The Rise of Non-Fungible Tokens (NFTs) and the Role of Copyright Law – Part I

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Summary

Digital art and collectibles have exploded in recent years, driven by the rise of NFTs. This post aims to provide a baseline understanding for our analysis of some of the copyright law implications of NFTs in Part II.

I. Introduction

With relatively few legal precedents on the subject, the various operations of the NFT market have been subject to disputes. Evidently, link permanence is not an NFT-specific issue. But, since an NFT is in essence a metadata record of an object, any dispute about the metadata may result in a dispute about the object itself.

II. What are Non-Fungible Tokens (NFTs)?

Before diving into the interaction of copyright law, it is important to understand what exactly is an NFT and what type of operation, even if transactions are involved, the additional metadata, e.g. .

The essence of NFTs is their non-fungibility. NFTs are created and used in blockchain-based technologies. In simple terms, a blockchain is a distributed ledger that only permits each record to be added or modified to the ledger (string of blocks) without modifications. This digital representation will stay the same throughout the blockchain (i.e., the digital object/information) or as a token, or be the representation of a blockchain protocol.

Consequently, NFTs cannot be used to contain the transferability of physical objects through their tokenized versions. To ensure this, each NFT record is stored on the blockchain, and metadata can be added to the object it points to (e.g., a digital artwork).

Both the writing and transferring of the NFT would usually be paid in what is called "gas," i.e., the Ethereum-based bitcoin rate for the computation power needed to perform a specific operation on the Ethereum blockchain. The gas fee can vary depending on the amount of work that needs to be done to perform the transaction. Gas fees are paid by the sender of the transaction, and are essentially a "pay toll" in the Ethereum blockchain.

As a result, NFTs can be used on a blockchain-based platform. This platform provides the technical environment that allows NFT transactions to take place securely. In practice, NFTs are considered as computer-readable tokens that can be directly linked to a digital asset through a blockchain protocol.

The challenge for the NFT asset will remain on the device or blockchain, rather than signaling the respective ownership of the token in question. This is especially the case if an NFT is transferred through intermediary platforms but not on the blockchain itself.

The value of an NFT can change over time, and even if transactions are involved, the ownership of the digital asset is never transferred to another party. In essence, NFTs represent and point to where the digital asset itself is located.

Consequently, NFTs are not considered as computer-readable tokens that can be directly linked to a digital asset through a blockchain protocol.

As a result, an NFT is metadata that represents and points to where the digital asset and any related data are located.

This has two important consequences that further the nexus analysis under copyright. First, no NFT can be the object itself (i.e., a digital artwork). This is because no NFT can be the object itself (i.e., a digital artwork) in other words, it must be stored on a blockchain (i.e., the digital asset). This must be stored on a blockchain to be used as digital artwork.

Second, NFTs are not considered as computer-readable tokens that can be directly linked to a digital asset through a blockchain protocol. As a result, NFTs are not considered as computer-readable tokens that can be directly linked to a digital asset through a blockchain protocol. Instead, they represent metadata records on the blockchain.

In addition, intermediary platforms that facilitate NFT trading and transactions will only operate in fee to add attributes to the token to increase the scarcity or uniqueness of the associated digital asset. However, this intermediary platform only acts as an agent and does not own the token.

Despite the recent investor attention, NFTs are still a new phenomenon. However, the first NFT enabling technology was created in the Bitcoin blockchain in 2012. Since then, NFTs have been used for various purposes, such as in the form of "non-fungible tokens." These tokens are essentially digital representations of valuable assets, such as art or collectibles.

While NFTs have gained significant attention in recent years, there is still much to learn about how these assets are valued and traded. Furthermore, there is uncertainty about how these assets are protected under copyright law. This uncertainty makes it difficult to determine the exact value of NFTs, as well as the liability or damages claims that may arise.

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Linked to NFTs has grown significantly, raising questions about their status under copyright law more recently.

In Part II we will discuss certain copyright law implications of NFTs.