we are back to square one.

Nonetheless, licensing is a potentially good test case for blockchain, and I am willing to hear from people who have been trying to use smart contracts to write licences, so far I have found a few proposals, but nothing concrete.

Conclusions

There may be many possible uses of blockchain technology that are being developed, and at some point there might be successful applications of the technology in the copyright industries. As of today, I still see too many issues that match other problems I have with blockchain implementation in general, but that does not mean that these may not be solved in the future.

The question at the heart of any blockchain implementation always remains the same: what is the problem that you are trying to solve, and is the blockchain the appropriate technology to solve that issue? For example, open source software has been managing quite well with dumb licences and distributed version control (as with the development platform GitHub), and I have not seen a rush to replace many elements of software development for blockchains.

Other industries may want to look at software before jumping on the bandwagon.

Dr Andrés Guadamuz is a Senior Lecturer in Intellectual Property Law at the University of Sussex and the Editor in Chief of the Journal of World Intellectual Property. He blogs at www.technollama.co.uk. Email A.Guadamuz@sussex.ac.uk. Twitter @technollama. Image: cc by Descryptive.com.

What is legal design?

By Matthew Terrell and Emily Allbon

Legal design is the process of applying design-thinking to complex legal information, to make the law more accessible and easier to understand for its intended audience. Never was it more evident how ill at ease most of us are when it comes to digesting legal information, than during the pre-GDPR flood of privacy policies into our email inboxes. How many people actually read these missives?

Access to justice

We've all seen #thelawisbroken stories and understand that the idea of “access to justice” has been battered by the severe cuts in legal aid. Legal design cannot of course plug this gap single-handed; access to a lawyer and to the courts, or some form of alternative dispute resolution, should be an option for everyone regardless of their financial situation. However, legal design does have the power to provide access to justice for millions of people around the world, by simply communicating information in a fair, efficient and simple manner. If people understand initially what they're agreeing to, the likelihood of disputes is lessened; it has a preventative role. Similarly, if information is available to help them take a first step in understanding that their problem is indeed a legal one, and what the possible routes for resolution might be, that would be a huge step forward.

Comic contracts

There are many real-world examples of legal design, but none perhaps that have captured attention more than comic contracts. These are contracts in visual form, not simply a comic-strip “explainer” adding value to the contract, but a binding contract agreed upon by both the employer and employee, where the images are as important as the words. Leaders in this field include South African lawyer Robert de Rooy who created an employment contract for ClemenGold, where he was legal counsel. This contract was developed for their fruit-picker employees, many of whom spoke English only as a second language and as such would have difficulty with formal legal language. De Rooy has spoken of how this method shifts the power balance and empowers employees. Professor Camilla Andersen
from the University of Western Australia is working with global infrastructure firm, Aurecon, to create their visual employment contract, cutting a massive 4000 words from the contract in the process.

Human-centred design

Legal design combines the discipline of human-centred design, where problems are solved by including the human perspective in all steps of the problem-solving process, and information design that is focused on presenting information in a way that fosters efficient and effective understanding of it.

We encounter comparable forms of human-centred design and information design communication every day, often in the form of signs, icons and symbols, that are used to communicate information across cultural and language barriers. Today we are starting to see this approach applied to legal information. Notable examples include the contract management solution, Juro (juro.com), whose team collaborated with acclaimed legal information designer, Stefania Passera, to reinvent their privacy policy (pictured opposite). The outcome demonstrates that when lots of information is required to be displayed, icons and consideration of the hierarchy can make a large difference in understanding and navigating the information. Design patterns have been developed to help us display content in a way that allows users to grasp information more effectively. Passera and Helena Haapio describe these as “repeatable best practice solutions to communication problems in contracts” (“Contracts as interfaces: Exploring visual representation patterns in contract design” (2017)).

Applying human-centred design in a legal context can also be seen in our online services as well as text documents. JustisOne’s Precedent Map visualises the relationships between citing and cited cases, to enable practitioners to see at a glance where an authority has been considered (see http://bit.ly/2zmQNKZ). The outcome demonstrates that when lots of information is required to be displayed, icons and consideration of the hierarchy can make a large difference in understanding and navigating the information. Design patterns have been developed to help us display content in a way that allows users to grasp information more effectively. Passera and Helena Haapio describe these as “repeatable best practice solutions to communication problems in contracts” (“Contracts as interfaces: Exploring visual representation patterns in contract design” (2017)).

International growth

The concept of legal design should therefore not be too unfamiliar to many of us. Its appeal and commercial use are expected to increase with independent projects, organisations and education-led initiatives starting to appear around the world. For example, if you are in the Palo Alto area of California you might want to visit the Legal Design Lab (legaltechdesign.com), an interdisciplinary venture based at Stanford Law School and d.school, which aims to train law students and professionals in human-centred legal design. Alternatively, if you happen to be in Helsinki, Finland, you can swing-by the legal design consultancy, Dot. (dot.legal) and sign up for one of their workshops or a design jam.

Recently in London, The City Law School and Justis hosted the Legal Design Sprint for students in order to give the next generation of legal practitioners an opportunity to apply legal design thinking to real-world problems presented by organisations such as Jisc, Outfish and the subsequently cited passages to see how a case has been treated.

Innovative design

The ideology of communicating legal information in a fair, efficient and simple way has been embraced by creative professionals around the world, including artist Candy Chang (candychang.com). Chang took those laws commonly violated by street vendors in New York, and turned this information into an accessible visual information guide to give a population of 10,000+ street vendors better access to the law, and empower them to operate within the law. Indeed the visual guidance even gave them the confidence to challenge police officers who tackled them in relation to infractions.

Previously the street vendors were required to navigate a myriad of information including a 58-page city guide. Relevant documents were not all available in one place and regulations were contained within densely worded documents in unfamiliar complex language, which left street vendors in a vulnerable position. The guide produced by Chang and the Center for Urban Pedagogy, called Vendor Power, was also translated into five different languages, providing further assistance to the vendors when English was not their native language.

Innovative design is not something limited to countries outside of the UK; one of the most exciting examples include the contract management solution, Juro (juro.com), whose team collaborated with acclaimed legal information designer, Stefania Passera, to reinvent their privacy policy (pictured opposite). The outcome demonstrates that when lots of information is required to be displayed, icons and consideration of the hierarchy can make a large difference in understanding and navigating the information. Design patterns have been developed to help us display content in a way that allows users to grasp information more effectively. Passera and Helena Haapio describe these as “repeatable best practice solutions to communication problems in contracts” (“Contracts as interfaces: Exploring visual representation patterns in contract design” (2017)).

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Innovative design is not something limited to countries outside of the UK; one of the most exciting

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ventures to emerge on our shores has been RightsInfo. (rightsinfo.org). Developed by barrister Adam Wagner (who also created the excellent UK Human Rights Blog whilst at the chambers of One Crown Office Row), this resource uses a range of visual tools to engage users in their content; from infographics to videos, from collector cards to timelines.

Aims of legal design

So what does legal design, and the ideology of communicating information in a fair, efficient and simple manner aim to achieve? It may be clear now that the aim of legal design is to help an individual understand legal information which may take the form of terms and conditions, contracts and tenancy agreements. However, legal design is doing much more than enabling people to understand unfamiliar legalese.

When you translate a legal document, such as a contract, into an easy-to-understand format, you increase access to justice for all those affected by the aforementioned contract. You remove the need for a lawyer to translate the legalese into simple terms and the associated cost which is often far beyond what many individuals can afford. You empower individual members of the public with knowledge of the law.

We’ve seen examples of privacy policies designed to help users navigate important information; city regulations visualised and translated into different languages to help street vendors; handy explainer guides to human rights from Rights Info; and you can even access an online legal design toolbox for those unable to visit the Legal Design Lab in person. So where next, and how will this impact practitioners?

This is an opportunity for legal practitioners and law firms to work with designers and legal design specialists to ensure that the legal information, contracts, and terms they produce can be understood by the intended recipients. Legal practitioners and law firms can add to their service catalogue for their client’s legal design service, which could subsequently help many more people if the contracts firms create are for public-facing businesses, or are intended to be distributed by their clients.

Law firms need to be much more open to engaging the services of those outside of the business, whether they be designers, psychologists or technologists, and of course embrace working with the clients themselves. Universities should also be looking to include legal design as part of their offering; fostering a new wave of legal practitioners for whom empathy is a vital part of their skill set.

Emily Allbon is a Senior Lecturer in Law at The City Law School, University of London, the creator of the award-winning Lawbore law resource website for students (lawbore.net), and has been named a National Teaching Fellow by the Higher Education Academy. Email e.allbon@city.ac.uk. Twitter @Lawbore.

Neil Brown

Director of decoded:Legal (decodedlegal.com), a firm in Newbury, Berkshire, giving internet, telecoms & tech advice. Email neil@decodedlegal.com.

I’m willing to give a “first opinion” to long-term clients, who need a high-level steer as to whether something is worthy of further attention or not. That’s usually a few minutes chatting or reading through the facts, and then some thoughts back from me, or just a chat about the potential implications of a new product or service.

I’m always mindful that it takes time and effort to get the full view of a situation, to be able to advise properly, and a “quick chat” is not always conducive to that. Someone trying to be brief, because they think that is appropriate if they are not paying for the advice, could cause problems (and thus potentially negligence claims), if they omit key information, perhaps because they did not realise its significance, or if the time available did not permit detailed discussion.

For long-term clients, this risk is capable of mitigation, to an extent, because of background knowledge of, and exposure to, their business, products and the like. When it comes to potential clients, of whom I have no advance knowledge, I’m more wary — both for the reasons above and also because my time and advice has a value.

Just because a problem can be solved relatively quickly does not mean that the solution has no value and, since I make a living from giving advice, giving that away for free has to be managed carefully.

In a similar vein, I’m quite lucky at the moment to be able pick and choose work, so I don’t feel like I need to make a pitch, or try to convert, every enquiry I receive. Perhaps, if I felt more pressure in that respect, I might be more tempted to do this.

As a means of exploring whether a piece of work looks interesting or enjoyable, a preliminary conversation can be worthwhile, but I can normally pick that up from a couple of lines in an email, so it does not need a discussion. I realise that these comments do not consist of a formal policy, but that sums up how I tend to approach it!
Is free legal advice good for business?

I ask the question because the essence of what we “sell” as solicitors is knowledge and expertise and a slogan which resonates with me is “Please do not confuse your Google search with my law degree”. Our “product” is actually the result of years of legal training and experience with verbal advice often the key part of an initial consultation. It is our professional knowledge in its purest, most intangible form.

Over the last 12 months or so, I have come to think that free advice at the initial point of contact is not always the best way to offer our services and while I recognise I may be championing a minority view, it is one I believe warrants debate.

I set up Roche Legal to help people with private client matters: wills, probate, trusts, lasting powers of attorney and tax planning. All of which are complicated legal topics and are the kind of weighty steps which clients want to discuss thoroughly before deciding whether to proceed.

I now believe that to make this free at the outset, sends the wrong message and reinforces the impression that physical manifestations of legal work – the will, the power of attorney, the deed – are what clients are actually “buying”, not the skills which surround their creation.

This has been a gradual change and as a result, around 6 to 8 months ago, I altered our business terms. Our standard fixed fee work remained unchanged but, for hourly work, only the first 30 minutes of the first meeting was free. This initially went well, until several incidents caused me to, for now, remove the free initial consultation altogether. The confusion, from our point of view, was difficult to understand as it was made very clear to clients only the first 30 minutes was free.

We acted entirely in accordance with the SRA handbook and in line with guidance provided by the Legal Ombudsman in relation to setting out our fees from the outset. Our terms were clear and sent well before the meeting.

Despite this, we encountered problems and one client took the view that the lengthy initial consultation and follow up meeting were both free! Patently, our attempt to find a half-way house was not working.

Ceasing, for the time being, to provide free consultations is not about squeezing profit from every possible source and we may well revert to providing free initial consultations again in the future. We provide a lot of complimentary information on our website, which has taken many hours to compile. We have various options around pricing and delivery, such as our online service for wills and lasting powers of attorney, which is less expensive than our face-to-face offering.

It is not about turning our backs on those who need help either. As a socially responsible firm, we get involved in a lot of community work and charity fundraising. Since setting up my practice some 4 years ago, we have raised well over £10,000 for various charities and given many hours of our time to individuals and to local and national charitable causes.

It is about preventing the advice we give from being devalued, and I think that if other lawyers took a similar view, it would be good for everyone. If we know that clients are fully prepared for the commercial nature of the arrangement from the outset, there can be no confusion about what is expected on both sides.

We are happy to give out a certain amount of free initial legal advice. However, it’s a very fine balancing act between general advice based on the brief information we are given and trying to ward off time-wasters who are just trying to get lots of advice without paying.

It is not an exact science and we work pretty much on a case-by-case basis. We do answer the queries apart from those who are obviously time wasters, in which case we just hit the delete button.

How many enquiries are converted to clients? It is difficult to give an exact figure but we think that at least 50 per cent are converted. It’s pretty evident when a person contacts you if they’ve been generally just shopping around and, if they are only ever interested in knowing what our fee structure is, we pretty much know that we probably won’t convert them.

Do I consider the free initial legal advice as part of our pro bono work or part of the process of gaining clients? We are a business like anything else and whilst we are happy to do some pro bono work we do consider that offering this free initial advice is just part of the process of client gaining and client retention.

Over the years I received many informal requests for free advice, as I expect most lawyers do. These were generally informal and personal, not requests that I should act in my usual professional capacity but unremunerated. (As I was a company/commercial practitioner, this is hardly surprising.)

My experience was that people who ask informally for advice in a context which makes it clear that they won’t expect to pay for it usually seem to have a contentious problem (quite often involving their neighbours), and they also have a clear idea of what they think the answer to the problem ought to be (almost always putting them in the right).

In telling their story they tend to simplify it, perhaps feeling that asking for free advice about a simple case will be more acceptable. When pressed for greater detail, what emerges often tends to weaken the case as initially presented.

The bias may be quite unconscious, but it can feel as though one is given the facts needed to lead to the
advice desired, and only reluctantly allowed to extract points that are less favourable.

I have an enduring memory of a long discussion with a couple about their treatment by the developer of a site adjoining their home; only when they got up to leave did the wife turn to her husband and remark, “Of course, there was that document you signed...”

This may be a quite different context from the one contemplated by “free initial advice”, where a non-chargeable session is used to scope out what sort of paid retainer has the prospect of providing value for a client's money.

I have no reservations about that in principle, although I suppose it too presents risks in the case of an over-optimistic client or lawyer.

Adam Newman

Bear Newman Limited, providing training courses and security services. He is a user of legal services, rather than a provider.

Email adam.newman@bearnewman.co.uk.

As part of my business it is essential to obtain legal advice. Free initial consultations and advice allow me to gain a flavour of the lawyer. Instinctively, by the way someone conducts themselves, you can very quickly determine their knowledge of a subject. You can see the confidence in their abilities. I am more likely to engage with someone who can demonstrate these traits. By charging a fee for initial advice, from a business perspective, law firms are automatically reducing their potential leads and ultimately revenue potential.

As a personal viewpoint, I often see lawyers who charge a fee for simple initial advice as ‘struggling’. This is on the premise that they need to charge clients or potential clients for information that is readily available in the public domain. In other words they are not making enough in billable hours and therefore clutch at every revenue generating opportunity.

Of course, there is an argument that ‘you get what you pay for’ and a lawyer who charges for otherwise ‘free advice’ could be in a league where their advice holds significant value.

In business I have found that more people will work with you if they like you as a person. People do not buy products or services they buy outcomes and the legal profession is not exempt from this.

Clients, in my opinion, are more likely to pay fees if they feel supported and can see an end goal. Free advice offers the opportunity to show a client that a lawyer cares and they can visualise the outcome. If I met with a lawyer who was balanced and offered me advice for free, helping me to see the potential end results, I would definitely purchase services from them. The free advice approach makes it a journey instead of “just” purchasing a service. A journey is always better with someone you can rely on.

Delia Venables is joint editor of this Newsletter.

Email deliavenables@gmail.com. Twitter @deliavenables.

Delia’s Legal Resources site is at www.venables.co.uk.

Open data: free to use and republish

By Nick Holmes

In the last issue we looked at the concept of open law (http://bit.ly/INL1807holmes); we should probably now take a step back and consider what is meant by open data.

Open data is the idea that some data should be freely available to everyone to use and republish as they wish, without restrictions from copyright, patents or similar. The philosophy behind it is long established, but the term “open data” itself was more recently coined. It appeared for the first time in 1995, in a document from an American scientific agency, and it gained traction with the rise of the internet and the web as the platform enabling its effective delivery.

In 2009 open data started to become visible in the mainstream with a number of governments (including the USA, UK, Canada and New Zealand) commencing initiatives to open up their public information.

Open government data

Government data is one of the most important forms of open data. In the UK, government data is subject to Crown copyright which, per section 163 of the Copyright, Designs and Patents Act 1988, applies to any work “made by Her Majesty or by an officer or servant of the Crown in the course of his duties.” These include legislation, government reports and codes of practice, official press releases, academic articles and many other public records, as well as data from Ordnance Survey, the Met Office, Highways Agency, Environment Agency, UK Hydrographic Office and other agencies.

The latter, operating as trading fund monopolies, have been particularly controversial. In 2006 the Guardian’s technology supplement carried an article entitled “Give us back our crown jewels.” The argument was simple: “Government-funded and approved agencies such as the Ordnance Survey and UK Hydrographic Office and Highways Agency are government-owned agencies; they collect data on our behalf. So why can’t we get at that data as easily as we can Google Maps or the Xtides program?” Their subsequent “Free Our Data” campaign was highly successful and instrumental in developing the open government data agenda.

At the same time, an Office of Fair Trading market study into the commercial use of public information (http://bit.ly/2D9nKih) found that more competition in public sector information (PSI) could benefit the UK economy by around £1billion a year and proposed a number of solutions. Public sector information holders (PSIHs) should, inter alia:

• make as much public sector information available as possible for commercial use/re-use;
• ensure that businesses have access to public sector information at the earliest point that it is useful to them;
• provide access to information where the PSIH is the only supplier on an equal basis to all businesses and the PSIH itself.
The Open Government Licence

In 2010 the UK Government created the Open Government Licence, which public bodies are encouraged to apply to their Crown copyright material. You cannot assume that all government information is covered by this licence; the works must have been expressly released under the OGL terms by the relevant rights owner or authorised information provider.

The Open Government Licence is based on and designed to work with Creative Commons licences. The current version 3.0, in short, provides that:

“You are free to:
• copy, publish, distribute and transmit the Information;
• adapt the Information;
• exploit the Information commercially and non-commercially for example, by combining it with other Information, or by including it in your own product or application.

You must (where you do any of the above):
acknowledge the source of the Information in your product or application by including or linking to any attribution statement specified by the Information Provider(s) and, where possible, provide a link to this licence;
If the Information Provider does not provide a specific attribution statement, you must use the following:
‘Contains public sector information licensed under the Open Government Licence v3.0.’”


Data.gov.uk

In 2010 data.gov.uk was established to help people to find and use open government data and to support government publishers in maintaining data.

The site, run by the Government Digital Service (GDS), was re-designed in 2018 and named “Find open data”. Using the site you can find data published by central government, local authorities and public bodies and links to download data files to help build products and services. All content is available under the Open Government Licence v3.0, except where otherwise stated.

Data is at the heart of digital transformation and a part of the Government Transformation Strategy. GDS works with other organisations both within and outside government in shaping the strategic direction on how data is managed, accessed and used. GDS works collaboratively on a range of issues with the Office for National Statistics, Department for Digital, Culture, Media & Sport and The National Cyber Security Centre.

The market for PSI

In 2014, an independent report by DotEcon (https://bit.ly/2Ddc65U) evaluated the impact of the 2006 OFT study into the commercial use of public information (see above). It found that the market for PSI had grown substantially following the study, driven in part by its recommendations, but also by the Government’s open data agenda which was designed to improve transparency and accountability of the public sector and also to stimulate economic growth, and by wider technological developments. It concluded:

“Many of the concerns identified by the OFT have been addressed through the push for Open Data. At the same time, others have re-emerged, in particular because of the inherent tension between the trading fund model and the Open Data approach: requiring trading funds to self-finance while at the same time asking them to make available data for free means that either the Government has to provide funding for some of this activity, or that trading funds need to make up the shortfall of revenue elsewhere. Both of these options come with their own problems and could raise new competition concerns. Resolving this tension may be one of the major challenges in relation to the provision of PSI going forward.”

Open data resources

Open Knowledge International (okfn.org) is a global non-profit organisation focused on realising open data’s value to society by: demonstrating the value of open data for the work of civil society; providing organisations with the tools and skills to effectively use open data; and making government information systems responsive to civil society.

Their Open Data Handbook discusses the legal, social and technical aspects of open data. It can be used by anyone but is especially designed for those seeking to open up data (opendatahandbook.org).

Their Global Open Data Index provides the most comprehensive snapshot available of the state of open government data publication (index.okfn.org).

The Open Data Institute (theodi.org) was co-founded in 2012 by the inventor of the web Sir Tim Berners-Lee and artificial intelligence expert Sir Nigel Shadbolt to show the value of open data and to advocate for the innovative use of open data to effect positive change across the globe. It is an independent, non-profit, non-partisan company that works with companies and governments to build an open, trustworthy data ecosystem.

The ODI helps people identify and address how open data can be used effectively in their sector and connects, equips and inspires people around the world to innovate with data.

The EU Directive on the re-use of public sector information (https://bit.ly/2DdkIDc) provides a common legal framework for a European market for government-held data (public sector information). It is built around two key pillars of the internal market: transparency and fair competition.

The European Data Portal (europeandataportal.eu) aims to improve accessibility and increase the value of open data. It harvests the metadata of PSI available on public data portals across European countries. Information regarding the provision of data and the benefits of re-using data is also included.
Why have multiple websites?

By Stanley Dunthorne

Businesses large and small often use more than one website, for various reasons. We take a look at the advantages and disadvantages of this approach and its impact on your SEO efforts.

Businesses with multiple websites come in several forms. They might be massive international companies, where the separate domains serve totally different business functions. Or, much smaller businesses may have several sites offering the same products or services, in the belief that more websites means that they’ll have a better chance of succeeding online.

Whether you are a large or small organisation, let’s start by taking a look in a bit more detail at when several domains could be useful, before looking at the disadvantages of such an approach.

Reasons to have multiple websites

There’s a business case for it

First of all, ask yourself why having more than one site is necessary, and why that information couldn’t appear together. It may be the case that there’s a valid business reason for wanting to maintain multiple websites. In some cases it can make sense to have several domains if the services you’re offering are completely different from each other, and if they need to have a distinct brand voice.

From a user intent perspective, segmenting information may be useful for large organisations with a varied offering. For example, tesco.com is used to buy groceries; tescobank.com is used for banking and tescoplcc.com is a corporate site. Likewise, easyjet.com, easyhotel.com and easycar.com all serve completely different customer needs.

Additionally, some companies may wish to keep intent funnels completely separate, and keep lengthy informational content separate from the sales-focused ecommerce site, like Tesco’s content hub tescolliving.com which sits on a separate domain.

Although it makes sense for big companies like Tesco, EasyGroup and Virgin to follow this approach, in some cases smaller businesses could also offer a few totally distinct services, where it would make sense for the different offerings to have separate websites.

To target different countries

There’s a number of options to consider when it comes to choosing how to structure international websites. For more detail see the blog post on Hallam at http://bit.ly/2xrc1lZ.

One of the options that leads to multiple sites is using a country code top level domain name (ccTLD) such as example.fr for France and example.ie for Ireland. With a structure like this, each international site will be treated as a separate domain, with separate domain authority and the demands on resource and maintenance that this brings.

Technical reasons

Although not a separate domain, it’s pretty common to see a blog hosted on a subdomain (blog.example.com).

While in an ideal world the blog would be hosted on the main domain in a subfolder (example.com/blog), technical limitations might make it impossible to publish content on the main site.

Taken to the next level, some companies who are unable to publish content on their main site may launch an entirely separate domain purely for publishing content, on a nice and easy WordPress platform, or something similar.

To dominate the search results

Relatively recent Google updates have made it very difficult for more than one URL from the same domain to rank organically on the first page.

As Google’s unlikely to show multiple results from the same domain, having several websites allows you to take up more space in the SERPs, therefore multiplying your chances of users clicking through, or so the theory goes.

While this might work, you should question whether you have the resource available to get two websites ranking on the first page, let alone one.

A recent article on Moz discusses this, highlighting that smaller businesses will struggle to devote the time and money necessary to earn the necessary link equity and rank well (http://bit.ly/2NRvDwN).

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Exact match domains

As an SEO strategy, some businesses may have attempted to capitalise on the rankings boost given by exact match domains and bought up several exact match domains related to their business, or maybe simply to prevent competitors owning those domains.

Or, additional websites may have been bought as a quick way to pass on link equity. This won’t work though, as to pass on any value in a link, the linking site itself needs to have high authority, built over time by earning links.

Occasionally you might see the same local business with multiple exact match domains dedicated solely to targeting different areas, for example nottinghamplumber.co.uk/derbyplumber.co.uk. This is ultimately a bad idea, again stemming back to the resource required, never mind the fact that it’s an approach which aims to deceive the user.

A Google update in 2012 aimed to counteract the boost you get from exact match domains, so you are better off focusing your efforts on one quality website!

Why multiple websites are a bad idea

Resource intensive

Perhaps the main and simplest reason that you don’t want more than one website is that it’s resource intensive.

Whether it’s content creation, securing SSL certificates, optimising site speed or ensuring the sites are mobile friendly, your tasks are doubled, and in a few years’ time when it’s about due for a redesign and update, you’ll need to fork out the money for two new websites instead of one.

Most importantly, external links are essential to a site ranking well, and without them it’s going to be incredibly difficult to rank.

Making a second website means that you’ll have to go through the effort of building links to two websites, rather than focusing your efforts on building up the authority of one site, and if you’ve bought a brand new domain, it’ll be starting with zero authority.

Customer confusion and user experience

If you’re jumping between multiple websites, it can be confusing and negatively impact user experience and may even leave users unaware that they’re viewing the same business.

If you’ve set up multiple websites for the same product but targeting different stages of the conversion funnel, you can’t guarantee that the user will find the right site at the right time. You would be better off focusing on ensuring that one primary site is as visible as possible and that it has everything a customer needs.

Duplicate/thin content

With multiple websites selling the same products, there’s a clear danger of duplicate content.

For smaller businesses, it’s likely that any microsites or secondary websites will repurpose content from the main site, and if you’re only “spinning” content, you should question why there’s any point in having a separate site in the first place.

Great content is universally agreed upon as being essential to ranking well but it’s unlikely you’ll meet this criteria if the content is very similar or thin.

Tracking

With multiple domains for the same business, you have multiple analytics properties to track and manage. Not only that, but you can lose valuable insight too: when a user navigates between your websites, the source will show as a ‘referral’ – not the source that originally brought the user to your business.

NAP consistency

This one’s more relevant to brick and mortar businesses – if one business operating from one location has multiple websites and each one lists the same business name, address and phone number (NAP), this can have a negative effect in search. More importantly, it’s confusing for users.

Google needs consistent NAP information in order to validate your location and return your site in local searches, and sending it mixed signals over what domain is linked to a certain location isn’t going to help.

The best approach

If you have multiple websites, or are considering building more, ask yourself why having more than one site is necessary. If you can’t come up with a good answer and are wondering how best to deal with them, my colleague Tom has written a great article on merging several domains at http://bit.ly/2PK0GYM.

If there’s a legitimate business case for maintaining several domains, that’s fine, but leads on to the next point – do you have the resource required for all of them to be effective? While multinational organisations might have the means to operate several successful websites, it’s unlikely that smaller organisations could do so in a way that’s more beneficial than having one strong, authoritative domain.

Stanley Dunthorne is an Owned Media Consultant at Hallam Internet (www.hallaminternet.com), where he specialises in SEO and delivers results for clients across a range of industries.

Email stanley.dunthorne@hallaminternet.com. Twitter @DigitalStanley.
Government surveillance

By Alex Heshmaty

There are many different facets to an Orwellian dystopian society (in which, some may argue, we already live) where privacy no longer exists and Big Brother is watching everyone. Some of the culprits are data mining and tracking used by the tech giants for profiling internet denizens in order to realise lucrative profits from highly targeted advertising which we covered in the July issue of the Newsletter (http://bit.ly/INL1807heshmaty).

But although the erosion of privacy by big business is a major concern – especially in light of the Cambridge Analytica scandal and allegations of Russian interference in elections – the most acute fears have traditionally centred on government surveillance. So what are the main pieces of legislation in the UK which relate to government surveillance?

RIPA

The Regulation of Investigatory Powers Act 2000 (RIPA) was arguably the first implementation of an official framework for covert surveillance of internet communication by the police and other public bodies. Controversial at its inception, it introduced various measures designed to empower security services and others grappling with the lawlessness of cyberspace, including:

- allowing police, intelligence services, HMRC and various other public bodies to demand ISPs provide detailed communications records for individual users;
- forcing ISPs to fit equipment to facilitate interception of internet communication at Government request;
- enabling government to demand any relevant encryption keys - and making refusal a criminal offence;
- other measures dealing with non-internet interception such as bugging and wiretaps, reading mail, requesting telephone data and listening to calls, photographing people and using undercover officers and informers.

Although an Investigatory Powers Tribunal (ipt-uk.com) was set up to hear complaints about surveillance by public bodies, privacy campaign and other critics argued that powers granted under RIPA were overreaching and posed risks of inappropriate and oppressive surveillance. These fears were borne out in several incidents which followed its introduction, including the revelation of journalists’ sources and a council which spied on a family to determine whether they were entitled to take advantage of a school catchment area.

The “Snooper’s Charter”

In 2006, the EU Data Retention Directive came into force, requiring member states to store the telecommunications data of their citizens for at least 6 months. This was declared invalid in 2014 by the ECJ following a case after it was found to breach the EU Charter of Fundamental Rights. This ruling led to the UK Government introducing the Data Retention and Investigatory Powers Act (DRIPA) as a piece of “emergency legislation” so that it could continue with its policy of data retention. However, DRIPA was subsequently challenged and also ruled unlawful by the ECJ in 2016. This second ruling paved the way for a new piece of legislation – Investigatory Powers Act 2016 (IPA) – designed to both replace DRIPA and update RIPA.

IPA 2016 not only kept in place retention of data by ISPs, but also beefed up the measures contained in RIPA regarding interception of communications, request for communications data, equipment interference, bulk warrants for communications data and introduced technical capability notices (TCNs). TCNs can require ISPs to introduce permanent interception capabilities - and possibly also to prevent encryption (although this latter point is still a matter of debate).

As well as the traditional communications industry, IPA 2016 can be applied to nearly any business which handles communication of data - such as cloud based service providers, ecommerce businesses and even private network operators (eg business computer networks).

But IPA 2016 has already been successfully challenged in the courts and needs to be amended to better align with EU legislation, with other challenges expected.

Oversight

The Investigatory Powers Commissioner’s Office (IPCO) (ipco.org.uk) was set up in September 2017, centralising the oversight roles which were previously undertaken by the Chief Surveillance, Interception of Communications, and Intelligence Services Commissioners. IPCO is responsible for reviewing the use of investigatory powers by public authorities, including intelligence and law enforcement agencies. It complements the Investigatory Powers Tribunal and conducts audits and investigations when necessary.

Other relevant oversight bodies include the Surveillance Camera Commissioner (responsible for working with public authorities to make them aware of the surveillance camera code of practice), the Intelligence and Security Committee of Parliament (which has responsibility for oversight of the UK intelligence community) and the Biometrics Commissioner (responsible for reviewing the retention and use by the police of DNA samples, DNA profiles and fingerprints - see below).

Biometrics

Biometrics refers to the calculation of biological human characteristics. In terms of government surveillance, this normally translates to the identification of individuals using biometric identifiers such as fingerprints and DNA, or through face or iris recognition. Although the retention of fingerprints by the police is nothing new, the use of automated facial recognition has courted controversy due to huge inaccuracy.

The Home Office recently published a Biometrics Strategy which has been lambasted as woefully inadequate, and was even criticised by the Biometrics Commissioner for lacking direction.

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Other relevant legislation

- The EU Charter of Fundamental Rights and the Human Rights Act (HRA). The former was mentioned earlier in relation to the now defunct DRIPA, and Article 8 of the HRA (right to privacy) has been invoked in relation to RIPA.
- The Telecommunications Act 1984. Section 94 provides for “bulk Communications Data Acquisition”. This was updated by the Communications Act 2003.
- The Protection of Freedoms Act 2012. This included several provisions related to controlling or restricting the collection, storage, retention, and use of information in government databases.
- The GDPR and the Data Protection Act 2018. These relate to the protection of personal data in general but there are several provisions which relate directly to public authorities and bodies (eg the need to appoint a Data Protection Officer).
- The Intelligence Services Act 1994. This established “a procedure for the investigation of complaints about the Secret Intelligence Service and the Government Communications Headquarters” and the Intelligence and Security Committee of Parliament (see above).

Further reading

The Register: Here's the little-known legal loophole that permitted mass surveillance in the UK https://bit.ly/surveillance2
Big Brother Watch bigbrotherwatch.org.uk

Alex Heshmaty is a legal copywriter and journalist with a particular interest in legal technology. He runs Legal Words (www.legalwords.co.uk), a copywriting agency in Bristol.
Email alex@legalwords.co.uk. Twitter @alexheshmaty.

Publications and blogs

The Internet, Warts and All: Free Speech, Privacy and Truth, by Paul Bernal, Senior Lecturer in Information Technology, Intellectual Property and Media Law at the University of East Anglia, seeks to explain the internet information ecosystem, busting myths, pointing out why attempts at regulation have failed and suggesting the way forward.


Control Shift: How Technology Affects You and Your Rights by David Meyer, a technology journalist with extensive expertise in digital rights and policy issues. It is an accessible guide to the tech debates that are shaping our world.


Data-Driven Law: Data Analytics and the New Legal Services, edited by Edward J Walters, helps legal professionals meet the challenges posed by a data-driven approach to delivering legal services, with chapters written by leading experts on topics including mining legal data, quantifying the quality of legal services, contract analytics and more.


The AL 100 Legal Tech directory has been created by Richard Tromans at Artificial Lawyer to showcase the best and most progressive legal technology from around the world. It focuses on applications that use automation and AI technology, as well as those systems that are designed to integrate with and support these applications. See www.artificiallawyer.com/al-100-directory/.

LexBlog opens to all legal blogs. Legal blogging pioneer Kevin O’Keefe is inviting all legal bloggers worldwide to participate in his LexBlog network. Any legitimate legal blog with an RSS feed, just fill in the application form, drop in your site feed and agree to the Terms of Service! Background and more info on the LexBlog blog http://bit.ly/2Npq49f.