

NFTs and Intellectual Property : A Critical Examination of the Implications for Creatives and Collectors

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ABSTRACT

Non-Fungible Tokens (NFTs) have gained significant attention in the realm of digital art and collectibles, raising important questions regarding intellectual property (IP) rights. This abstract presents a critical examination of the implications of NFTs for creatives and collectors in the context of IP. It explores the unique features of NFTs that enable the tokenization and ownership of digital assets, and the potential conflicts that arise with existing IP laws and regulations. Specifically, it addresses concerns related to copyright, trademark, and ownership rights in the digital realm, analyzing the challenges and opportunities posed by NFTs for artists, content creators, and collectors. Additionally, this abstract discusses the impact of NFTs on the art market, exploring issues of authenticity, provenance, and the role of intermediaries. It also delves into the environmental impact and sustainability considerations associated with NFTs. By critically examining the intersection of NFTs and IP, this abstract contributes to a deeper understanding of the legal, ethical, and economic implications for stakeholders in the creative and collecting communities.

Keywords: NFT, minting, tokenization, digital assets, copyright protection, ownership, cryptocurrency, value

I. INTRODUCTION

Non-fungible tokens (NFTs) are digital assets that represent underlying works such as art, music, memes, and even physical items like shoes and clothes. Unlike fungible assets like money, NFTs cannot be exchanged or divided, making them unique and distinct from one another. Each NFT is supported by algorithms and metadata, which set it apart from other similar NFTs on the block chain. The tokenisation process involves making a digital representation of an asset using block chain technology, resulting in an NFT that is essentially a unit of value. As the owner of an NFT, you are the only person in the world with that unique token on the block chain. NFTs have opened up new opportunities for artists, musicians, and other creatives to monetize their digital works in ways that were previously impossible.

To create an NFT of a Work, one needs to "mint" the NFT, which is the process of tokenization by creating a digital representation of the Work and uploading it onto a marketplace. Platforms like OpenSea, Bored Ape Yacht Club, and SuperRare facilitate the sale and purchase of NFTs. NFTs are essentially metadata added to the

block chain, providing built-in authentication with a unique identification code as proof of ownership. This enhances market efficiency and enables direct buyer- seller connections, thereby simplifying the transaction process and making the sale and purchase of NFTs quite viable.

After the NFT is minted and uploaded onto a platform, it becomes publicly accessible for sale. The value of an NFT is largely determined by its perceived uniqueness and scarcity, and the market demand for the underlying Work it represents. Collectors and investors are willing to pay high prices for NFTs that represent highly sought- after Works, such as viral memes, iconic art pieces, or famous music albums. In some cases, NFTs have sold for millions of dollars in online auctions, creating a new market for digital assets.

The price of an NFT is influenced by its perceived rarity and exclusivity, and the demand for the original Work it represents. NFT collectors and investors are often willing to pay exorbitant prices for NFTs that represent highly popular and valuable Works, such as famous music albums, viral memes or iconic art pieces. Some NFTs have been sold for millions of dollars in online auctions, indicating the emergence of a new market for digital assets.

II. LITERATURE SURVEY

An NFT (non-fungible token) is a digital asset that represents ownership of a specific underlying work such as art, music, or a meme. NFTs are created by minting, which involves creating a digital representation of the work on a block chain platform and issuing a token to guarantee its authenticity. Each NFT is unique, and ownership is verified through a unique identification code.

While NFTs are mostly metadata files that can be created from any digital work, whether or not it is subject to copyright, there is a growing interest in their relationship with copyright. This is because many of the works being traded as NFTs, such as art, are protected by copyright. Additionally, there is uncertainty about what exactly is being purchased when someone buys an NFT.

III. RESULTS AND DISCUSSION

There is a lot of confusion surrounding the rights that buyers of NFTs acquire. Some buyers mistakenly believe that they are purchasing the actual work of art and all its associated rights, but in reality, they are only buying the metadata that is linked to the work. The high prices of some NFTs, such as pixel art selling for millions of dollars, contribute to this confusion. Even mainstream press sometimes mistakenly reports that the work itself has been sold. It can be hard to understand why someone would pay so much money for what essentially amounts to a metadata file and a short string of code that may not have much artistic value, but that's precisely what most NFTs are.

1. HOW DOES IT RELATE TO COPYRIGHTS?

Certainly! While copyright may not always be a relevant consideration for NFTs, it could potentially be involved in certain cases, such as those involving digital rights management. In some instances, sellers may use NFTs to transfer actual copyright ownership of the original work. However, it remains unclear if this approach would satisfy the legal formalities required for the transfer of copyright, as in some jurisdictions, such as the UK, a written and signed copyright assignment is necessary. On a broader level, NFTs can function as a form of

registration that uses block chain technology to provide a means of verifying and determining authenticity of ownership claims. However, this approach is not infallible, as anyone with the appropriate technical knowledge and tools can create their own token and make erroneous ownership claims within the block chain. As a result, there are practical limitations to using NFTs as a means of digital rights management.

Another issue to consider is the use of licenses in relation to NFTs. Smart contracts, which are agreements coded into the block chain, could be used to create licenses that allow users to perform actions that would otherwise be restricted by copyright. However, at present, there are no cryptographic smart contract licenses in the form of NFTs available on major NFT platforms. Some platforms and collectible projects do offer licenses, but the terms and conditions are often contradictory. Additionally, there is the potential for copyright infringement with NFTs. There have already been numerous instances of alleged infringement, with some artists complaining that their works were being minted as NFTs without their permission, and even public domain works being turned into NFTs. While most of these cases have been resolved outside of court by removing the token from auction platforms, it is likely that a copyright infringement case involving an NFT will arise in the future. The question of whether an NFT infringes on a copyright holder's rights will need to be addressed at that point.

The challenge of determining whether creating an NFT constitutes copyright infringement or not. It is a complex issue because NFTs typically involve creating metadata rather than the work itself, which may not infringe on copyright. Understanding the technical details of what an NFT actually is becomes important when considering copyright infringement related to NFTs.

It is uncertain if the creation of an NFT without permission would be considered copyright infringement as the token is not the actual artwork, but rather a series of numbers linked to it. Infringement usually involves unauthorized use of exclusive author rights, a direct connection between the potentially infringing work and the original, and copying a substantial part of the work. It's unclear how NFTs meet these requirements, but legal disputes have arisen, such as the lawsuit by Miramax against Quentin Tarantino for trademark infringement, copyright infringement, and contract breach related to his plan to sell NFTs based on his film Pulp Fiction.

The author of a work has exclusive rights over reproduction, publication, lending and rental, public performance, adaptation, communication to the public, and authorization of any of the above. However, it is uncertain if the author has the exclusive right to make a claim against a platform for minting an NFT associated with their original work. While there is a possibility that the right of communication to the public could be infringed through an NFT link, there is no substantial reproduction of the work in the NFT itself, and therefore it would not infringe those rights. Nonetheless, authors may still pursue legal action against a platform for unauthorized use of their work through an NFT.

2. CURRENT CHALLENGES

The advent of NFTs has brought to the forefront several issues that require regulation. One of the issues is the environmental impact of the technology, as the operation of the blockchain networks requires significant energy consumption. However, entities working with blockchain technology are exploring solutions to reduce CO2 emissions. Additionally, the emergence of NFTs necessitates regulation in various legal areas, including civil law, tax law, environmental law, and intellectual property law, specifically copyright.

The regulation of NFTs, despite the rapid growth of the market, is still not a reality. However, concerns regarding the potential for money laundering or terrorist financing crimes have been raised by the Financial Action Task Force (FATF), providing a strong impetus for regulation. In response, the European Commission is preparing the "Markets in Crypto-Assets Regulation" (MiCA) as part of its Digital Finance package. This regulation may cover non-fungible digital assets and is expected to have a significant impact on the crypto-asset sector not only in Europe but worldwide, as other countries may follow similar rules. The proposed definition for crypto assets under MiCA is "a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology." This definition explicitly includes NFTs, indicating that MiCA will generally apply to them. As such, the regulation of NFTs is becoming a pressing issue, and it is likely that there will be increased scrutiny and legal requirements for NFT transactions in the future.

The European Commission proposed a regulation called "Markets in Crypto-assets" (MiCA) in September 2020, which is currently awaiting joint adoption by the European Parliament and Council through an ordinary legislative procedure. The European Data Protection Supervisor provided some recommendations for amending the proposal during a discussion in June 2021. The MiCA will have general application and be directly applicable in all EU member states when it enters into force, without the need for national transposition.

IV. CONCLUSION

In conclusion, the emergence of non-fungible tokens (NFTs) has brought about many legal and regulatory issues. One of the major concerns is their potential impact on intellectual property rights, as NFTs create a new way of trading and owning digital assets, such as artwork, music, and other digital content. As discussed, there is currently no clear consensus on whether the creation of an NFT without authorization constitutes copyright infringement.

However, it is evident that NFTs raise complex legal questions, and their growth is causing a need for regulation in various legal fields. Furthermore, the environmental impact of NFTs has been a growing concern. The energy consumption required for the operation of block chain networks raises questions about the sustainability of this technology. There is an urgent need to find new solutions that reduce the CO2 emissions associated with the development and maintenance of NFTs.

Despite the regulatory uncertainty surrounding NFTs, the European Commission is proposing the Markets in Crypto-Assets Regulation (MiCA) to regulate the crypto-asset sector, including NFTs. While there is some uncertainty regarding the MiCA's application to NFTs, it is evident that NFTs are increasingly becoming a significant part of the crypto-asset market, and there will be a need for this Regulation to define the rules for the use of this new technology soon.

Overall, the emergence of NFTs highlights the need for a comprehensive legal and regulatory framework that takes into account the unique characteristics of this new technology. As this technology continues to evolve and grow in popularity, it is essential to strike a balance between innovation and legal protections, ensuring that NFTs are developed and traded in a manner that is both sustainable and legal.

V. REFERENCES

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