

# *Trademarking Blockchain Enterprises*

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Who owns the trademarks to Bitcoin, Ethereum, and other blockchains? Are blockchain marks even eligible for trademark protection? If so, how should use of such valuable marks be governed within the enterprise?

Trademark law struggles with the ambiguous ownership issues raised by decentralized enterprises such as blockchain. Scholars have explored such issues in the analogous context of open source software (OSS). However, blockchain enterprises present novel issues related trademark ownership, validity, and third-party use.

Like OSS, the decentralized organizational structure of leading blockchain protocols fits awkwardly with trademark doctrine. Indeed, reducing centralized authority forms a key selling point of blockchain technologies, and many users may ideologically resist the hierarchical control contemplated by trademark law.

At the same time, blockchain presents new trademark challenges that differ from traditional OSS. Whereas OSS communities typically unite around a discrete set of functional, technocratic goals, blockchains attract more diverse stakeholders with diverging goals and interests. As the frenzy of commercial activity around blockchains continues, the potential for additional conflicts puts pressure on the question of who controls the enterprise, its software, and its key marks.

For example, both the Bitcoin blockchain and Ethereum protocol underwent rivalrous hard forks, with factions splitting off to pursue incompatible goals. In both cases, the factions agreed to share the key trademarks. However, lingering tensions remain, and one should not presume amicable resolutions of future blockchain conflicts. Moreover, third party companies have claimed blockchain trademarks, privately registering Bitcoin in both Britain and Japan.

Because blockchain protocol software is often open source and available for anyone to use, the associated trademark rights may constitute the most valuable property a blockchain enterprise possesses. The ambiguities surrounding the ownership of blockchain marks therefore cast an unwelcome cloud. Furthermore, given the wide array of secondary business ventures from smart contracts to asset registries to initial coin offerings being built upon existing blockchain technologies, questions regarding third-party use rights also merit investigation.

This paper seeks to map the interface between trademark law and blockchains. It begins by surveying the diversity of blockchain enterprises and ecosystems and canvasses the trademark issues they raise. Having done so, the paper takes a deeper dive into the governance structure of leading blockchains, exploring the different stakeholders who share control over blockchain governance and analyzing the trademark implications. It then considers the scope for third-party use of blockchain marks under various scenarios. Finally, the paper offers prescriptive advice as to how blockchain enterprises can organize themselves to navigate the contours of trademark law more effectively, including suggestions as to best practices for organizational structure, licensing, and third-party use.