

9 November 2022



Rigorous empirical
research on
intellectual property

The Rise of Cryptoassets and NFTs and its Implications for Copyright Law

Host: Axel Ferrazzini, Managing Director of 4iP Council

Presenter: Prof. Dinusha Mendis

Collaborator: Andrés Caturla



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Which types of intellectual property do you need?

Filter table columns

	Patents	Copyrights	Designs	Trademarks	Trade Secrets
What do they protect?	All inventions: a new and inventive way of doing something or solving a technical problem. See also: Patents	Any work of original intellectual creation. See also: Copyrights	Any new and original visual appearance of a product. See also: Designs	Any sign which is capable of distinguishing goods or services from those of other undertakings. See also: Trademarks	Any confidential information which has commercial value because it is not generally known. See also: Trade Secrets
Examples of what is protected	Inventive products and processes in all areas of business. The examples of successful patents by SMEs. See also: Patents	Audio-visual works, pictures, graphics, architecture, software, designs, literature, music, games, films, and more. See also: Copyrights	Logos, symbols, packaging, containers, furniture, graphics, computer icons, user interfaces, signs and marks. See also: Designs	Words, phrases, slogans, logos, symbols, and more. See also: Trademarks	Business secrets, customer lists, and more. See also: Trade Secrets
How are my rights protected?	Prevents unauthorized making, using or selling of the patented invention. See also: Patents	Prevents the work being copied, reproduced, copied, authorized, distributed or made available online. Protects the integrity and attribution of the work. Related rights: Public performance and display of the work. See also: Copyrights	Prevents unauthorized use of all elements or certain visual appearance for the same kind of products within a sector. See also: Designs	Prevents unauthorized use of the sign for goods or services. See also: Trademarks	Prevents unauthorized disclosure of the secret. See also: Trade Secrets
How long is my innovation protected?	Up to 20 years.	Life of the author + 70 years after death (depending on the country).	Up to 25 years for registered designs.	Up to 10 years for unregistered designs.	As long as the information remains confidential.
Do I have to register it?	Yes, filing an application to a patent office is required. More on patent applications in: Patents	No, copyright protection arises automatically with its creation. See also: Copyrights	Yes, but it is highly advisable to register designs. More on design rights in: Designs	Yes, but it is highly advisable to register trademarks. More on trademarks in: Trademarks	No, but it is highly advisable to register trade secrets. More on trade secrets in: Trade Secrets



2 - NEGOTIATING

3 - FUNDING

4 - STRATEGIC VALUE

Explore how patents add value with our [interactive guide](#).

3 - COLLABORATION

4 - FUNDING

Explore the benefits of copyright with our [interactive guide](#).

4 REASONS 4 TRADEMARKS

- 1 - DIFFERENTIATION
- 2 - PROTECTION
- 3 - REPUTATION
- 4 - REVENUE

Explore the benefits of trademarks with our [interactive guide](#).

4 REASONS 4 DESIGN RIGHTS

- 1 - EXCLUSIVITY
- 2 - COMMERCIALISATION
- 3 - REPUTATION
- 4 - VALUE

Explore the benefits of design rights with our [interactive guide](#).

Case Law post CJEU ruling *Huawei v ZTE*

[Back to main 4IP Council site](#)



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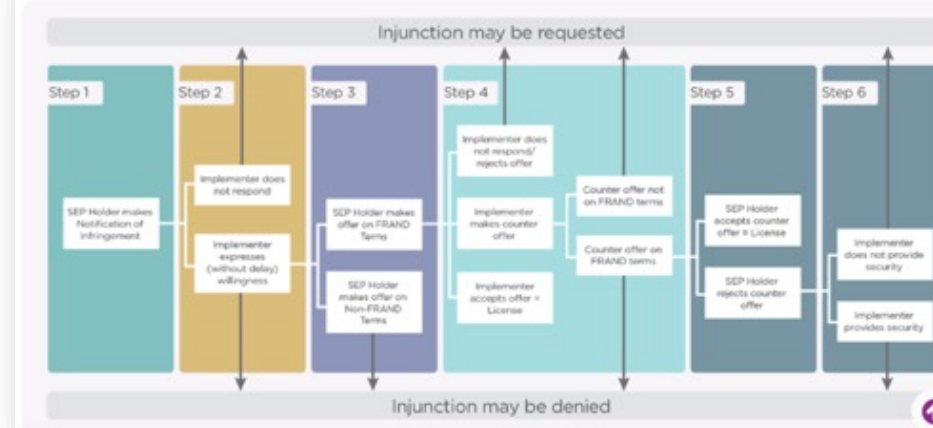
National Courts Guidance

Negotiating Licenses for Essential Patents in Europe

Increased clarity provided on the principles established by the Court of Justice of the European Union in *Huawei v ZTE*.

The Court of Justice of the European Union clarified, in *Huawei v ZTE* (Case No. C-170/13), European law relating to the availability of injunctive relief for infringements of FRAND-based standard essential patents. In doing so, the Court provided a legal framework focused on the good faith conduct to be expected of both parties. Since

Huawei v ZTE process



The Rise of Cryptoassets and NFTs and its Implications for Copyright Law



Dinusha Mendis is Professor of Intellectual Property & Innovation Law and Director of the Centre for Intellectual Property, Policy and Management (CIPPM) at Bournemouth University, UK.



Andrés Caturra is a legal trainee at Vidal-Quadras & Ramon a law firm specialising in intellectual property and competition law; as well as former intern at 4iP Council.

The Rise of Cryptoassets and NFTs: Implications for Copyright Law

Dinusha Mendis

Professor of Intellectual Property & Innovation Law

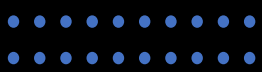
Director @cippm

Bournemouth University

@lawtechgadget

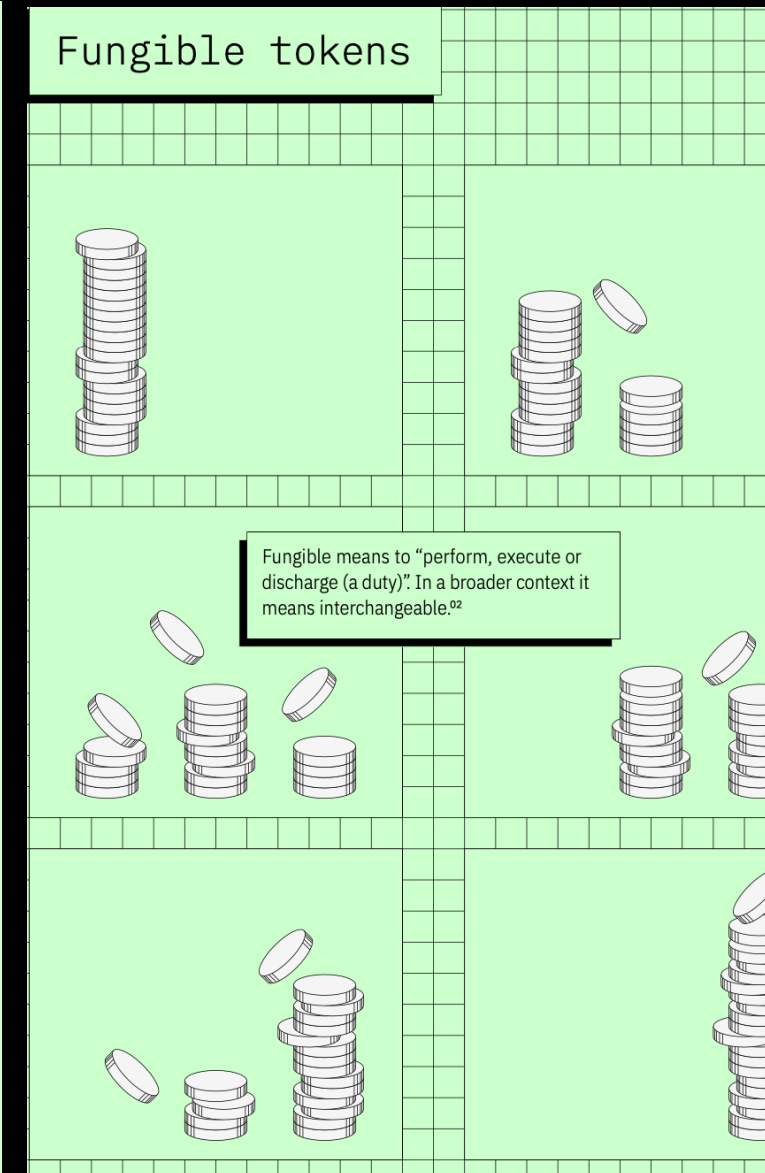
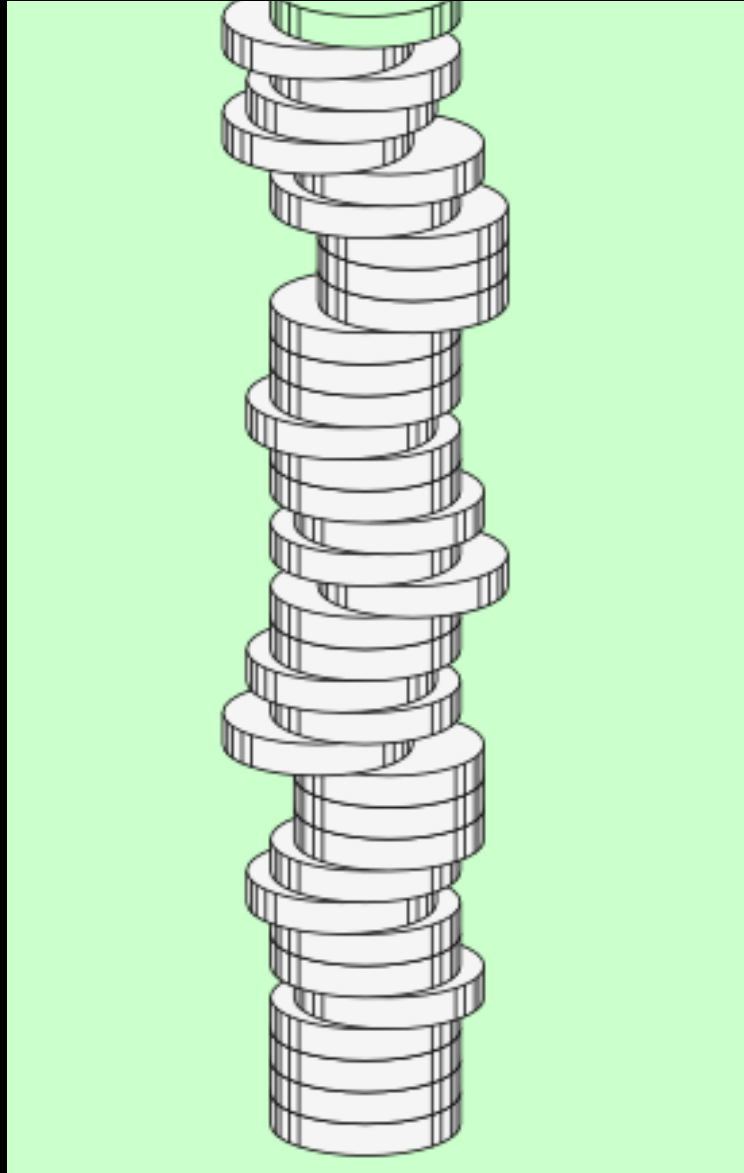
Outline

- Cryptopassets / NFTs – introduction, terminology
- IP implications
 - -ownership of NFTs
 - -right of distribution
 - -NFTs and liability of marketplaces
 - what it means for creators/artists – artists resale right
 - -blockchain and data implications
- Concluding thoughts and learning lessons from the past



What are Non-Fungible Tokens (NFTs)?

- Non-fungible – one which carries its own unique TokenID
- It means that each digital asset will be unique or one of a collection













Cryptocurrency / Cryptoassets/ crypto-tokens

- *Cryptoasset* is used more widely than *cryptocurrency*
- Unregulated
- Transactions are recorded on the blockchain – immutable and permanent

Cryptoassets

According to the Oxford dictionary, 'crypto' is defined as "concealed"; "secret" and represents the secure technology used to record who owns what, whilst 'asset' refers to "an item of property owned by a person or company".



Transactions	Internal Txns	Erc20 Token Txns	Erc721 Token Txns	Erc1155 Token Txns	Contract	Events	Analytics	Info	Comments
Latest 25 from a total of 953,353 transactions (> More than 25 Pending Txns)									
Txn Hash	Method ⓘ ⌵	Block ⌵	Age ⌵	From ⌵		To ⌵	Value	Txn Fee	
 0x275c347951f06fde237...	Safe Transfer Fr...	(pending)	11 mins ago	0x291829845300988cec...	IN	OpenSea: OPENSTORE...	0 Ether	(Pending)	
 0x88a2d0fb7879f33c7e1...	Safe Transfer Fr...	(pending)	11 mins ago	0x291829845300988cec...	IN	OpenSea: OPENSTORE...	0 Ether	(Pending)	
 0x5509de4d4bfd41bad1...	Safe Transfer Fr...	(pending)	11 mins ago	0x291829845300988cec...	IN	OpenSea: OPENSTORE...	0 Ether	(Pending)	
 0x0a4f72850b154fd372c...	Safe Transfer Fr...	(pending)	22 mins ago	0xfaf52d5c0d4f4251e04...	IN	OpenSea: OPENSTORE...	0 Ether	(Pending)	
 0x1a26177b7488e943c6...	Safe Transfer Fr...	(pending)	22 mins ago	0xfaf52d5c0d4f4251e04...	IN	OpenSea: OPENSTORE...	0 Ether	(Pending)	
 0x49bf3a34d8a7c5b8d7...	Safe Transfer Fr...	(pending)	22 mins ago	0xfaf52d5c0d4f4251e04...	IN	OpenSea: OPENSTORE...	0 Ether	(Pending)	
 0xe5deb643bff450ee09...	Safe Transfer Fr...	(pending)	29 mins ago	0x3598a2faf9d8b90cb2c...	IN	OpenSea: OPENSTORE...	0 Ether	(Pending)	
 0xa9c2e7a23efacf5766b...	Safe Transfer Fr...	(pending)	51 mins ago	0x71b521047db270866a...	IN	OpenSea: OPENSTORE...	0 Ether	(Pending)	
 0xdb4245a53490444746...	Set URI	(pending)	1 hr 30 mins ago	0x201610f9723a73b5a9...	IN	OpenSea: OPENSTORE...	0 Ether	(Pending)	
 0x2f697bc4110a4eb2d31...	This website uses cookies to improve your experience. By continuing to use this website, you agree to						0 Ether	(Pending)	

Chronological database

Encrypted and divided into ‘blocks’ –

Timestamp

Validation by nodes on network

Permanent record; cannot be deleted; a copy of the blockchain will be stored on every computer in the network which will periodically synchronise to ensure that the same database is being shared across the network

Kings of Leon Will Be the First Band to Release an Album as an NFT

The band's revolutionary tokens will unlock special perks like limited-edition vinyl and front row seats to future concerts

By SAMANTHA HISSONG



Creative work / product



Creative Inspiration

Gucci ventures into the world of NFTs

Released in collaboration with marketplace SuperRare, the fashion brand's new online exhibition and auction features NFT artworks by 29 different creatives

Meta will allow creators to sell NFTs directly on Instagram


It's only available to a handful of US-based accounts, for now.

STYLE

Nike has already made \$185 million off of NFTs

The Swoosh leads the list of brands who've made the most money off of the space.

Demystifying NFTs: From technology to intellectual property

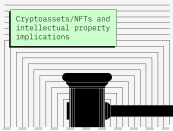
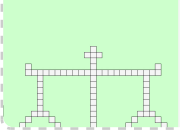

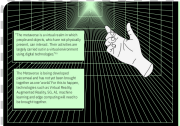
 **OpenSea**

Create New Item

* Required fields

Image, Video, Audio, or 3D Model *

File types supported: JPG, PNG, GIF, SVG, MP4, WEBM, MP3, WAV, OGG, GLB, GLTF. Max size: 100 MB



Name *

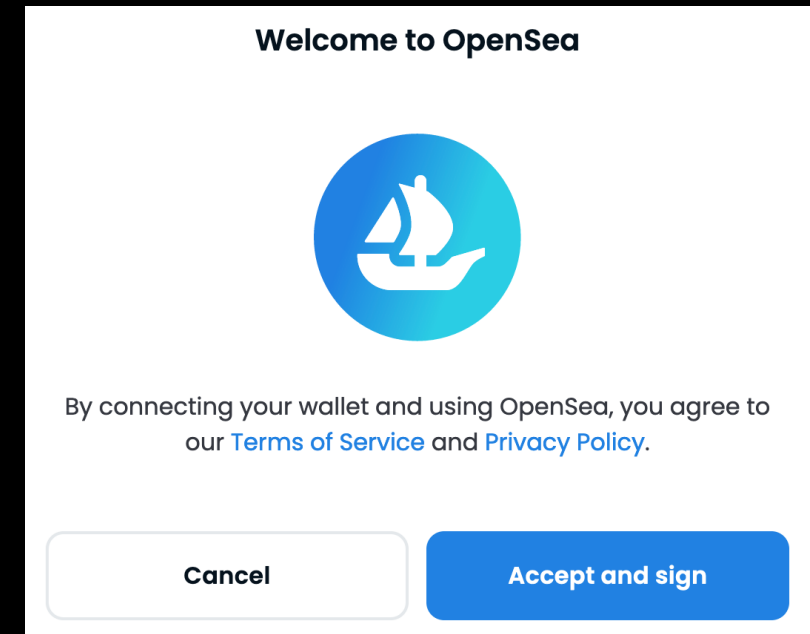
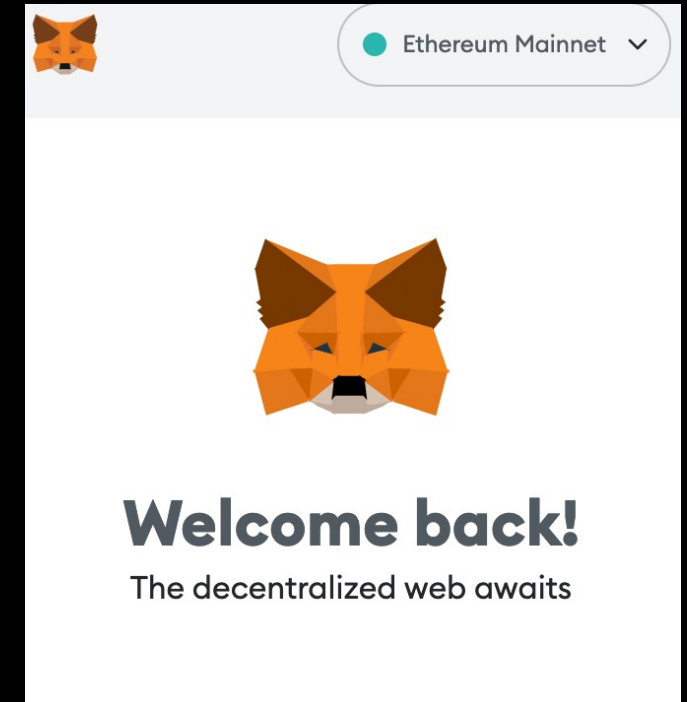
External link

OpenSea will include a link to this URL on this item's detail page, so that users can click to learn more about it. You are welcome to link to your own webpage with more details.

Description

The description will be included on the item's detail page underneath its image. [Markdown syntax](#) is supported.

This NFT explores the intellectual property, particularly, copyright implications surrounding NFTs. It questions what it means to own an NFT from a copyright perspective before considering other copyright issues such as the right of



Demystifying NFTs:
From technology to
intellectual property

An NFT zine by Dinusha Mendis

© 2022 Dinusha Mendis. The right of Dinusha Mendis to be identified as author of this work has been asserted by her in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

BU **Bournemouth University** CIPPM Centre for Intellectual Property Management

Introduction and note from the author

Cryptocurrencies and particularly non-fungible tokens (NFTs) captured the imagination of the public in early 2021, and has journeyed through a rise – and fall – in the past year and a half. Through the meteoric rise of NFTs in 2021, and its relative downturn in 2022, it has continued to raise several questions in the field of intellectual property (IP) law.

Cases such as Nike v StockX, Hermes v Joo Aronowicz, Missoni v Queen's University, and the recent case surrounding the Bored Ape Yacht Club to name a few have raised a fresh set of questions relating to ownership, authenticity and enforcement from the

Demystifying NFTs and IP law

Demystifying NFTs: From technology to intellectual property

25 owned by **392EA5** 4 views

Sale ends December 5, 2022 at 7:15pm GMT+0

Current price

0.001 ETH \$1.63

Remove from cart

Make offer


Price History

Description

by you

This NFT explores the intellectual property, particularly, copyright implications surrounding NFTs. It questions what it means to own an NFT from a copyright perspective before considering other copyright issues such as the right of distribution, artists re-sale right, liability of marketplaces and the right to be forgotten (on blockchain). The law is illustrated through a series of images.

About Demystifying NFTs and IP law



Contract Address

0x495f...7b5e

Token ID

2586425124670823...

Token Standard

ERC-1155

Chain

Ethereum

Metadata

Centralized

Creator Fee

0%

Item Activity

Filter

Event	Unit Price	Quantity	From	To	Date
List	0.001 ETH	1	you		3 days ago
Minted		25	NullAddress	you	3 days ago

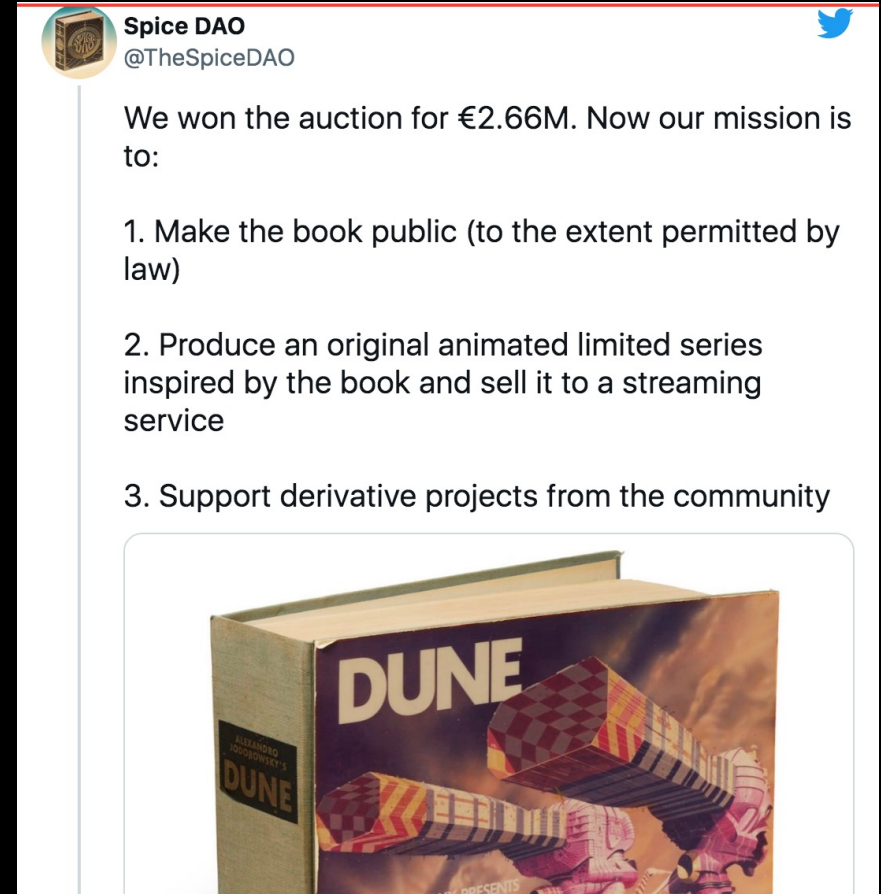
Intellectual Property/Copyright Implications

Ownership of NFTs...

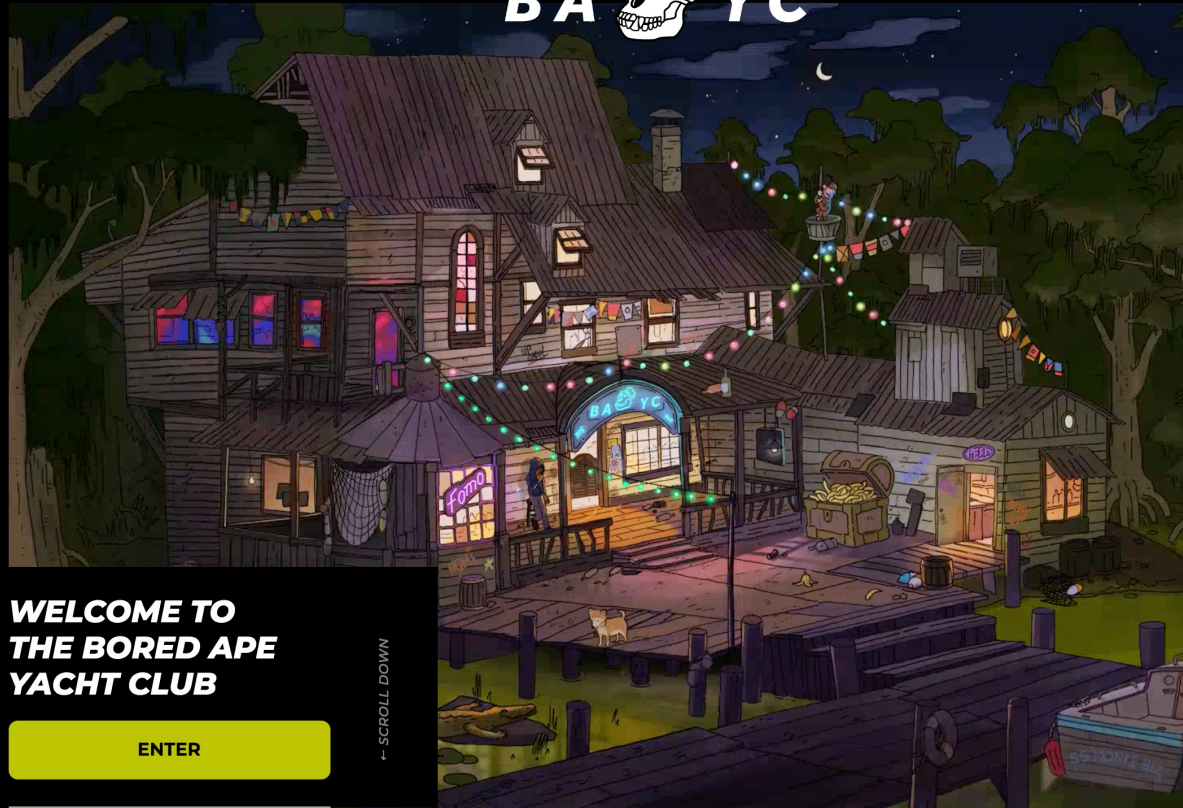
- When you buy an NFT, you have access, through a URL to the digital asset, and in this sense, you have ownership of the asset
 - **Property law = it is your property**
- A number of cases since 2019 from the High Court of England and Wales have recognised cryptoassets including NFTs as a type of property
- Law Commission of England and Wales consultation (July 2022)
 - called for the establishment of a ***third type of personal property*** for recognising cryptoassets

However, from an intellectual property/ copyright perspective ...

- Buying an NFT does not mean that the buyer acquires the copyright to the work – as many have mistakenly thought
- Unless the copyright is specifically assigned to the buyer of the NFT, the copyright remains with copyright owner
- What a buyer gets is a **certificate of ownership (TokenID)** representing the purchase of a digital asset, traceable on the blockchain



BA  YC



A limited NFT collection where the token itself doubles as your membership to a swamp club for apes. The club is open! Ape in with us.

Caked Apes, a Bored Ape NFT Spinoff Venture, Sparks Legal Battle Over Copyrights



by Milko Trajcević March 22, 2022

Four artists behind Caked Apes

They are suing each other (in USA) over ownership and authorship

Poorly drafted contracts and lack of understanding of NFTs/copyright

TECH CREATORS

A bunch of ape NFTs just sold for \$24.4 million

Apes together strong

By Jacob Kastrenakes | @jake_k | Sep 9, 2021, 10:03am EDT

@lawtechgadget

Quentin Tarantino v Miramax (2022)

- Quentin Tarantino launched and auctioned an NFT collection consisting of some images and handwritten screenplay of the *Pulp Fiction* film
- Miramax sued Tarantino for copyright infringement ...
- Case settled in Sept 2022, after the sale of 1 NFT which fetched \$1.1 m



Right of distribution

- Once the copyright owner places a work in the market, copyright in that work is exhausted – *e-bay*
- NFTs have their own unique TokenID
- Very different to MP3 files, films etc.
- Does this mean that NFTs are more akin to physical goods?



NFTs and the exhaustion doctrine

- The exhaustion right in relation to **virtual assets** is currently not very developed
- ***UsedSoft GmbH v Oracle International Corp*** (2012) established that a copy of a computer program will exhaust the distribution right
- ***Tom Kabinet Internet*** (2019) attempted to answer the question of whether virtual goods such as e-books can exhaust the distribution right
 - However, the Court based its answer on another copyright concept known as 'communication to the public right'
- Latest guidance we have from the Tom Kabinet case cannot apply to NFTs

NFTs and liability of marketplaces

- Marketplaces such as OpenSea, Rarible facilitate the buying and selling of NFTs
- Bound by the US *Digital Millennium Copyright Act 2011*
- OpenSea may abide by notice-and-takedown but many others are not so vigilant
- Even so ...

OpenSea admits at least 80 percent of NFTs hosted on its platform are plagiarized or knock-offs

Published Jan 31, 2022 | Kara Murphy

Share Tweet



CRYPTO

The counterfeit NFT problem is only getting worse

So artists are joining together to fight back

By HARRISON JACOBS

Feb 8, 2022, 1:00 PM GMT | 0 Comments / 0 New

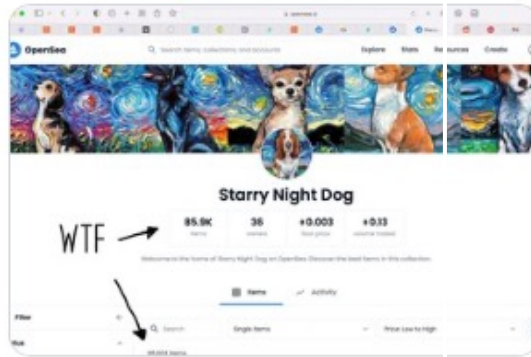


Aja Trier
@AjaArt · Follow



86 thousand times people have stolen my art and listed them on @opensea and they even had the gall to make a collection like a giant middle finger to my IP rights. Wtf?

#nft #arttheft #opensea #infringement
#nftcommunity



3:26 AM · Jan 5, 2022



Share

plies

- Marketplaces will need to take note and re-think their Terms of Use
- Also certain marketplaces are not directly caught under Article 17, DSM Directive
- Decentralisation and regulation

Artist's Resale Right

- Artist's Resale Rights (ARR) was introduced into UK law in 2006, transposing the ARR Directive 2001
 - Grants artists and their heirs the right to receive a fee on the resale of their art work, based on a sliding scale sale price, for determining the royalties
- Was not perceived very favourably at the time of its implementation
 - **“outdated, inefficient and expensive”**
 - **“the cost of administration, its disproportionate impact on dealers who quickly buy and sell in succession ... [and] the right to request information and collect ARR if the artist or their estate have not mandated a collecting society”**
- Blockchain – the answer?

The Art Market 2.0

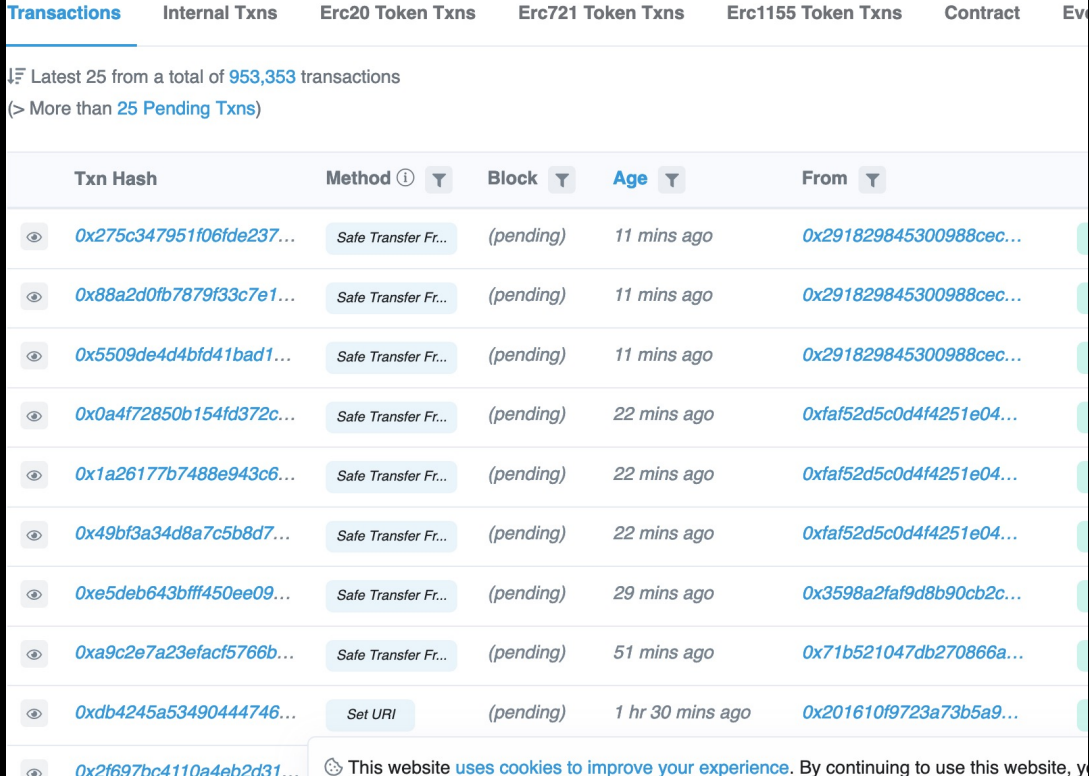
Blockchain and Financialisation in Visual Arts

Duncan MacDonald-Korth
Vili Lehdonvirta
Eric T. Meyer

University of Oxford
and
The Alan Turing Institute

Blockchain – immutable, permanent ...

- Whilst the blockchain is secure, it **cannot absolutely know whether a creative work is truly authentic**
- Someone can take another person's work and tokenise it as an NFT, thereby infringing the rights of the copyright/IP owner



The screenshot displays a web interface for viewing blockchain transactions. At the top, there are tabs for 'Transactions', 'Internal Txns', 'Erc20 Token Txns', 'Erc721 Token Txns', 'Erc1155 Token Txns', 'Contract', and 'Events'. The 'Transactions' tab is selected. Below the tabs, a message indicates 'Latest 25 from a total of 953,353 transactions' and '> More than 25 Pending Txns'. The main content is a table with columns: Txn Hash, Method, Block, Age, and From. The table lists several transactions, all of which are 'Safe Transfer Fr...' and are in a 'pending' state. The 'Age' column shows times ranging from '11 mins ago' to '1 hr 30 mins ago'. The 'From' column shows various Ethereum addresses. At the bottom of the table, there is a cookie notice: 'This website uses cookies to improve your experience. By continuing to use this website, y'.

Txn Hash	Method ⓘ	Block	Age	From
0x275c347951f06fde237...	Safe Transfer Fr...	(pending)	11 mins ago	0x291829845300988cec...
0x88a2d0fb7879f33c7e1...	Safe Transfer Fr...	(pending)	11 mins ago	0x291829845300988cec...
0x5509de4d4bfd41bad1...	Safe Transfer Fr...	(pending)	11 mins ago	0x291829845300988cec...
0x0a4f72850b154fd372c...	Safe Transfer Fr...	(pending)	22 mins ago	0xfaf52d5c0d4f4251e04...
0x1a26177b7488e943c6...	Safe Transfer Fr...	(pending)	22 mins ago	0xfaf52d5c0d4f4251e04...
0x49bf3a34d8a7c5b8d7...	Safe Transfer Fr...	(pending)	22 mins ago	0xfaf52d5c0d4f4251e04...
0xe5deb643bffa450ee09...	Safe Transfer Fr...	(pending)	29 mins ago	0x3598a2faf9d8b90cb2c...
0xa9c2e7a23efacf5766b...	Safe Transfer Fr...	(pending)	51 mins ago	0x71b521047db270866a...
0xdb4245a53490444746...	Set URI	(pending)	1 hr 30 mins ago	0x201610f9723a73b5a9...
0x2f697bc4110a4eb2d31...				

StockX

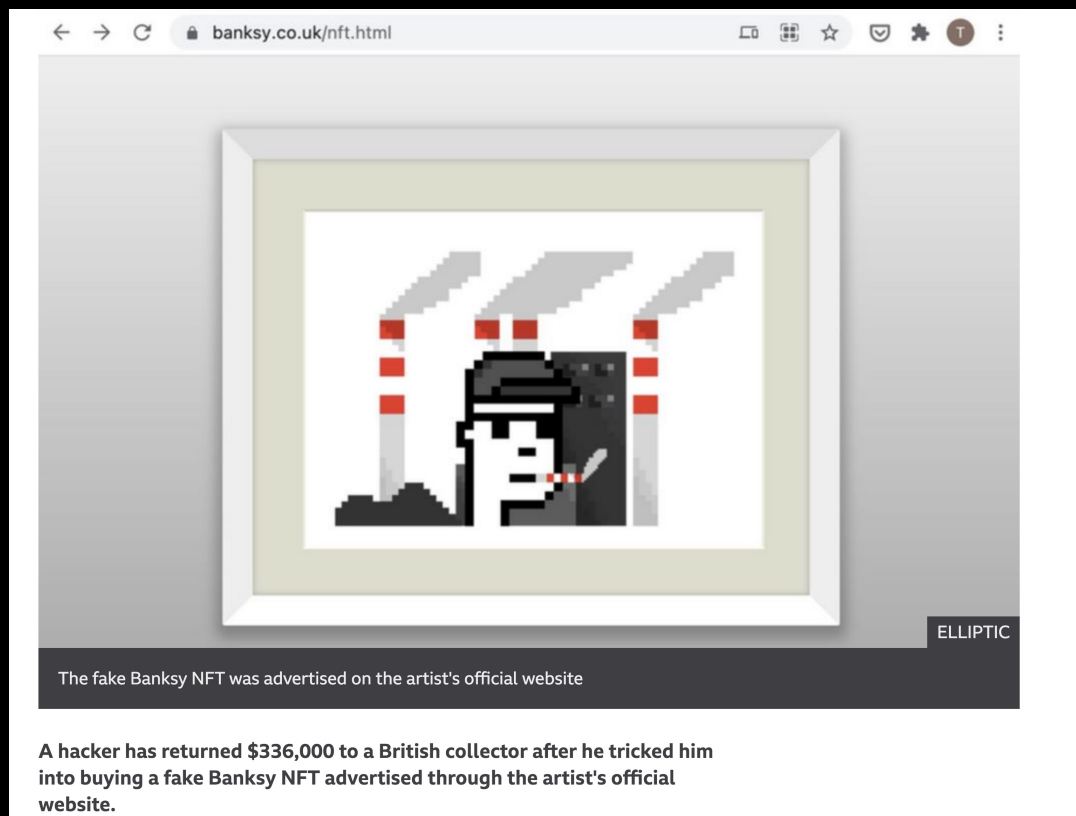
Vault NFT
ERC-1155



DUNK•LOW•BEN&JERRYS•CHUNKY•DUNKY
NIKE•SB•DUNK•LOW•BEN&JERRYS•CHUNKY
DUNK•LOW•BEN&JERRYS•CHUNKY•DUNKY

Nike Wants to 'Destroy' Unauthorized NFTs—How Will That Work?

Nike is asking a court to destroy something that pretty much can't be destroyed.



A hacker has returned \$336,000 to a British collector after he tricked him into buying a fake Banksy NFT advertised through the artist's official website.

The Banksy fan who got duped says he thought he was buying the world-famous graffiti artist's first ever NFT.

Boom or bane?

- EUIPO Guidelines (trade marks)
- Law Commission of England and Wales – consultation
- UK Treasury Committee
- UK DCMS inquiry

DCMS Committee to hold inquiry into the future of the NFT market

4 November 2022



DCMS will hold an inquiry into the operation, risks, and benefits of NFTs and the wider blockchain. MPs are expected to consider whether NFT investors, especially vulnerable speculators, are put at risk by the market. The inquiry may also look into the wider benefits that NFTs and the blockchain could provide the UK economy.

@lawtechgadget

Conclusion

- NFTs – hype, hysteria, a passing fad?
- There are many IP/copyright/data issues to address
- Metaverse – raises a different set of questions
- Policy makers in EU and UK are taking note of this technology
- What can we learn from past experiences?

Questions?

Thank you

dmendis@bournemouth.ac.uk

'When you buy an NFT, you don't completely own it – here's why'

<https://theconversation.com/when-you-buy-an-nft-you-dont-completely-own-it-heres-why-166445>

'Demystifying NFTs: From technology to intellectual property'

<https://opensea.io/assets/ethereum/0x495f947276749ce646f68ac8c248420045cb7b5e/25864251246708234408347436892818933203574917685884566250376237255043129016345>

A free give-away of the this first-ever NFT Zine to explore NFTs and intellectual property for the first 10 to complete the feedback survey after the event

@lawtechgadget

Thank You!

Forthcoming Webinar:

Date	Title	Summary
15-11-2022 15h CET	Green tech helping net zero emissions by 2050	We have joined forces with LESI to cover the big challenge that is having net zero emissions by 2050. With Dr. Suracha Udomsak (SCG Chemical), Dr. Dallas Wilkinson (3ME Technology) and Dr. Stephanie Guichard (Qualcomm)



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