



NFTs and copyright law

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Abstract

NFT is a Non Fungible Token. The etymology of the word is from the Latin verb Fungi, i.e, to perform or in the “wider sense”, it is interchangeable. Therefore, it is a token that cannot be exchanged, unlike traditional digital art currencies or cryptocurrencies. NFTs are financial and digital tokens having a monetary value which represents an underlying asset. This could be any digital assets like a tweet any digital work like, songs music, or even other physical forms like artistic paintings.

Can NFTs be brought under copyright?

The definition of Copyright as worded by the World Intellectual of Property Organization (WIPO):

“Copyright (or author’s right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.”

As we know that NFT is a token that represents an underlying asset which should be a literary or artistic work for it to be covered under the copyrights. Therefore, one can infer from the above statement that NFTs per se do not come under the ambit of copyrights but the underlying assets in the NFTs are eligible for copyrights.

What is an NFT

The full form of NFT, non-fungible tokens the word non fungible token means non replaceable or non exchangeable, are unique digital tokens that function in a blockchain network. As defined under section 2(y) of the Copyright Act, 1957 and hereinafter referred to as “Work/s”) such as art, memes, gifs, music and could even include shoes and clothes. Blockchain is the underlying technology on which cryptocurrencies work. When we discuss about transforming our work into NFTs, it means we are transforming it into a digital asset or digital token, This token could be anything from a JPG file to music to a tweet; all these things could be transferred into an NFT. It is any digital asset that can hold value, and this value is based on what someone is offering to pay for it. Therefore, the demand for that digital asset sets its price.NFTs are purchased with a cryptocurrency.The only similarity that cryptocurrency and NFT hold is that they are both backed up by blockchain technology.

Anything that can be converted into a digit asset can be termed an NFT.

For example, if a sketch artist gets his or her digital asset converted into an NFT, what he is actually getting is proof of ownership that he or she is the exclusive owner of that artwork. This ownership is powered by blockchain. Those who understood the real profit regarding NFTs at an earlier stage made significant profitable investments.

An NFT Is a digital asset that has a unique identification code and metadata that differentiates it from a fungible token

Characteristics of NFT

- unique
- Non replaceable
- Non exchangeable
- Each token is unique and it cannot be exchanged For something exactly alike .

Creating NFT

When one decides to create an NFT out of the Work, one must 'mint' the NFT. Minting of the NFT refers to the process of creating the digital representation of the Work, which is essentially tokenisation. Tokenization includes uploading it onto a specific platform or marketplace and then issuing a token which will guarantee its authenticity.

Copyright

Copyright literally means the right to copy but has come to mean that body of exclusive rights granted by the law to copyright owners for protection of their work. copyright is a legal means of protecting an creators work. It is a type of intellectual property that provides exclusive publication, distribution and usage rights for the authors or creators of the content.

Rights of the copyright owner

When a person owns a copyright he or she actually has some bundle of rights and those are

- Right to reproduce the copy of the work
- Right to create derivatives of the work means it's like creating a new version of the song if you won a music copyrights
- Rights to distribute the copies of the work by sale or rent
- Right to perform or display the work in public
- Right to stream the content digitally and these are all the rights are granted by law

Imagine if you buy a CD of your favorite artist now you can listen to the music, play it in your personal parties, put it on display or you can sell it to your friend but if in case you try to use the music for any commercial work you don't have rights for that similarly in case of NFTs only change is the copy own is also unique but if your rights are so important to you and you want to use NFT for commercial use, you need to ask the creator and if the creator agrees to give you all or specific copyrights, for that you must sign a contract in writing which states all the rights you will own once you buy NFT

Ownership in NFT

When we purchase an NFT does not automatically give you the right to reproduce copy or modify such NFT unless this is specified in the contract of sale or in the smart contract . you might get much less right you might think Owing NFT means you are owner of that particular content and you can sell it trade it on the market place to earn profits but. You might. Not own the full copyright unless it is specifically stated by the artist or creator.

“An NFT is simply a cryptographically signed receipt that you own a unique version of a work. It is a misconception that purchasing an NFT gives the buyer a proprietary right to every copy or version of the underlying work”

Copyright Act, 1957 and NFT

Whenever anyone buys an NFT, the owner does not get the copyright to the underlying piece of art instantly according to **Section 19** of the Copyright Act 1957, states that if to transfer his or her copyright a written sale contract declaring explicit assignment of copyright must be present.

Section 2(d) of the Copyright Act, 1957, defines the 'author' of the work as one who has created the work. He or she is considered the sole owner of the work unless the work is shared by a co-author, which implies both of them jointly owning the work, or if the work was created by a person or entity just because he or she was paid for it, or was created under employment. In such a case, the commissioner or the employer owns the work.

Under Section 14 of the Copyright Act, only the owner of a work has the right "to reproduce and distribute copies of it". As a result, unless the buyer and seller expressly restrict resale or copying of the NFT, such action may not be accorded protection.

Therefore, the buyer cannot have full ownership until the owner specifically transfers their rights. Consequently, the buyer cannot establish ownership over the object unless the owner specifically transfers their rights. However, the buyer's digital item will have protection under the Copyright Act from illegal copying or disseminating.

Copyright violations by NFT creators

Example being an NFT creators cannot use the characters from Marvel or DC universe to create arts if you don't have copyright permissions you cannot use any of the characters, content or videos for any commercial purposes in your work. DC and Marvel are already trying to stop NFT creators who are using their character's in the art work.

Platform for NFT

Famous platforms for NFT like Open Sea, Bored Ape Yacht Club and SuperRare offer a forum for purchase and sale of NFTs to take place. NFTs are, therefore, metadata of the Work which is added to the blockchain. NFTs have built-in authentication in the form of a unique identification code which serves as proof of ownership. This promotes market efficiency and helps a seller to connect with the buyer directly without the help of an intermediary. This further streamlines the process of the transaction, thereby making the purchase and sale of NFTs quite feasible.

Legalization of NFT

virtual currencies remain unregulated in India. As of now, NFTs are not legally valid in India, but soon we might have laws and regulations regarding NFTs.

It removes the intermediaries in the process of the transaction and represents a transparent report of all the transactions done in the form of blocks on the blockchain network. NFTs can be used to represent individual's rights to property and identities.

In India, it holds some risks because it has no legal status here. The legalization of NFTs is necessary for the better trading of NFTs in India.

Conclusion

One of the most significant difficulties is the widespread misunderstanding of the rights buyers gain when they purchase an NFT. Some purchasers believe they receive the underlying work of art and all rights associated with it. In actuality, though, they are just purchasing the metadata linked with the piece and not the actual art itself. The exclusive rights owned by the creator of a work include reproduction, publication, lending and leasing, public performance, adaptation, public communication, and permission to perform any of the aforementioned activities. As long as there is a causal relationship between the token and the work, only the right of communication to the public could be infringed through a link in an NFT. As an NFT is merely code, it is not a significant duplication of the work, hence it does not violate these rights.

Thus, NFTs shall hold digital monetary value for every copy of the work that is created, minted, and posted on blockchains for sale/transfer. Although there is no established law that governs NFTs, the Indian Copyright Act, 1957 does play a significant role when it comes to creating, distributing, and transferring copies of NFTs being created for digital recognition.

Sources

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