

## Navigating NFTs: A Deep Dive into Copyright Infringement and the Pulp Fiction Perspective

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**Abstract:** Non-fungible Tokens (NFTs) have come to be as a contentious and legally complex issue in the world of digital operations and intellectual property. A huge legal struggle erupted between acclaimed director Quentin Tarantino and film company Miramax over Tarantino's desire to sell uncut chunks from 'Pulp Fiction' as NFTs. A major court struggle erupted in the prominent Tarantino-Miramax NFT litigation around the marketing of Non-Fungible Tokens (NFTs) including handwritten texts from 'Pulp Fiction.' The legal overlap between copyright legislation and NFT functionality continues to be uncertain and the paper attempts to explain how these tokens connect with current copyright rules by concentrating on situations such as Tarantino-Miramax and analyzing the distinctions between 'Copy NFTs' (which enable access to certain works) and 'Copyright NFTs' (that is, they authorize the creation of copies). Legal disputes such as the Tarantino-Miramax lawsuit and the Hermes-Rothschild conflict highlight the necessity for clear regulations in the developing world of Non-Fungible Tokens (NFTs). The purpose of this research is to address the uncertainties regarding NFTs and copyright law. It aims to evaluate the legal ramifications of selling NFTs holding intellectual property, such as handwritten screenplays, by investigating whether such transactions violate recognized copyright and trademark claims. The research question focuses on determining the limits of NFT operation within the context of copyright law. In simple terms, the 'Pulp Fiction' issue serves as a stinging reminder of the difficulties encountered in the nascent NFT ecosystem. As the market grows, artists, dealers, and investors need to be aware of their rights and responsibilities. A stable and moral framework can be developed by adopting a thorough approach to formal contracts, taking into consideration blockchain constraints, and honoring the legal complexities of various jurisdictions. This framework not only protects the goals of all stakeholders, but also secures the NFT ecosystem's long-term growth and ethical evolution, promoting an atmosphere in which innovation and rights to intellectual property are valued and protected.

**Keywords:** *Non-Fungible Tokens, intellectual property, copy right, Quentin Tarantino, Miramax.*

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## 1. Introduction

The upbeat soundtrack gradually gives way to a hail of gunfire and a weird race of automobiles. The soundtrack was not the sole legacy of Quentin Tarantino's masterpiece, 'Pulp Fiction.' The Tarantino-like feature of Pulp Fiction originates from his excellent writing, which is concise, clever, and, most importantly, imaginative. The film was recently in the news over the constitutionality of releasing Non-Fungible Tokens ("NFT" or "NFTs") for protected by copyright material. Tarantino announced in November 2021 that he had intended to sell seven uncut chunks from Pulp Fiction to be known as "secret NFT." Following this, the producer of the movie, Miramax, filed an action against Tarantino, claiming an infringement of their 1993 contract and a violation of copyright. Miramax asserts that Tarantino lacks the authorization to grant access to his scribbled scripts in the manner of NFTs because Miramax owns all rights to Pulp Fiction.<sup>1</sup> Though the parties have settled the case, the uncertainty surrounding the intersection between NFTs and Copyright persists. The major issue in this case was whether the buyer obtained possession of the essential asset when acquiring NFT, which is a type of copyright infringement. The authors of this article attempt to answer this question primarily in the negative. NFTs, like digital signatures, are not commodities in and of themselves, but rather establish the legitimacy of the property that underpins them. They are mostly digital, but physical assets are also handled to enable NFT. The ownership of an NFT is documented in a distributed record and is changeable by the owner, allowing NFTs to be bought, sold and traded. Any digital asset, in theory, might be traded as an NFT. It is currently art, whether or not it is photography, video, or song. The electronic work itself is free to copy and spread on the world wide web, but the NFT maintains track of whoever owns it. These tokens are similar to trade cards you might have gathered in school, except that they don't exist outside of the game.<sup>2</sup> Artists sell many copies of their artwork in the same manner that conventional prints are sold, with the exception that each one is an exact replica of the original. They may also choose to sell the rights to a work of art to a single person. NFTs are used to control digital components in some computer games. Possessing a specific NFT in a driving game may award you control of a digital plot of property or a faster carded. Anyone can create NFTs. They aid creators and other material

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<sup>1</sup>Miramax is suing film-maker Quentin Tarantino over planned 'Pulp Fiction' NFTs', (17<sup>th</sup> nov 2021), <<https://economictimes.indiatimes.com/magazines/panache/miramax-is-suing-film-maker-quentin-tarantino-over-planned-pulp-fiction-nfts/articleshow/87751062.cms>>, accessed 12<sup>th</sup> oct 2023

<sup>2</sup>The rise of sports NFT trading cards: How they are changing the collectible experience', 17Nov 2023, <<https://indianexpress.com/article/technology/crypto/the-rise-of-nft-trading-cards-how-theyre-changing-the-collectible-experience-8150162>>, accessed 29 oct 2023

creators in digitally presenting their skills, as well as providing the chance to securely value, acquire, and collaborate on electronic artwork via a digital register.<sup>3</sup> NFTs can be used by new and previously decentralized entities to develop novel value exchanges. Mike Winkelmann, alias Beeple, is an innovator in the retailing of digital art through non-traditional platforms. He sold a work of computerized artwork called Crossing as an NFT in October 2020 for \$66,666.66. The outcome of the US Presidential election would determine which of the two forms it would take. That piece sold for \$6.6 million four months later. Since then, the market has expanded dramatically. In less than 20 minutes, Canadian singer and artist Grimes sold more than \$6 million in digital pieces of art, while headline rock band Kings of Leon released the album When You See Yourself as an NFT, providing the owner with a number of special benefits. NFTs, according to Herzig, are an important sort of different investment that responds to buyers' "personal preferences."<sup>4</sup> Metadata is defined as data that comprises details about one or more data features; it serves to summarize basic data-related details that can aid in monitoring and interacting with specific data. It includes crucial information on the related item, such as relevant links. A Smart Agreement, on the other hand, is a collection of codes that executes royalty payments, among other criteria, as well as modalities for initial purchase and eventual transfer. A smart contract is a self-executing program that performs the actions described in the contract or agreement. The transactions are irrevocable and traceable once completed. Smart contracts allow for reliable interactions and contracts to be carried out between disparate, anonymous individuals without the need for a centralized legal framework or outside e Popular marketplaces for creators to trade NFTs include: Open Sea, Rarible, Myth Market, Bakery Swap, and Super Rare. While the technology behind block chains is most commonly recognized as the basis for Bitcoin, it has advanced far beyond the backing of a digital currency.<sup>5</sup> The dynamics of supply and demand of the NFT marketplace are the same as those of other market assets. Buyers should proceed with prudence, as with any type of expenditure, and keep an eye on the stock market as it grows. "An NFT is only valuable what other people are willing to pay for it," Herzig noted. "NFTs that are capable of developing solid connections with collectors and funders have

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<sup>3</sup>Introducing Digital Collectibles to Showcase NFTs on Instagram', <<https://about.fb.com/news/2022/05/introducing-digital-collectibles-to-showcase-nfts-instagram>>, last accessed 30 sep 2023

<sup>4</sup>Beeple sold an NFT for \$69 million', <<https://www.theverge.com/2021/3/11/22325054/beeple-christies-nft-sale-cost-everydays-69-million>>, accessed 21 oct 2023

<sup>5</sup>An Introduction to Smart Contracts and Their Potential and Inherent Limitations', <<https://corpgov.law.harvard.edu/2018/05/26/an-introduction-to-smart-contracts-and-their-potential-and-inherent-limitations>>, accessed 29 oct 2023

shown a greater likelihood of having over time staying power." Viewing previous comparable sales in established marketplaces might assist collectors and investors in better understanding the present worth of NFTs. NFTs' long-term success will be dependent on their utility value, not just conceptually. This will occur, like with other souvenirs, when owners perceive NFTs to have distinct experiences or qualities. NFT communities will emerge and expand, contributing to the preservation of markets and prices that increase trust in their viability over time.

## **2. Unreal Art, Real Problems: Assessing the Legal Repercussions of Unauthorised NFT's**

The debate is that the unfettered reconfiguration of the digital environment, which has resulted in disastrous inventions like Non-Fungible Tokens (NFTs), particularly in the fashion industry, has resulted in some major real-life issues. In this sense, the hoopla surrounding Mason Rothschild's launch of 100 Meta Birkin NFTs in December 2021 is noteworthy. Hermes has filed a 47-page complaint against Mason Rothschild in the Southern District Court of New York, accusing him of government and typical intellectual property violations, erroneous name of source, trademark reduction, digital squatting, and harm to company trustworthiness, along with a reduction under New York General Business Law, for imitating the French luxury brand's one-of-a-kind Birkin Bag.<sup>6</sup> In regard to this context, the study investigates the market for digital items from two unique legal viewpoints: violation of rights of consumers and abuse of trademarks. The study would require a full assessment of existing US standards, examining their relevance and viability in the NFT market while delving further into the debate's facts. Catch-22 for the consumer the development of the virtual world has resulted in technological advances that include NFTs, which have penetrated and are going to keep penetrating the fashion sector. They may appear to be fascinating, but they expose consumers to an unknown ocean of risks. The Meta Birkin issue demonstrates how customers are put on the back burner when it involves getting the best bargain, instead of receiving fraudulent products at exorbitant prices. While Meta Birkins has already been removed from Open Sea, Looks Rare, Rare, and Zora may also be removed. This debate will concentrate on the core issues of deception, safeguarding information, and money laundering. What is the significance of a name? Seller-Verification. The Hermes event emphasizes the basic issue with NFTs: anyone can mint anything.

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<sup>6</sup>Hermès Case Gives Guidance on How Trademark Law Applies to NFTs', 14 June 2022, <[aw.com/dailybusinessreview/2022/06/14/hermes-case-gives-guidance-on-how-trademark-law-applies-to-nfts/?slreturn=20231017010634](https://www.dailybusinessreview.com/2022/06/14/hermes-case-gives-guidance-on-how-trademark-law-applies-to-nfts/?slreturn=20231017010634)>, accessed 27 oct 2023

Verification criteria are hazy in nanotechnology markets like Open Sea and Rarible. On the one hand, when releasing an electronic currency to the ledger, Open Sea fails to confirm the true owner; on the other hand, Rarible's verification technique, while present, is a fabrication.<sup>7</sup> Notwithstanding the reality that Rarible requests two internet user handles, it rarely validates the user's existence. These lax standards not only allow unverified outside vendors to sell bogus NFTs at high prices on these platforms, but furthermore, expose users to misinformation and misleading advertising. Mainstream NFT customers frequently have a hazy knowledge of what they are purchasing, and merchants can misrepresent what they are selling. Clients who purchase through an NFT-operated marketplace are also subject to the liability limitations and buyer warning clauses specified in each marketplace's terms of service or public standards. NFT markets utilize these terms of service to relinquish liability for any imitation goods, fraud, or user misconduct that may occur in their marketplace. Pursuant to the FTC Act, the government agencies in the United States, led by the Federal Trade Commission (FTC), have the jurisdiction to use laws against fraud running through the NFT marketing, sales, and resale process. Nonetheless, this rule. The Meta Birkins controversy shown that proprietary rights (IPR) are especially vulnerable in the growing NFT sector. Many companies have entered the virtual selling sector, providing NFTs of practical issue goods, such as Nike's acquisition of RTFKT to sell virtual sneakers or Warner Brothers selling comic novels, superhero movies, and science fiction mementos. These real-world businesses create NFTs and sell them under their brand name, increasing the people served in this emerging market. There is currently no governing law.<sup>8</sup> The Lanham Act, on the other hand, provides unequivocally that if a counterfeited product is made accessible "for purchase, transporting goods, or marketing," the registrant may seek relief under Section 32 of the Lanham act. Mason Rothschild manufactured imitation Hermes purses, sold them on numerous NFT platforms, and labeled the tokens Meta Birkins, for which Hermes has registered the trademark "Birkin" and its trade dress with the US Patent and Trademark Office. The newly issued NFTs have a "likelihood of misunderstanding" with Hermes' Birkin bags, which meets the requirements of the applicable law because purchasers may purchase Meta Birkin assuming it has been authorized by Hermes. As a result, we can reasonably presume that the Lanham Act restrictions are available to the financial services business if the fundamental demands of the pertinent section are met. What are your

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<sup>7</sup>'Company owners and consumers, alike, know that a recognizable and trusted brand name is a powerful asset with clear value.' ", <<https://www.thefashionlaw.com>>, accessed 24 oct 2023.

<sup>8</sup>'How Are NFTs Regulated: Legal Issues, Taxation Aspects and More', 14 April 2022, <<https://pixelplex.io/blog/nft-legal-issues>>, accessed 21 oct 2023.

options? While the thriving NFT marketplace has significant value as an electronic asset, it exposes IP owners and users to potential legal violations. Examine the variations between the two perspectives below. To begin, a critical gap in this industry is the absence of a verification process that checks the relationship between buyers and sellers in addition to the IPR of the NFT exhibited on various platforms. To close this gap, NFT platforms should seek to create an environment in which vendors are held accountable for ensuring genuine ownership and trademark approval, to guarantee they don't infringe on brand IPR or mislead consumers into purchasing illegal, counterfeited tokens. This can be accomplished by exercising market control through the application of appropriate requirements.<sup>9</sup> The expansion of FinCEN's Know Your Customer (KYC) system, which is used to monitor financial companies, to include NFT markets is, critical for avoiding illicit activity like counterfeiting and money laundering. Clarity can be established by validating sellers and purchasers, removing unregistered sellers and limiting confidentiality violations. This safeguard is critical, as evidenced by the Miramax case, in which Tarantino's Pulp Fiction NFTs allegedly infringed on Miramax's trademarks and copyrights, highlighting the necessity for strong regulation in the NFT arena.

Tarantino and Miramax disputed whether producing NFTs of handwritten scripts was an extension of Tarantino's 'designated rights' or an infringement of Miramax's media rights, encompassing any right to 'New Media.' Miramax sued Quentin Tarantino, the filmmaker of Pulp Fiction, in November 2021 for breach of contract, copyright infringement, and intellectual property infringement. The charges stemmed from a series of NFTs centered on the cult classic film and intended to include "solely scenes" from Tarantino's handwritten script. Most nations, including Australia, have yet to adopt specific rules and regulations for NFTs, leaving us to speculate on how our present intellectual property laws will be affected. While the US lawsuit against Miramax and Tarantino may not have settled the law on this topic, particularly in Australia, it would have provided an ideal opportunity for the jury to be confronted with some of the same issues that are likely to be extremely important in the Australian legal landscape; thus, the case's settlement indicates we will have to wait a bit longer for some guidance on this emerging area of controversy. On November 2, 2021, Tarantino revealed in a press release that he would auction off seven uncensored Pulp Fiction movie scenes as Secret NFTs on OpenSea, the world's biggest platform for the sale of NFTs. Each of these NFTs was described as holding "one-of-a-kind" information that hadn't been

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<sup>9</sup> 'Anastasiia Chauvaieva, Non-Fungible Tokens and Failed Promises', 12 May 2023, <<https://jipel.law.nyu.edu/non-fungible-tokens-and-failed-promises>>, accessed 19 Nov 2023

seen before. The uncut original handwritten screenplays for Pulp Fiction, as well as additional comments from Tarantino aimed to expose secrets about the film and its creator, were scheduled to be covered. Furthermore, the "front cover" and public information for each NFT had to be separate.<sup>10</sup> These NFTs would be officially represented by exclusive, never-before-seen works of art, with the hidden material exclusively accessible to the NFT's owner. Mira-max claimed that NFTs were not part of 'publishing rights' and hence violated copyright. However, it is evident that Tarantino would be okay with publishing a handwritten script, scanning it, and sharing parts of it as NFT. He owns his handwritten scripts, and generating an NFT entails converting a tangible asset into a digital asset. NFT is not a platform for media delivery; rather, it transfers ownership of previously existing media. Unless the written script is imaged in a method that changes its domain and completely released, such as a film, the NFT stays completely valid. To move domains, there must be a prospective transformation in the core of the resource source and its propagation, which Tarantino's attempt does not have. They expedite contract execution. The programming cannot be changed. In its most basic form, a smart contract is a contract between an individual and a business in which a sale is made. The smart contract performs the customer's payment as well as the shipping or transfer of ownership by the firm. NFTs have evolved from a prototype technology used by a small community of collectors and artists to a new and disruptive distribution and marketing platform used by prominent companies, celebrities, and studios in the last year. While most of the latest NFT collections/projects by entertainment companies focus around new story lines, characters, and intellectual property ("IP"), a higher percentage of NFT projects revolve around previously established licensing and mission agreements.<sup>11</sup> Issues will inevitably arise in determining whether a certain screenwriter, actor, producer, composer, musician, or studio has the ability to launch NFTs based on previous license agreements drafted years, if not decades, before NFTs existed. Some of these problems are being addressed in the case of Miramax, LLC v. Quentin Tarantino<sup>12</sup> and Visiona Romantica, Inc. (United States District Court, Central District of California, Case No. 2:21-cv-08979), which is presently pending. Quentin Tarantino has a global cult

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<sup>10</sup>Grafiati, 'Still-life painting, American, 4 June 2021', <<https://www.grafiati.com/en/literature-selections/still-life-painting-american/journal/>> , accessed 15 Nov 2023

<sup>11</sup> 'Sasha Shilina, A comprehensive study on Non-Fungible Tokens (NFTs): Use cases, ecosystem, benefits & challenges'

May 2022, <[https://www.researchgate.net/publication/361443799\\_A\\_comprehensive\\_study\\_on\\_Non-Fungible\\_Tokens\\_NFTs\\_Use\\_cases\\_ecosystem\\_benefits\\_challenges](https://www.researchgate.net/publication/361443799_A_comprehensive_study_on_Non-Fungible_Tokens_NFTs_Use_cases_ecosystem_benefits_challenges)>, accessed 14 Nov 2023

<sup>12</sup>Jack Queen, Tarantino, Miramax settle copyright suit over 'Pulp Fiction' NFTs', <<https://www.reuters.com/legal/tarantino-miramax-settle-copyright-suit-over-pulp-fiction-nfts-2022-09-09/>>, accessed 12 nov 2023

following as the writer of famous scripts such as Pulp Fiction, as well as Kill Bill, Once Upon a Time in Hollywood, and Django Unchained. Tarantino has stated his desire to sell up to 7 NFTs (Non-Fungible Tokens) in an attempt to monetize his fame and jump on the NFT bandwagon. The NFT's crux will be a copy of Tarantino's first-ever script for the Pulp Fiction film, as well as an audio clip of Tarantino describing the scenario from which the NFT is drawn. He has, in fact, created an independent website for it called 'Tarantino NFTs,' and the promotion of the NFTs is limited to his name rather than the Pulp Fiction picture. The pending litigation is separated into two parts: First, Miramax argues Tarantino violated its intellectual property rights to the Pulp Fiction film, and second, Tarantino violated trademark law by using Pulp Fiction characters on his website. The copyright argument presented by Miramax to the NFT is that, while Tarantino has a license to "publish" the script, that permission does not extend to NFTs. This is plainly stated in the Complaint. Tarantino has used caricatures to depict the film's principal characters, which Miramax alleges is trademark infringement since, Tarantino is using Pulp Fiction brand imagery, which will lead viewers to presume that the NFTs are provided by Miramax. As at the time of writing, all such graphics had been removed. It is kept as a link and represents electronic effort (which could equally reflect physical work).<sup>13</sup> Art, movies, songs, tweets, and even everyday visuals can be represented by NFTs. The right of the NFT corresponds to the right of the original work. It ought to be noted that the purchase of NFT does not result in the transfer of ownership of the original piece of work. In this case, regardless of whether the rights are held by Miramax or Quentin Tarantino, the transaction will not ultimately transfer ownership to the NFT purchaser. The original contract was attached to Miramax's complaint and contained specific specifications relative to each party's rights in the dispute. With the rare exception of a few prohibited rights, Tarantino awarded Miramax complete rights under the original deal. Tarantino's Reserved Rights were limited to "music album, sound publication, performing live, print publication (including without limitation screenplay its release, 'making of' books, comic books, and novelization, in sound and electronic formats as well, as necessary), multimedia, dramatic and TV sequel and remake rights, and TV series and spin off rights. "Tarantino seems to be acting within his' reserved privileges' when he chooses to make available. His right derived from his agreement, and any such revelation cannot be considered a violation of contract. If Tarantino has a license to make available his screenplay, he

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<sup>13</sup> 'Genne , Quentin Tarantino's Attorney Responds to 'Pulp Fiction' NFT Lawsuit: 'Miramax Is Wrong', 16 Nov 2021, <<https://variety.com/2021/film/news/miramax-tarantino-pulp-fiction-nft-1235113383/>>, accessed 11 nov 2023



additionally enjoys the right to the script itself, which he cannot violate. As a result, the trademark violation claim filed for the website graphics may have substance and may eventually succeed. The 'Pulp Fiction' trademark is another source of dispute in this lawsuit. Miramax must demonstrate that there is a risk of consumer confusion among Tarantino and Miramax, according to the US Standard. In the United States, the Lapp Test is used for figuring out if two brands have a probability of being confused. The Lanham Act's liability for trademark infringement is essentially. According to US precedent, this accusation may be hard to prove. "Use," "in trade," and "the probability of confusion" are three different components required for proving a trademark infringement claim, according to the standard. Confusion exists not about the cult film Pulp Fiction, but about Tarantino and Miramax. In *Dastar Corp. v. Twentieth Century Fox Film Corp*<sup>14</sup>, the Supreme Court determined that the "creator of the content" is a major factor in identifying the "origin" of the job. Furthermore, the issue of whether trademark law applies to digital data is currently being disputed in American courts. The evidence presented in the Indian case of *D.M. Entertainment Pvt. Ltd. v Baby Gift House and Ors.*<sup>15</sup> are identical to the facts in the current case in terms of trademark infringement. Daler Mehndi dolls might be purchased at Baby Gift House. Tarantino's consequences would surely differ in India and the United States. In India, it was deemed that answering questions about NFTs is premature because regulations has yet to catch up with advances in technology. Nevertheless, intellectual property is protected in both cases, even if infringement of trademarks must be addressed individually. Furthermore, distribution of a small number of copies to a restricted number of recipients does not qualify as publication under US copyright legislation. The sole exemption is when further dissemination is not restricted. According to Miramax, Tarantino has reserved the right to script publication and that the sale of a few screenwriting pages is a one-time agreement, not screenplay publication. This appears to be an exception because Tarantino intends to allow his buyers to split the NFTs anyway they see fit. Finally, Miramax's trademark registrations do not cover NFTs. The Central District of California has issued a preliminary injunction against Miramax's motion to force disclosure of all Tarantino's records and correspondence pertaining to his intellectual property interests in Pulp Fiction, partially denying it. The court ruled that Tarantino's demand for access to papers relating to any copyright ownership for Pulp Fiction spanning 28 years constituted a violation of the law. Nonetheless, the court's

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<sup>14</sup>*Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003)', <<https://supreme.justia.com/cases/federal/us/539/23/>>, accessed 11 nov 2023

<sup>15</sup> 'Ankit Rastogi, *D.M. Entertainment Pvt. Ltd. v. Baby Gift House and Ors.*', <<https://indiancaselaw.in/d-m-entertainment-pvt-ltd-v-baby-gift-house-and-ors/>>, accessed 8 nov 2023

conclusion was confused as to whether Tarantino specifically asserted that he owned any intellectual property or trademarks connected to the Pulp Fiction NFTs and deemed it an appropriate topic of investigation.<sup>16</sup> As a result, Tarantino was forced to issue any copyrights or trademarks he claims to have in the Pulp Fiction NFTs and their source, as well as any other intellectual property rights he claims to have in the film and its source. Communities debating NFTs and their intellectual property are curious about how pre-existing IP rights affect proactive regulation and NFT litigation. This was seen in this case, when a presence or lack of trademarks or intellectual property registrations was highlighted to the harm of both parties. To prevent the Miramax problem, practitioners should complement their clients' current portfolio registrations with new applications that include NFTs. These additional registrations would also help to simplify take down activities on NFT platforms. Practitioners who plan to assist clients in promoting brands through NFTs, on the other hand, must analyze the proposed NFT's content in connection to the clients' rights and agreements with third parties to ensure that there are no ownership issues. Given the costs and uncertainty of the outcomes, it appears that establishing clarity is crucial for both parties involved in these early cases.

### 3. Do NFTs Infringe Copyright?

The Second Circuit established a criterion for copyright infringement in *Arnstein v. Porter* case: unauthorized use of exclusive rights and significant reproduction of the copyrighted work. NFTs, like access codes, do not breach these rights. While some believe that NFTs have an impact on public communication rights, authors reply with arguments about fair use and trans formative usage. To avoid copyright infringement, one must obtain replication and public speaking rights in order to legally mint an NFT. Under the fair dealing idea, the individual who pays for the NFT has the right to use the NFT for non-profit purposes. The work's originality, purpose, and the impact of such use on the source material all have an impact on such use. The trans-formative usage argument states that if the primary objective for which the NFT is being used differs considerably from the use of the original work of art, then the use of the NFT over the copyrighted work is acceptable. Though the purchaser of the NFT has exclusive and exclusive control over the token, ownership of an essential digital asset or creative or artistic work is not implied. must obtain replication and public speaking

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<sup>16</sup>Bruce Berman, Tarantino Pulp Fiction Dispute Spotlights the Contentious Relationship between NFTs and IP Rights', 18 Nov 2021, <<https://ipwatchdog.com/2021/11/18/tarantino-pulp-fiction-dispute-spotlights-contentious-relationship-nfts-ip-rights/id=140181/>> , accessed 11 oct 2023

rights in order to legally mint an NFT.<sup>17</sup> The purchaser is the sole owner of the underlying item. NFTs can theoretically be "tethered" to an administrative claim. However, there are two independent rights at risk here: the ability to own a single instance of the artistic creation (as one may own a tungsten cube) and the freedom to manufacture copies and derivatives of the original piece of art. These licenses could be merged to form a single NFT. They may be split, however, into what an artist might call a "Copy NFT" and a "Copyright NFT." Take a look at Spice DAO to see the difference in action. The project purchased one original copy of Jodorowsky's pitch book and used it as a token. As a consequence, SPICE token owners might agree to sell, give away, or exhibit that single copy offline. However, Frank Herbert's property retains the rights of the Dune novel, which leased theatrical property to Legendary Entertainment, which made the 2021 film adaptation. The pitch book's artwork is owned by the original artists and their estates. To summarize, there is not such a thing as a "Copyright NFT."<sup>18</sup> The Spice DAO is not allowed to make further editions of the pitch book or to create anything based on it, such as a film. They just have a book. When it comes to digital copies as opposed to physical ones, the situation becomes more complicated because the law has a peculiar definition of "copy." It includes "things that are objects... That is how the work can be believed, replicated or otherwise engaged in," such as hard drives in computers. For copyright purposes, any computer that interacts with the work generates a unique "copy"; even simply visiting a web page generates a "copy" of the visuals on that page for your computer to display. Copyright transfers and releases are particularly distinguished in US copyright law. As a result, most NFTs require some type of "Copyright NFT" feature that allows the owner to produce extra copies - alternatively, the owner will become an infringer as soon as they see the work on their computer. Some recognized NFT projects, like the Crypto Punks, have been released with no copyright limitations indicated. Everyone engaged is in legal jeopardy. Anybody can approach the artist if the terms are not clearly stated. This is not the authors' or purchasers' purpose, and we expect that the courts will not cooperate in a copyright-based attack of this sort. The courts, on the other hand, are not known for their extensive grasp of cutting-edge blockchain technology and community rules. Following the first publication of Crypto Punks, its author, Larva Labs, went back and sought to add a copyright license retroactively. Some legal experts are skeptical that this is going to succeed.

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<sup>17</sup>'NFTs & Copyright: What Do You Own?', <<https://www.searchenginejournal.com/nft-copyright/481280/>>, accessed 29 oct 2023

<sup>18</sup>'You spent \$3.5m on what?! Spice DAO, Dune, NFTs and copyright', 11 March 2022, <<https://www.lexology.com/library/detail.aspx?g=84fc84c6-994d-45a9-88aa-1fc6950cc7af>>, accessed 27 Oct 2023

Even more recently, Yuga Labs purchased the Crypto Punks title and proclaimed its intention to offer token owners with economic rights. While many Crypto Punks owners may welcome this change, changing the terms of the agreement after their initial release and minting is more complicated than issuing them upfront. Acquiring these kinds of works as part of NFT marketing (such as for Open Sea listings) may be a violation of copyright. An NFT maker may be involved in deceptive advertising if they state that individuals who purchase the NFT will receive rights alongside stolen works. Because infringement of copyright is punishable by "strict liability," those with NFT rights who make copies of stolen information may be held liable for the offense, even if the NFT developer misled them into believing it was lawfully licensed. While it is rare for blatantly fraudulent individuals to be concerned about misuse, it is unfortunate that many well-meaning efforts, such as Andy Williams', appear to presume that minting an NFT of a work inevitably includes some copyright ownership of the piece. Posting an image without a particular permit from the copyright owner may be practically impossible in a Web3 future where all information is on a distributed ledger and none can be published unless it has been approved by a blockchain transaction. But it is not the world we live in now, and a world where communication without prior consent is prohibited would be extremely dystopian. It would be completely incompatible with the distributed ledger's professed values of openness and liberty. Whatever your thoughts on NFTs are, introducing them with unlawful copyright agreements is bad for anyone. While some Bitcoin and Web3 projects want to avoid or replace the prevailing legal framework, many innovative NFT ventures seek to operate inside it. Responsible NFT developers wouldn't release a project based on an unfixed smart-contract library, and they should avoid introducing legal provisions that could be similarly destructive. Despite this, it appears that many efforts spend far less emphasis on the legal aspects of their designs than on the technological and creative ones. If code is law, then a slew of NFTs are built on incorrect code.<sup>19</sup> In the Arnstein Case, the Second Circuit determined that straightforward access would not be sufficient to charge violations because access simply gives the purchaser with an ample opportunity to review the copyrighted information. According to the Agreed Statement on Article 1(4) of the World Intellectual Property Organization ("WIPO") Copyright Treaty, storing a protected work in digital form on an electronic medium constitutes reproduction under Article 9 of the Berne Convention. If prior permission is obtained from the copyright owners, such copying isn't considered an infringement. Another

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<sup>19</sup>'Resolving NFT and Blockchain Disputes', 24 June 2023, <<https://stanford-jblp.pubpub.org/pub/resolving-nft-blockchain-disputes/release/4>>, accessed 17 oct 2023

argument in favor of NFT is the use of de minimis. The United States District Court, Southern District Court, found in the case of *Solid Oak Sketches LLC v. Games INC.* that two elements must be met in order to establish copyright infringement. First and foremost, the infringer has effectively replicated the author's protected work. Second, such copying is illegal because there is a significant analogy that exists between the alleged infringer's work and the original protected work.<sup>20</sup> Because NFTs are nothing more than metadata, they do not breach copyright under the De Minimis Use test. The metadata may provide information on the characteristics of the object, such as its system of operation or the number of times it has been obtained, but it does not constitute the asset itself. This absence, nevertheless, relies on a single view of NFTs in which the NFT just transfers custody of the underlying property's Metadata rather than the asset itself, as advocated by WIPO. Others argue that NFTs can convey ownership of the basic asset in issue as well as the metadata. In the latter perspective, there will be copyright infringement.

#### **4. Conclusion**

The authors stated that NFTs are not infringing on the creator's rights when they do not infringe on copyright because they give legitimacy and ownership of records without transmitting the copyright itself, underlining the necessity for advancing jurisprudence in the NFT sector. Purchasing an NFT does not normally offer full control of the digital content; creators maintain intellectual property rights, and consumers typically obtain limited license to use, exhibit, or resell the work based on terms stated by the creator. When unauthorized parties create, sell, or buy NFTs linked to works lacking the owner's permission, the intersection of NFTs and copyright may give rise to potential legal issues such as infringement. This can occur when someone mints and sells an NFT of another individual's artwork, music, or other intellectual property without authorization. In such cases, the original copyright owner has the option of suing the infringer to protect their rights to intellectual property. To avoid copyright infringement in the NFT sector, producers, purchasers, and sellers have to acknowledge and value the intellectual property rights of others. Consider "Crypto Kitties," which are NFTs in which the owner has the right to commercialize the featured artwork or "kitty," as long as this commercial use does not exceed

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<sup>20</sup>'WorldIntellectualPropertyOrganizationCopyrightTreaty : Anoverview',  
<<https://www.everycrsreport.com/reports/97-444.html>>, accessed 21 oct 2023

USD 100,000 per year.<sup>21</sup> However, certain other NFTs, such as the NBA Top Shots, grant the NFT's owner a license to "use, copy, and display" the "moment" specified in the NFT but not the NFT itself. NFT sales utilize smart contracts recorded on the blockchain, which facilitate ownership monitoring and transactions but limit customization. Instead, merchants frequently use standardized conditions of sale linked on the online marketplace to bind customers universally. Givenchy's NFTs on Open Sea use similar terms and conditions for all customers, but Indian law precludes the assignment of copyright using smart contracts since Section 19 (1) of the Copyright Act, 1957 requires written, signed agreements.<sup>22</sup> Under Indian law, a formal written agreement signed by both parties is required to transfer copyright with an NFT. This adds to smart contracts by ensuring unambiguous terms of usage, decreasing copyright violation risks and uncertainty for NFT owners.

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<sup>21</sup>Gauatm KM, Sonia Thomas, India: NFTs And Copyrights', 8 March 2023, <<https://www.mondaq.com/india/copyright/1211232/nfts-and-copyrights>>, accessed 10 Nov 2023

<sup>22</sup>Section 19(1) in The Copyright Act, 1957', <<https://indiankanon.org/doc/509070/>>, accessed 10 Nov 2023