

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 5

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

The Invisible Strings of NFTs and IP

KARUN ROY¹, HARISANKAR ROY² AND R GOWRI PARVATHY³

ABSTRACT

In this technological era, over the few years, we are witnessing unprecedented phenomena's that emerge from nothing and yet possess the power to revolutionize the entire world and the legal system. NFT means "non-fungible token." In simpler words, an NFT can be described as a digital asset which links ownership of anything to unique physical or digital items, which includes various works of art, real estate or properties, music/sounds, or any forms of multimedia. In short, anything that can be digitised can be turned into an NFT. This possesses a characteristic of Intellectual Property as the blockchain will publicly record the sale or purchase of such NFTs for everyone to view, and the owner of an NFT will have the records of his ownership available publicly for anyone to verify; NFTs are bought and sold through the blockchain. In most cases, purchasing an NFT grants the owner some basic usage rights, such as the ability to publish the image, video, or audio files online. However, even if we were to assume for the time being that the NFT qualifies for copyright under Indian law (let's say that an amendment is brought about to that effect), what rights does the author grant to the initial purchaser of his NFT? The authors of this paper try to analyse and understand the rights, relationships and various characteristics between the Non-Fungible tokens and Intellectual Property Rights.

I. INTRODUCTION

In this technological era, over the few years, we are witnessing unprecedented phenomena that emerge from nothing and yet possess the power to revolutionise the entire world and the legal system. NFT means "non-fungible token." In simpler words, an NFT can be described as a digital asset that links ownership of anything to unique physical or digital items, including various works of art, real estate or properties, music/sounds, or any form of multimedia. In short, anything that can be digitised can be turned into an NFT.

These non-fungible tokens can be considered modern-day collectable items. They're bought and sold through the internet, and they represent digital evidence of ownership of the given item. NFTs are securely recorded on a blockchain, the same technology underlying cryptocurrencies, ensuring that the asset is unique and one of its kind. This technology also makes it very difficult

¹ Author is a Junior Lawyer at Office of Adv P.K Roy, India.

² Author is a Student at Bharat Matha School of Legal Studies, India.

³ Author is a Student at Bharat Matha School of Legal Studies, India.

to alter or counterfeit NFTs.

Blockchain-based NFTs make it easier for enthusiasts to manage NFTs completely, transfer ownership of their NFTs to a buyer, and produce NFTs in the standard token format on the blockchain. Additionally, there are tokens that exhibit traits of both fungible and non-fungible tokens, known as semi-fungible tokens. Tokens that are semi-fungible are fungible within the same class or at the same time but non-fungible in other classes or at other times. Because a charter ticket can be exchanged for another charter ticket but not for a first-class ticket, an aircraft ticket can be regarded as a semi-fungible token. Blockchain-based games primarily use the idea of semi-fungible tokens, which also lowers NFT overhead. Following is a description of NFTs' primary characteristics:

II. FEATURES OF NFT

1. NFTs are fundamentally distinct from fungible cryptocurrencies like Bitcoin, which cannot be distinguished from one another. The NFTs can be found on the blockchain, where they cannot be copied or altered. Additionally, it makes it simpler for users to verify its legitimacy.

2. Fungibility—the ability of currencies or assets to be freely exchangeable because they are equivalent. For example, the value of a 100-rupee note will always be equal to the value of another 100-rupee note. Similarly, in cryptocurrencies, the value of one Bitcoin is equal to another Bitcoin. Conversely, each NFT is unique and different and therefore, they cannot be exchanged like-for-like².

3. Royalty collection - NFTs may include a smart contract-based automated royalty creation mechanism. A predetermined portion of the resale revenues would be automatically transferred to the asset's original inventor through the use of such technology.

4. Originality - The blockchain layer allows the NFT owner to readily demonstrate the ownership of his or her keys. The ownership of the user can be publicly verified by other nodes. NFTs are made to grant the asset's buyer the right to originality. Even while other people may use the same image, music, or video file, the artist has the right to hold all production rights and the copyright just like they would with any other tangible assets. Example- Every person interested in buying a “Monet” print can have the freedom to do so, but only the one who has the original can control its ownership and enjoy all other rights.

5. Transferable: Ownership of owned NFTs may be freely transferred between users on specific markets.

6. **Transparency:** By using blockchain, all transactions are open and can be verified and tracked by every node in the network.

7. **Fraud prevention:** Since fraud is one of the main issues in asset trading, adopting NFTs guarantees that customers purchase authentic goods.

8. **Immutability:** Information about the bought NFTs cannot be changed because it is recorded on a distributed ledger together with its metadata, token ID, and transaction history.

III. NFT AND THE BLOCKCHAIN

A blockchain is simply a public ledger that is kept up to date by hundreds of computers cooperating on a global scale. It records each and every transaction made using cryptocurrencies and keeps track of them publicly. The blockchain records all bitcoin transactions and keeps a public record of them for everyone in the world to examine, much like how a bank records a customer's activity to assess whether he has enough money in his bank account. On the blockchain, no legitimate record or transaction can be altered, and anybody can check the recorded transactions.

As the blockchain will publicly record the sale or purchase of such NFTs for everyone to view, and the owner of an NFT will have the records of his ownership available publicly for anyone to verify, NFTs are bought and sold through the blockchain. In most cases, purchasing an NFT grants the owner some basic usage rights, such as the ability to publish the image, video, or audio files online (in addition to the exclusive blockchain record and bragging rights!)

NFTs need to be regarded similarly to works of art. They are made to provide the owner ownership of the work, which cannot be replicated (though the artist can still retain the copyright and reproduction rights, just like with physical artwork). If one were to compare it with collecting physical art-, anyone can buy a Van Gogh print, but only one person can own the original.

NFTs are sometimes mistaken for a form of cryptocurrency. NFTs are actually digital assets that may be bought with cryptocurrencies. The fact that both cryptocurrencies and NFTs have a digital record maintained on a blockchain is the sole thing that unites them. Each token in an NFT is unique and cannot be traded for one with a similar value. One can trade one Bitcoin for another and there is greater transparency and value with cryptocurrencies.

The question of whether the owner of an NFT has ownership or copyright over the asset upon which the NFT is minted arises since NFTs are digital tokens that are created on top of underlying digital assets. The answer to this issue is "no," as experts point out that NFTs do not

provide copyright privileges and that the buyer simply acquires ownership of the digital asset, similar to how a painter retains copyright to his work even after selling the actual picture to a buyer. Therefore, the buyer cannot assert copyright over the asset unless the owner specifically transfers his copyright by assignment or licence under the Copyright Act. A buyer's digital item is additionally shielded from unauthorised duplication or dissemination by the Copyright Act. The right to copy or distribute copies of one's own work is granted by Section 14 of the Copyright Act. Therefore, any such conduct would be subject to the requirements of the Copyright Act unless the smart contract between the buyer and the owner does not forbid the resale or reproduction of the digital asset.

Purchasing NFT by execution of smart contracts

By executing smart contracts, the purchase and sale of NFT become legally binding transactions. Digital contracts known as "smart contracts" are created using codes and kept on a blockchain. When the action related to the contract is completed, such as when an NFT purchase is made, these are automatically carried out. The connection regarding the rights given and/or transferred to the NFT buyer is governed by these smart contracts. These may include information on the owner, any limitations on the usage of NFT, ownership of IP, royalties administration as and when the NFT is exploited/resold, etc.

What are the legal rights that are transferred from the owner of a digital art to the purchaser of the NFT?

However, even if we were to assume for the time being that the NFT qualifies for copyright under Indian law (let's say that an amendment is brought about to that effect), what rights does the author grant to the initial purchaser of his NFT? Although the law is unclear on this, it appears that the author of an NFT does not fully relinquish all of his rights to the work. What has been referred to as a "smart contract" largely determines the issues of what rights are transferred and what rights are retained. Although many rights are often transferred to the buyer under these arrangements, which are framed by the platform itself, the NFT is always made by the original inventor. Some trading platforms assert that the corporation owns the copyright and that the author of the NFT has no ownership interest in the NFT following its sale. We don't know exactly what rights the author transfers to the buyer because the NFT industry in India is still quite young. However, it appears that from the perspective of the Copyright Act, a transfer of full ownership may not be problematic, unlike in many western nations. The Copyright Act provides that if the creator of a copyrighted work so wish he can transfer all his rights in the work to the buyer of the work. Should the NFT platform require the complete transfer of the

copyrights, it might be possible to do so.

For Instance, WazirX, India's first NFT marketplace, under its terms and conditions has given complete ownership rights to the creators of NFT. The NFT is entirely transferred to the buyer upon purchase. "A worldwide, perpetual, exclusive, transferable licence to use, copy, and display" is granted to the owners. However, the platform ostensibly only allows the selling of the NFT on its own platform.

However, NFTs are currently marketed through "smart contracts" in India and overseas, regardless of their future. "Smart contracts" are simply predetermined contracts that are accepted by both parties for the sale and purchase of the NFT. These contracts are often created by the platform itself.

NFTs are a recent development that is growing quickly. Like other technological advancements, it has led to new questions that remain unresolved. Before these difficulties are resolved, either through the legal system or through legislation, some time will pass. There is not yet much consensus regarding NFTs.

IV. THE INVISIBLE STRINGS ATTACHED: NFTS AND ITS RELATIONSHIP WITH IP RIGHTS

Intellectual property refers to mental inventions like names, designs, symbols, and even literary and artistic works. Creative property rights, sometimes known as IP rights, are legal frameworks that provide for the regulation and protection of these benefits of intellectual labour. Exclusive rights and monopolies are at the heart of intellectual property. The only authority to create, use, display, or sell such work belongs to the patent owner. The use of a brand name that is confusingly similar to one that already existing is prohibited under trademarks. Every responsible businessperson should prioritise such protection along with the expansion of innovation.

Owners of NFTs may include organisations with consumer-facing trademarks and logos, writers of books and screenplays, musicians, game developers, and even individuals who create actual works of art. There is a substantial possibility that these owners' rights will be violated because they are likely to share their assets with others, which they can use to create an NFT. NFTs do not, however, always come with IP rights. There is a distinction between owning an NFT and owning the underlying intellectual property or other assets included within the NFT; owning an NFT is merely a display on the shelf.

The assets can be cloned, replicated, and forwarded to an illimitable extent because NFTs are

built on blockchains that are intended to be decentralised and free from third-party controls. For instance, a screenshot of art can provide someone else a copy of the digital asset. The main goal of NFTs is to blatantly demonstrate originality and ownership, which does not depend on the number of copies someone may own, although this is a frequently overlooked point. You may snap a photo of a picture, but you don't have what's under the picture, famed bitcoin investor Paul Kell once said. It follows that it makes sense that having a replica of an object that is freely held does not have any advantages. Eventually, when the issue transposes to ownership benefits for purchasers of an NFT, the dilemma becomes different.

NFT Ownership and Copyright of the Underlying Asset

When someone buys an NFT, they only receive a cryptographically signed receipt proving they are the rightful owner of that specific copy of the NFT. Here, two misunderstandings must be clarified: first, the buyer receives merely ownership of the purchased work and not the original copyright that belongs to the author; and second, the buyer receives no property right to every copy of the purchased work. For instance, the NFT of the animated digital cartoon Nyan Cat is owned by a person who paid thousands of dollars for it. Christopher Torres, who created the original doodle of Nyan Cat, still holds the original copyright. The following fundamentals provide for this: each NFT has a unique serial number or "fingerprint" (hash) that cannot be imitated. A hash can only represent one instance of a given digital file because it is a cryptographic key created from a single digital file. However, it implies that owning NFT may not always be advantageous. But this is where smart contracts and licences come in handy.

In the case of copyright, ownership of the underlying rights won't transfer unless the author of the original work expressly consents to handing over those rights to the NFT owner. Depending on the conditions of the transfer, an NFT owner may not be permitted to reproduce, share copies, publicly perform, exhibit, or make derivative works of the original asset if and when copyright is transferred through licencing.

Under Section 14 of the Indian Copyright Act of 1957, the owner of the copyright is granted a number of privileges, including the ability to make copies and modifications. When a customer purchases an NFT that correlates to creative work, they also receive a copy of the underlying work (in some digital format, such as .jpeg, .pdf, or .mp4) in addition to the NFT itself, or tokens. Any unauthorised copying of an NFT and sending it to a customer could be construed as copyright infringement. This goes for any unauthorised distribution, copying, or adaptation of an NFT. Enforcing IP rights against a buyer after an NFT sale can be difficult because NFT ownership is decentralised and blockchain transactions are immutable. Similar to a bank

account, an NFT is typically associated with a digital wallet address, but without strong digital forensics, identifying the wallet owner may be challenging. Thus, utilising powerful (but lawful) takedown notices might stop the NFT from ever being sold.

Trademarks and NFTs

The main goal of a businessperson trying to mint an NFT for an underlying asset is to stand out from the competition. However, trademark infringement occurs when an unauthorised or rival party attempts to mint, sell, or resell that NFT while utilising the asset owner's registered trademarks without the asset owner's consent. As owners of large fashion brands like Tiffany, Louis Vuitton, and Dom Perignon, for instance, use the AURA blockchain to allow customers to verify the validity of their branded NFTs, a crucial question is whether the company actually owns NFTs as opposed to trademarks or the assets being sold.

If industry players broaden their trademark registrations to include NFTs in their trademark manoeuvre and classifications, this conundrum can be greatly eased. They could also decide to associate their brand with particular fashions or business attire. When appropriate, design patents should also be taken into account because their revenue, profit, and sales are frequently sizable.

Patents and NFTs

With the help of patents, an NFT blockchain owner is able to licence the technology that powers their NFT and give customers access to real collectibles of the brand. Famous shoe company Nike, for instance, has a patent on creating "cryptographic digital assets for footwear," which enables customers to ensure the authenticity of the purchased item while also carrying a digital collectible version of their shoe in their wallet (Cryptokicks). It is important to remember that a patented idea must be new and qualified for patent protection.

V. A POSSIBLE WAY FORWARD AND SOME SUGGESTIONS

Earlier in the first few generations of NFTs, the purchaser could only display or otherwise utilise it for personal reasons and could not make money off of his purchase. However, the developer can provide special usage guidelines for NFTS, which could be used to satisfy certain requirements, like making money off the tokens. NFT License 2.0 is a concept created by Dapper Labs, the firm behind the initial NFTS such crypto-kitties and NBA Top Shots. The NFT buyers were able to make up to \$100,000 per year in profit from their tokens thanks to this strategy. While this is a novel and intriguing development for NFTs as a whole, it is also true that it is getting harder to regulate users and stop them from exceeding the fixed quota. Because

of this issue, NFT creators might desire a strict prohibition on the commercialization of their works.

Through blockchain networks, NFTs function. The development of smart contracts is one of the key components of the blockchain idea. Essentially, smart contracts are contracts with embedded conditions in computer code. With regard to NFTs, smart contracts can be made that incorporate NFTs so that the NFT transfer occurs once the contract's conditions have been met.

Legislative and judicial bodies from all over the world continue to examine smart contracts from a legal perspective, and efforts are being made to develop a system of smart contracts that is legitimate legally. This would help to support NFTS as a real financial option or mode of income.

These are a few instances of recent advancements in NFTs that might encourage comprehensive discussions on IP Rights and NFTs and how NFT platforms might be better integrated and improved to preserve IP Rights.

VI. CONCLUSION

Due to the work put into the token, NFT as a whole combines digital products and investment (as it is a crypto currency). This has caused the price of something as basic as a single digitally produced image of a monkey to rise, along with the sudden boom around NFTs. Although these new advancements are welcome, their abrupt expansion has resulted in some cases of intellectual property violation. Additionally, choosing dispute resolution processes is difficult with NFTs because there are no laws governing them and because there are many international transactions taking place because it is so simple to conduct foreign transactions in digital assets. The mechanics of NFTs will undoubtedly be another issue when trying to enforce IP rights in NFTs, even though the concepts and applications of IP remain the same and just the manner of exploitation has changed.
