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## NON-FUNGIBLE TOKENS AS EVIDENCE OF COPYRIGHT OWNERSHIP- BLOCKCHAIN AS A LEGAL TOOL

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### ABSTRACT

The emergence of non-fungible tokens (NFTs) raises significant challenge for the core of copyright law, especially regarding the requirement of originality in copyright as copyright itself is based on two important features like originality and fixation. Although NFTs are often positioned as proof of ownership for digital assets, their legal status concerning copyrights remains ambiguous. Especially regarding their connection to copyrights, as there is a widespread misconception that purchasing an NFT automatically confers copyright ownership. While legislation is still developing, courts largely apply traditional laws to NFT related cases, such as those involving copyright infringement, this helps to establish the legal precedents, but the overall legal landscape remains in a state of flux. This paper critically examines the gap between the transactional nature of NFTs and the legal standards of copyrights protection, focusing particularly on the role of originality in copyright law. The paper argues that the blockchain technology behind NFTs offers an albeit unconventional, legal tool by offering an immutable, time stamped record of an asset's creation and subsequent chain of custody, the blockchain can serve as compelling *prima facie* evidence of creation, helping creators establish ownership and priority over copyright disputes. It can be particularly transformative in digital media, where proving the time of creation has been a significant obstacle. It also delves into the complex issue of licensing and derivative works, examining the legal validity of rights and licenses embedded in small contract. This framework would clarify the distinction between token ownership, copyright ownership, formalize the evidentiary value of blockchain records, and address the legal and jurisdictional challenges in a global decentralized ecosystem.

**Keywords:** Non- fungible tokens, copyright, blockchain, infringement, smart contracts.

**Introduction and Background:**

The advent of non-fungible tokens (NFTs) has completely transformed the way digital assets are produced, traded and priced. Non-fungible tokens which are based on blockchain technology, offer an unchangeable and cryptographic proof of ownership or license for a particular digital asset. The legal and practical ramifications of this technology are still heavily debated, particularly when it comes to intellectual property rights.<sup>1</sup> With a particular emphasis on copyright, this study seeks to go beyond the hype and assess the degree to which NFTs and the supporting blockchain technology may be used as a powerful legal instrument in establishing and regulating copyright ownership. The legal foundation of traditional copyright law is based on a physical or centralized digital environment. The digital age has changed how creative works and new ideas are made, shared and owned. But this change has also made it harder to prove who owns something and stop others from copying it easily, especially the digital files which can be copied in a single click. The old ways of handling copyright depend on central offices and legal papers, which can be slow, expensive, and not fit well with the fast and worldwide nature of the internet. Blockchain technology is a decentralized and shared record system which keeps track of transactions in a way that it cannot be changed or hidden. Originally known for supporting cryptocurrencies, blockchain is now becoming a big change for the legal and creative fields. At the center of the change is the non-fungible token (NFT), a special type of digital asset that is stored on a blockchain. Although NFTs are famous for being used in the art world, their real power goes beyond just trading. They act as digital proof that something is owned and belongs to someone, serving as a new kind of evidence for intellectual property rights. This study will examine how NFTs may be used to establish a chain of provenance for a creative work, but also why a simple record of token ownership frequently fails to legally demonstrate copyright ownership.<sup>2</sup>

**Literature review:**

*Joshua A.T. Fairfield, Tokenized The law of Non-Fungible Tokens:* This paper provides foundational analysis on the distinction between the token and the underlying digital property, aligning with our paper's core problem.

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<sup>1</sup> Joshua A.T. Fairfield, *Tokenized: The law of Non-Fungible Tokens and Unique Digital Property*, 97 Ind L J 1261 (2022).

<sup>2</sup> Michael D. Murray, *NFT ownership and copyrights* SSRN Electronic Journal (2022).

*Michael D. Murray, NFT ownership and copyrights:* This source contributes to the critical discussion on the difference between NFT ownership and legal copyright ownership, a central theme of our research. As they both are separate works, which is highlighted in our research.

*Aryan Asthana and Dr. Shova Devi, Copyright in the Digital Age:* This article sets the broader context by discussing the challenges, reforms, and future direction of copyright law in the evolving digital environment.

*Vladimir Troitsky, Neither Tinder nor karaoke:* Approaching the Legal status of Nonfungible Tokens (NFTs): This article offers a perspective on the ambiguous legal status of NFTs, which our paper seeks to formalize using blockchain's evidentiary value.

*Prachi Mishra et al., Beyond Traditional Intellectual Property: Rise of Non- Fungible Tokens (NFTS)* This article supports our premise by exploring how blockchain technology can be leveraged to protect digital art beyond traditional IP mechanisms. As blockchain as a legal tool is necessary for NFTS.

### **Problem statement:**

The central problem is the underlying gap between the “ownership” that an NFT represents and the real legal ownership of the copyright it is linked to a blockchain record offers irrefutable evidence that a particular wallet address holds a certain token, but it does not immediately give the owner the copyright, moral rights, or other exploitative rights to the underlying creative work (such as an image, song, or video). This leads to considerable legal ambiguity and hazards for authors, collectors, and platforms.

### **Research Questions:**

1. Does NFT fall under the ambit of work according to Indian copyright Act 1957?
2. How may a blockchain's unchanging ledger be used as a legal instrument in copyright enforcement and infringement cases?
3. What restrictions do smart contracts have in a legal jurisdiction, and how can they be legally structured to include and automatically enforce copyright licenses?

**Research Objective:**

This research primarily aims to analyze the gap between the ownership that an NFT represents and the real legal ownership a copyright and to investigate the limitations of blockchain technology and decentralized ledger as an immutable record for proving the provenance and originality of a copyrighted work in infringement disputes. This paper attempts to provide a viable legal and technical framework for blockchain to function as a globally recognized tool for evidence and enforcement.

**Scope & Limitations:****Scope:**

In order to offer a targeted analysis, this study purposefully concentrates on the intersection between law and technology. The primary focus of this study will be on the function of blockchain technology as a system for, in particular, immutable timestamps and smart contracts (namely the ERC-721 and ERC-1155 standards). establishing the digital work's genesis and chain of custody. Legally, the study will concentrate on Copyright Law, exploring the fundamental distinction between having ownership of the NFT (the unique token) and having ownership of the actual intellectual property. property rights (the copyright of the underlying work). The geographical scope will concentrate on comparing the legal treatment of NFTs in a Common Law jurisdiction (such as the United States or ) the United Kingdom) and a significant Civil Law jurisdiction (e.g., the European Union framework). By intentionally concentrating on cryptocurrencies, the article avoids delving into complicated financial or environmental issues and excludes thorough analyses of other IP categories like trademarks or patents.

**Limitations:**

In order to improve clarity and make sure that the intended message reaches the target audience, good content writing is essential. Well-written material simplifies difficult concepts, divides data into manageable pieces, and removes uncertainty. It helps readers comprehend important concepts fast and without confusion by employing clear and simple language. Furthermore, effective content writing is geared toward the needs and preferences of the audience, resulting in more interaction and engagement. High-quality content guarantees that the message connects with the audience, which promotes confidence and leads to improved results,

regardless of whether the purpose is for education, marketing, or entertainment.

### **Research Methodology:**

#### **1. Doctrinal Legal Analysis (Legal Efficacy):**

The core of the research will be a Doctrinal Legal Analysis to determine the current and potential status of NFT data (timestamps, wallet addresses) as admissible evidence in a court of law. Analysis will focus on primary legal sources, including relevant Copyright Statutes (e.g., U.S. Copyright Act, EU Copyright Directives) concerning fixation, originality, and registration requirements.

2. Case Law Analysis: Critical examination of emerging case law (e.g., *Hermès v. Rothschild*, *Miramax v. Tarantino*) where NFTs intersect with copyright or contract disputes. This aims to extract judicial reasoning on the evidentiary weight of blockchain records. Review of national and international rules of evidence regarding the authenticity and admissibility of electronic and digital records, applying these rules to the characteristics of an immutable blockchain ledger.

3. Comparative Analysis: Comparative Law will be used to contrast the legal reception of NFTs in Common Law and Civil Law jurisdictions, identifying specific points of conflict (e.g., the treatment of smart contracts as legal agreements).

Techno-Legal Comparative Analysis (Functionality and Gaps)- This prong assesses the technical realities of NFTs and smart contracts against the requirements of traditional legal frameworks. This involves analyzing the technical implementation of NFTs. Examination of public smart contract standards (e.g., ERC-721 metadata) to identify which elements (token ID, minter address, creation timestamp) are permanently recorded on-chain, and which elements (link to the artwork, licensing terms) are stored off-chain (e.g., IPFS or centralized server). Review of whitepapers, technical specifications, and security audits related to blockchain immutability, data provenance, and the potential for 'bad-faith' minting (minting unauthorized copies).

#### **NFTs as creative works under Indian copyright law (Domestic Aspect):**

An NFT itself is not considered a creative work under copyright law; it is a digital certificate

of ownership for an underlying asset, like a digital artwork or music file. It's a blockchain-based digital certificate of ownership or authenticity, representing a link to (or metadata about) a creative work — such as an image, video, audio file, or other digital content.

- The **NFT token** = a cryptographic record on a blockchain.
- The **underlying work** = the artistic, literary, or musical creation linked to the token.

The copy rights to the underlying asset remain with the original creator unless they are explicitly transferred in writing, and owning the NFT does not grant the buyer those rights by default. Therefore, an NFT does not inherently confer copyright or other IP rights to the owner of the token.

Under **Section 13** of the **Copyright Act, 1957**, copyright subsists in: “Original literary, dramatic, musical and artistic works; cinematograph films; and sound recordings.” For something to be a “work” under Indian law: It must be an **original expression**, and it must be **fixed in a tangible medium**. Hence, under Indian copyright law, the NFT itself is not a creative work. It is a technological mechanism — a record of ownership — whereas the underlying digital artwork is the copyrightable creative expression.

There are possible solutions where it might be possible to bring NFTs under the ambit of creative works according to Indian copyright law. However, these are merely just possible scenarios or situations, which are:

1. If NFTs are created using original code, animation, or generative algorithms involving human creative input, they can be considered “creative works” under copyright law. The human author — coder, artist, or animator — holds the copyright in the underlying code and resulting digital artwork.

This includes cases where:

A human designs visuals, writes creative code, or animates the NFT manually.

A human creates the generative algorithm with artistic intention and control, even if the output is automated.

2. In the case there are NFTs released in a collection or series. Although these tokens are all distinct, they are all part of a set and, as such, can be used interchangeably within that set. The set of NFTs forms a curated body with consistent style, theme, and metadata.

NFTs released as part of a collection or series can be considered creative works under copyright law, provided there is:

- **Human creative input** in the design or generation of the artworks,
- **Originality** in each token's expression (even if traits overlap), and
- **Fixation** of the digital work (on blockchain or IPFS).

Therefore, it may be protected as a collective or compilation work, similar to how a series of artworks or photographs is protected.

### **Status of copyright in the current Digital Age:**

The condition of copyright is constantly changing and evolving in today's digital environment. Between conventional legal frameworks and the reality of a global, digital-first environment, there is a fundamental tension brought about by the quick rate of technological advancement. This continues to be the biggest issue. Digital material (such as music, movies, e-books, and software) may be easily copied, shared, and distributed online on a large scale and internationally, sometimes without the permission of the copyright owner. This has resulted in significant financial losses for creators and businesses. Moreover, there is an increase in digitalization of creative works, which refers to an increasing trend in transferring creative works into digital format. This makes it possible for even common people to reproduce, distribute and communicate works with relative ease. Copyright laws are mostly national, while the internet knows no boundaries.<sup>3</sup> Because an infringer in one nation may have to be prosecuted in another jurisdiction with different rules and legal processes, this complicates enforcement. The absence of a consistent international legal framework for digital copyrights makes legal proceedings more difficult. AI presents complicated issues that existing copyright

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<sup>3</sup> Aryan Asthana & Dr. Shova Devi, Copyright in the Digital Age: Challenges, Reforms and the way Forward, 7 Indian JL & Resch 3407 (2024).

laws are unable to address. AI models are trained on massive amounts of data that frequently include copyrighted content. This raises legal concerns regarding whether or not this usage is considered to be fair use or an infringement. There also exist new and advanced works in cyber space such as computer programmes, databases etc, which require and possess copyright protection under the traditional copyright laws (copyright act, 1957 in India for instance) but require more advanced legal framework.

E-commerce platforms, while offering a worldwide marketplace, have also grown to be a hub for the sale of fake goods. The continuous struggle for companies to safeguard their trademarks from illegal usage, such as phony online shops and social media profiles, is never-ending. Although Digital Rights Management (DRM) technologies are used to regulate the usage of digital material, they are frequently circumvented by tech-savvy consumers. As a result, there is a constant "cat-and-mouse" game between creators and those who attempt to circumvent these safeguards.

Despite the difficulties, the digital era also offers novel tools and legal structures for safeguarding copyrights. The digital environment has made new business models possible, such as subscription-based streaming services like Spotify and Netflix. These services offer a lawful and practical substitute for piracy, which helps to redirect consumer demand into a system that rewards producer. Blockchain technology is being researched as a way to build decentralized, time-stamped, and unchanging records of copyright development and ownership. One useful application of these digital tools is Non-Fungible Tokens (NFTs), which offer a distinct digital certificate for each item. Although the connection between an NFT and the underlying copyright is still up for debate, this technology has a lot of potential for proving provenance and authenticity. In The "Betamax case"<sup>4</sup>: This watershed decision by the U.S. Supreme Court serves as a fundamental illustration of a court struggling to deal with a novel technology that makes replication possible. The business that makes the Betamax video cassette recorder (VCR), Sony, was brought up in court by Disney and Universal for aiding and abetting copyright infringement. They maintained that Sony was promoting piracy because the gadget could be used to capture copyrighted TV shows. The Supreme Court sided with Sony, stating that the VCR did not violate any laws. The "staple article of commerce" concept, which holds that a technology is not unlawful merely because it can be employed for infringing purposes if it also has significant non-infringing applications, was created by the court. The

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<sup>4</sup> Sony corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417 (1984).

court determined that “time-shifting” (recording a show for later viewing) was a lawful and fair use of the technology. This case established a critical precedent for technology firms, shielding them from responsibility for technologies with several applications, even if one of those applications is for infringement. It gave technologies like the VCR, MP3 players, and later, digital video recorders, a chance to thrive free from the risk of legal responsibility for contributory infringement.

Infringement is being fought with the use of artificial intelligence itself. With the use of AI-powered systems, it is possible to monitor the internet at a large scale in order to identify instances of copyright infringement or fake goods, which increases the efficiency of the enforcement procedure. Governments all over the world are constantly changing their laws to meet the difficulties posed by the digital environment. In order to give electronic documents and signatures legal validity, several nations have changed their copyright and trademark legislation (e.g., India's IT Act, 2000). To deal with international challenges more successfully, there is a growing push for global collaboration and harmonization of copyright related laws. The condition of copyrights in the digital era is, in summary, complicated and ever-changing. It is also adjusting through the development of novel legal frameworks, business models and technological remedies, even if it is severely threatened by emerging technology and internet's limitless environment<sup>5</sup>.

### **NFTs-Characteristics and connection with copyright:**

**Non-fungible is a one of kind, unrepeatable and indivisible** digital asset that is safely documented on a blockchain giving a public and tamper-proof record of ownership. The main qualities of an NFT are its uniqueness and intrinsic scarcity, which can be confirmed on the blockchain, in contrast to cryptocurrencies, which are interchangeable. A digital fingerprint, which sets each token apart from the others, is included in the embedded metadata. The capacity to trace the asset's history along with this verifiable provenance are crucial qualities that contribute to its sense of legitimacy and worth. Additionally, NFTs are frequently connected to smart contracts that can be programmed to automate specific tasks, such as royalty payments to the original creator on each future sale. This capability has revolutionized the business model for digital artists and creators. The link between copyrights and NFTs is a

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<sup>5</sup> Journal of Modern Law & Policy, The Evolution of Intellectual Property Rights in the Digital Age, 4 Indian J.L. Rsch.1,14 (2024).

complicated and legally convoluted field. It's a widespread misconception that buying an NFT grants the buyer all the intellectual property rights, including copyright. But the truth is that owning the token is different from owning the underlying piece of creative work. The copyright, which includes the rights to copy, distribute, and produce derivative works, is often retained by the author. A license, which may be included in the smart contract, typically defines the rights granted to the NFT owner and can range from permitting personal usage to granting restricted commercial rights. As a result of this legal distinction, several significant trials have taken place. In the landmark instance of *Hermès v. Mason Rothschild*<sup>6</sup>, for example, the luxury company successfully sued an artist for trademark infringement after he created "MetaBirkins" NFTs, which were digital depictions of the brand's renowned Birkin bags. The court found that the NFTs caused consumer confusion and concluded that they were a business product and not protected artistic expression under the First Amendment. In a similar vein, the contractual difficulties of copyright in the age of NFTs were brought to light in *Miramax v. Quentin Tarantino*<sup>7</sup>, where the film company sued the director for his intention to market NFTs based on the *Pulp Fiction* screenplay, claiming it violated the rights Tarantino had transferred to the business. The need for unambiguous agreements on who owns the rights to copyright in novel digital forms was highlighted by the resolution of the matter. These examples show that the courts are using conventional copyright law to regulate the novel technology of NFTs and that just creating a token does not supersede current copyright safeguards.

### **The application of NFTs in copyright protection and advantages:**

The use of non-fungible tokens (NFTs) in copyright protection presents a modern, blockchain-based solution that, while bringing up new challenges, offers several important benefits over conventional methods. A work's authorship and ownership can be established via NFTs, which offer a lasting, verifiable, and unchangeable proof. The blockchain records the transaction when an artist mints an NFT, providing a clear and open timestamp that documents the precise moment the digital artwork was created in its tokenized form. In the event of infringement, this on-chain documentation serves as a form of provenance, which might be quite useful in establishing a creator's claim to originality. In addition, the use of smart contracts can automate copyright administration, such as the enforcement of licenses and the distribution of royalties.

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<sup>6</sup> *Hermes v. Mason Rothschild*, 2023 WL 1458126 (S.D.N.Y. Feb 2, 2023).

<sup>7</sup> *Miramax v. Quentin Tarantino*, No. 2:21-cv-08979 (C.D. Cal. Nov. 16, 2021).

to the original author on every subsequent sale in the secondary market.<sup>8</sup> This gives artists a way to make passive money from their work for years after the initial sale, a huge benefit over conventional art markets. But the legal framework is always changing, and ownership of an NFT does not necessarily mean ownership of the underlying work's copyright. Numerous well-known court cases have revolved around this distinction. The conflict between NFTs and copyright is illustrated by the case of VEGAP v. Mango<sup>9</sup>f in Spain, where a collecting society filed a lawsuit against the fashion company for producing NFTs of actual artworks it possessed. In this case, the court decided that the NFTs did not constitute a straightforward violation of the artists' rights because they represented a "transformation" of the original works, which illustrates the nuanced way courts are applying current copyright law to this new technology. These instances emphasize that NFTs, although providing potent means for artists to safeguard and monetize their work, are nonetheless subject to well-established intellectual property law.

The advantages of Using NFTs to Safeguard Copyright are:

- Decentralization and Fewer Intermediaries: NFTs function on a decentralized blockchain, doing away with the requirement for a central authority, such as a conventional copyright office or gallery, to oversee and regulate ownership. This might lower expenses, expedite transactions, and provide creators more direct control over their work.
- Enhanced Authentication and Proof of Creation: The cryptographic character of NFTs offers strong and verifiable evidence of authenticity. Compared to traditional methods, which are frequently vulnerable to tampering or human mistakes, this approach may be safer and more dependable.
- Improved Licensing and Monetization: NFTs allow creators to make money from their work in novel ways. Digital assets that were previously illiquid are now accessible to novel licensing models and marketplaces thanks to smart contracts, in addition to royalties.
- Transactions that are both global and immediate: The blockchain's open and global nature enables the frictionless exchange and trading of digital assets anywhere in the

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<sup>8</sup> Robin Madi, Non-Fungible Tokens and copyright law: A token of haven for copyright holders or a fraudulent hell? (LLM thesis, KU Leuven 2022).

<sup>9</sup> VEGAP v. Mango, No AJM B 1900/2022.

world, at any moment, at any moment, without the intervention of banks or legal firms.

- Increased Transparency: The blockchain ledger is open to the public, which fosters a great deal of transparency. The ownership and transaction history of an NFT can be verified by anyone, fostering trust and confidence in the digital art market.

### **Role of Blockchain Technology and its potential as a legal asset:**

Blockchain technology has key features—such as immutability, transparency, and decentralization, that make it a potential legal asset. A blockchain acts as a shared, tamper-resistant record that documents ownership, transactions, and agreements, creating an unchangeable history of custody for both digital and physical assets. This creates a reliable way to provide clear proof of legal events, such as signing a contract or claiming an intellectual property right.<sup>10</sup> By embedding smart contracts within the blockchain, these self-executing agreements can automatically carry out legal obligations without the need for a third party, which changes how legal contracts are created and disputes are resolved. Courts are now seeing real-world uses of blockchain technology beyond just theory. For example, in the case of Blockchain Ltd v. Sloggett<sup>11</sup> in Australia, a court decided that Bitcoin, and other crypto assets on a blockchain, can be classified as personal property that can be held in a trust. This is significant because it sets the legal standing of digital assets on the blockchain, treating them as legal assets that follow standard property laws, even though they are not physical. This example shows that courts are increasingly recognizing blockchain as a valid and reliable source of legal evidence and are viewing blockchain-based assets as a separate category of legal assets. Although the legislative framework for blockchain is still developing in most jurisdictions, including India, courts have already begun to acknowledge the evidentiary value of blockchain records.<sup>12</sup> The main question is usually not whether the blockchain itself is legal, but whether the data it contains may be used as trustworthy evidence.

Although there is no particular law in India that governs blockchain, its possibilities are slowly being recognized by courts and governmental organizations. The current framework of the Information Technology Act, 2000, which grants legal recognition to electronic records and

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<sup>10</sup> Prachi Mishra et al., Beyond Traditional Intellectual Property: Rise of Non- Fungible Tokens (NFTs) and Role of Blockchain in protecting Digital Art, 29 J Intell Prop R 212 (2024).

<sup>11</sup> Blockchain Ltd v. Sloggett, [2020] FCA 1585 (Austl.).

<sup>12</sup> Prachi Mishra et al., Beyond Traditional Intellectual Property: Rise of Non- fungible Tokens (NFTs) and role of blockchain in protecting Digital Art, 29 J Intell Prop 212 (2024).

digital signatures, is frequently used to determine the legitimacy of blockchain-based contracts and transactions. It's crucial to establish that the blockchain record satisfies the requirements for being deemed a legitimate electronic record. However, the Indian Evidence Act, 1872, particularly Section 65B, presents a hurdle. The requirement for a certificate from the person in control of the device that created the electronic record is difficult to apply to a blockchain, whose very nature is decentralized. However, landmark Supreme Court cases like *Anvar P.V. v. P.K. Basheer*<sup>13</sup> and *Shafi Mohammad v. State of Himachal Pradesh*<sup>14</sup> show a judicial evolution towards a more flexible interpretation of electronic evidence, a trend that is favourable for the future admissibility of blockchain data. Despite this progress, significant legal gray areas persist, including jurisdictional issues in a borderless technology, the conflict between blockchain's immutability and the "right to be forgotten" under the Digital Personal Data Protection Act, 2023, and the enforceability of smart contracts, which are still code and may not fully capture legal intent. On the other hand, the Indian government is actively exploring the potential of blockchain, with the Ministry of Electronics and Information Technology (MeitY) publishing a "National Strategy on Blockchain. This strategy, along with pilot projects in states like Andhra Pradesh and Telangana for land records and the Reserve Bank of India's work on a Central Bank Digital Currency (CBDC), signifies a clear intent to recognize and leverage the technology. Ultimately, the distinction between blockchain technology as a valid method for recording legal events and the separate, evolving legal status of cryptocurrencies is a critical nuance. While the legal framework is still nascent, the convergence of judicial precedents, legislative foresight, and governmental initiatives suggests that blockchain is poised to become a recognized and powerful legal asset in India's digital future.

### **A New Era for Artists: From Smart Contracts to Platform Accountability:**

A blockchain stores the distinct digital certificate of ownership and authenticity known as a non-fungible token (NFT), which is not the copyrighted work itself. As a result, creators have developed innovative business strategies. Nonetheless, the introduction of this new paradigm also brings with it a number of major legal issues, notably in the area of copyright violation. A new era for artists is dawning, marked by a shift in how creative works are valued and protected. Smart contracts, a core innovation of NFTs, are fundamentally changing the business

<sup>13</sup> *Anvar PV v. PK Basheer*, (2014) 10 S.C.C 473, 477 (India).

<sup>14</sup> *Shafi Mohammad v. State of Himachal Pradesh* (2018) 2 S.C.C 130,134(India).

model for artists by automatically ensuring they receive a percentage of every secondary sale, a long-standing challenge in the art world. This financial empowerment is coupled with a growing emphasis on platform accountability, as recent court rulings are holding NFT marketplaces responsible for monitoring and preventing the unauthorized sale of copyrighted material. This dual evolution—financial and legal—is forming a more equitable environment where creators have greater control over their copyright work and can earn continuous royalties from their work.

The following are some examples of how NFTs are being utilized in new copyright companies, along with pertinent case law that is beginning to establish the legal framework.

### Cases in the Developing Copyright Industry

- Direct-to-Fan Monetization: Artists, composers, and authors are using NFTs to sell their work directly to their fans, bypassing traditional middlemen. The musician Grimes offered a collection of digital art for sale, some of which had a limited number of editions. The NFTs were connected to the artwork, and the sale gave her a fresh, independent source of income, while followers got a verifiable one-of-a-kind collectible. This model gives creators control over pricing, distribution, and royalties, which gives them more power. The Shenzhen Qice Diechu Cultural Creativity Co; Ltd. V. Hangzhou Yuanyuzhou Technology Co; Ltd<sup>15</sup>: In what is regarded as China's first case of copyright violation involving NFTs, the Hangzhou Internet Court ruled against a platform that marketed an NFT of a cartoon character known as "Fat Tiger" without the creator's consent. The court ruled the platform responsible for contributory copyright infringement as a result. It concluded that the unauthorized sale of the NFT violated the copyright holder's "right of communication by information networks." The court's decision was noteworthy because it required NFT marketplaces to have a review procedure in place to monitor and prevent violations of intellectual property rights. This ruling sets a precedent for platform responsibility, which is a significant worry for both marketplaces and artists<sup>16</sup>.

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<sup>15</sup> Zhe 0912 Minchu No 1008 ,2022 (China).

<sup>16</sup> Baiyang Xiao, copyright law and Non-Fungible Tokens: Experience from China,30 Int'l JL & Info Tech 44,47 (2022).

- Smart Contracts with Royalty Embedding: The capacity to program "smart contracts" that immediately pay a royalty to the creator with each subsequent resale of the NFT is a fundamental innovation of NFTs.
- Business Model: A royalty percentage is established by the artist who creates the NFT (for example, 10%). Each time the NFT is resold on a secondary market, the artist's digital wallet automatically receives 10% of the sales price. This addresses a persistent issue in the art industry, where artists frequently don't gain from the secondary market's appreciation for their creations.
- Fractional Ownership and Collectibles: Fractional ownership of a valuable copyrighted work is made possible by NFTs, which may be broken up into smaller, "fungible" tokens.

### **Legal Status of NFTs And a Comparative Analysis and Case Citations.**

The legal status of NFTs and their use in the current copyright market is a complicated situation which can vary greatly depending on the jurisdiction and is considered as a sort of a grey area in the legal sense across several regions. While there do exist advanced states and countries which have implemented legal framework capable of recognition and regulation of NFTs and their usage, these are not widely followed norms. Generally, NFTs do not grant actual legal ownership of the physical or digital assets they are linked to<sup>17</sup>. The creation of NFTs, their trading, and related activities may give rise to diverse legal issues, including civil disputes, regulatory or administrative scrutiny, and even potential criminal liability. Therefore, it can be stated that without a comprehensive legal framework regarding overall NFT use, there are multiple legal aspects regarding NFTs and their use in copyright related activates which can differ based on the country<sup>18</sup>.

#### **United States of America:**

As regulatory frameworks have not kept up with the technology, the legal status of NFTs in the United States is marked by considerable legal ambiguity or a "legal vacuum." The U.S. does

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<sup>17</sup> Awoyemi Ayomide, An Intellectual Property Rights Perspective to Non-fungible tokens (NFTs), 2 Int'l J Legal Sci & Innov 72 (2022).

<sup>18</sup> Ishika Soni, From Art to Assets: The Rise of Non-Fungible Tokens (NFT) in the Digital Age, IIPRD, (26 March 2024), <https://www.iiprd.com/the-rise-of-non-fungible-tokens-nft-in-the-digital-age/>.

not have a specific law that governs NFTs. Instead, existing laws on securities, commodities, copyright, taxation, and anti-money laundering apply depending on the NFT's characteristics and use<sup>19</sup>. The legal categorization of NFTs depends on their purpose, with some maybe falling under the purview of legislation that specifically identifies them as a regulated asset class, treated as securities if utilized for investment purposes<sup>20</sup>.

The U.S. Securities and Exchange Commission (SEC) and other federal groups like the Commodities Futures Trading Commission (CFTC) are working on their legal standpoint towards NFTs and have taken a regulatory approach. The SEC in particular, regulates NFTs as securities only when NFTs satisfy the requirements of an "investment contract" under the Howey Test—that is, when purchasers invest money in the hope of gains from the efforts of others—do they fall under regulation. Recently, after the SEC closed a high-profile case into Open Sea, has reduced its focus on regulating NFTs<sup>21</sup>.

With regards to NFTs and copyright, from a joint study conducted by the United States Copyright Office and the United States Patent and Trademark Office (USPTO) on March 12, 2024 explained that current IP laws and copyright laws are sufficient. As such, with the current use of NFTs, existing Intellectual Property (IP) laws, particularly copyright and trademark, apply to NFT-related issues.

The copyrights in the underlying work are not transferred when an NFT is purchased. In other words, purchasing an NFT usually means owning the token on the blockchain, not the copyright, trademark, or physical/intangible asset it represents. Only the ownership of the token on the blockchain, which is really a digital proof of ownership, is transferred. The transfer of ownership of copyrights is necessary for the buyer to gain the title of copyright holder.

The buyer is prohibited from copying, distributing, or utilizing the underlying art, music, or brand connected to the NFT for commercial gain unless specifically authorized by a contract or license. Minting an NFT of an asset associated with a copyright without permission can be considered copyright infringement.

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<sup>19</sup> Chinmay, When IP meets NFTS: The case for intellectual property protection for Non-Fungible Tokens, 10(2) RGNUL Student Research Journal 24, 26 (2022).

<sup>20</sup> 'The Intersection of NFTs and IP Rights and Protection, in Law, Technology & society: Contemporary Issues 134,137 (Aditi Singh & S. Nanda eds., Satyam Law Int'l 2023).

<sup>21</sup> Vladimir Troitsky, Neither Tinder nor karaoke: Approaching the Legal status of Non-Fungible Tokens (NFTs), 17 J Intell Prop L & Prac 956,959 (2022).

In the case Hermès International v. Mason Rothschild (2023)<sup>22</sup> The court ruled that “MetaBirkins” NFTs which depicted Hermès Co.’s Birkin bags, infringed Hermès’ trademark. Rothschild was held liable for trademark infringement. The court held that trademark law extends to digital goods, including NFTs just like physical goods. Simply attaching “artistic expression” or “digital asset” does not shield NFT creators from liability if the NFT causes consumer confusion or exploits existing brands.

Nike v. Stock (2022–present)<sup>23</sup> – Nike sued StockX for selling NFTs linked to Nike sneakers without authorization, arguing trademark infringement and consumer confusion. This case tests whether NFTs tied to physical goods can be treated as independent trademark-using products or receipts/tickets. So far, the court rejected claim of fair use.

### **European Union**

The European Union has passed the Markets in Crypto-Assets (Mica) Regulation, its first all-purpose regulatory legal framework for crypto-assets and crypto based activities. Under this act, businesses and entities will need to register under national authorities and require authorization to carry out crypto related business and services<sup>24</sup>.

However, under the Mica regulation, NFTs are largely excluded from the core of the act and are not considered part of the framework of this regulation. This is due to the uniqueness of NFTs and their value being individual making them difficult to replace and be valued in a standardized market system. Existing IPR laws and copyright regulations regarding copyright and trade such as under the EUIPO (European Union Intellectual Property Office) are enough to govern NFTs<sup>25</sup>. Thus, NFT- copyright disputes are handled under traditional copyright law (copyright, etc).

However, the Mica legislation does cover NFTs released in a collection or series. Although these tokens are all distinct, they are all part of a set and, as such, can be used interchangeably within that set. Consequently, the Mica regulation will treat businesses that release such NFT

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<sup>22</sup> Hermes Int'l v. Rothschild, No. 22-CV-384-JSR, 2023 WL 1458126 (S. D. N. Y. Feb.2, 2023).

<sup>23</sup> Nike, Inc. v. Stockx LLC, No. 1:22-cv-00983-VEC, 2024 WL 101010 (S.D.N.Y. 2024).

<sup>24</sup> Daniel Ruby, Crypto Legal Countries (Demand sage Aug.12, 2025), <https://www.demandsage.com/crypto-legal-countries/>.

<sup>25</sup> Regulation of Non-Fungible Tokens under the EU Law EUCI (n.d.), <https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-Law/>.

collections as crypto asset service providers. They will be governed by the laws that are intended to safeguard consumers and investors.

**Juventus vs. Blockeras (2022)<sup>26</sup>:** Juventus Football Club successfully obtained an injunction in the IP Chamber of the Court of Rome against Blockeras. The court sided with Juventus and issued a preliminary injunction against Blockeras and ordered Blockeras to stop minting, promoting, and selling the infringing NFTs which prohibited any further use of Juventus' marks and imagery in NFTs. The court emphasized that NFTs are commercial products, and the use of trademarks in connection with them falls under the same legal standards as for physical goods.

### **India:**

There are currently no laws in India that specifically address commercial transactions involving NFTs. In contrast, NFTs are subject to the broad legal framework of current laws such as the Consumer Protection Act, 2019; Information Technology Act, 2000; Designs Act, 2000; and Copyright Act, 1957. The Income Tax Act of 1961 is the sole legislative citation, and it has been modified to classify NFTs as virtual digital assets (VDAs). As a result, the income earned from trading NFTs is subject to a 30% tax<sup>27</sup>.

As per copyright laws, the rights to a copyright are not automatically transferred upon the creation of an NFT. The majority of NFT buyers get ownership of the token, but not the copyright in the underlying artwork, music, video, or digital file. Copyright belongs to the author unless transfer or licensing is mentioned in the external agreement or smart contract<sup>28</sup>. For example, the Copyright Act protects these NFTs that are owned by the purchasers or licensors, which prevents the buyer from infringing on the NFT's copyrights.

Additionally, unauthorized replication or dissemination is protected under S. 14 of the Act that states "which defines copyright as the exclusive right to do or authorize certain acts concerning a work or its substantial part, such as reproduction, issuing copies, performance, making films or sound recordings, translation, adaptation, and communication to the public. The specific

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<sup>26</sup> Tribunale di Roma, n. 32072/2022, 20 Luglio 2022 (Italy).

<sup>27</sup> Vikram and Sangeeta Sharma, An Analytical study of the Legal Framework Governing NFTs in India, 4 J. Intell. Prop. Rts.: L. & Econ. 25,27 (2023).

<sup>28</sup> Vishal Jejeriya, Protecting Copyright in Digital Art and NFTs: Emerging Challenges in India, 29 J. Intell. Prop. Rts. 212,214 (2024).

rights vary depending on the type of work, with separate provisions for literary, dramatic, musical, computer programs, artistic works, cinematograph films, and sound recordings”<sup>29</sup>.

Digital Collectibles Pte. Ltd. v. Galactus Fun ware Technology Pvt. Ltd. (Delhi High Court, 2023)<sup>30</sup>:

It represents the first major Indian judicial engagement with Non-Fungible Tokens (NFTs) and intellectual property rights, particularly publicity rights. The plaintiffs, operating the Rario platform, had secured exclusive licenses from prominent cricketers to use their names, images, and likenesses for NFT-based “Digital Player Cards.” They alleged that the defendants, who ran the Striker Club fantasy sports platform, infringed these rights by creating similar NFT-backed cards featuring artistic depictions of the same players without authorization.

The plaintiffs claimed this amounted to misappropriation of publicity rights, passing off, and unfair competition. However, the Court refused to grant an interim injunction, reasoning that player information such as names, images, and statistics exists in the public domain and that its use in fantasy sports was incidental rather than suggestive of endorsement.

Further, the Court clarified that NFT technology itself cannot be monopolized since it functions merely as a medium for authentication and digital trading, not as a proprietary right in itself. By prioritizing freedom of commercial expression over exclusive control of publicity rights, the ruling highlighted the limits of IP protection in the NFT space under Indian law.

The case underscores that, while licensing agreements for NFTs carry contractual force, the enforceability of personality and copyright claims in relation to NFTs will depend heavily on context—particularly whether the use creates confusion, implies endorsement, or exceeds fair use boundaries.

### **Criticisms and Limitations of NFTs.**

Despite the utility and potential of NFTs as well as their usage in copyright related matters, there arise numerous conundrums and complications with their legal recognition remains

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<sup>29</sup> The Copyright Act, India (1957).

<sup>30</sup> Digital Collectibles pte. Ltd. v Galactus Fun ware Tech.Pvt. Ltd., 2023 S.C.C Online Del 2306, paras. 15-16 (India).

fragmented, and the lack of uniform regulation across borders posing a challenge. Such limitations and criticisms include:

- Confusion of Ownership: The majority of NFT transactions give purchasers the mistaken impression that they are purchasing copyright in the underlying work. The token, not the legal rights, is all that really changes hands in the absence of a written assignment or license. Because of this structural uncertainty, consumers have been misled and there has been an increase in market speculation<sup>31</sup>. In the case, Tarantino v Miramax<sup>32</sup>: A film director made an effort to transform several scenes into NFTs. The director was sued by the producer for violating his trademark and copyright. But some of the million dollars plus worth of tokens had already been sold. The matter is still pending before the United States District Court. This is an example of the legal complications brought about by NFTs being used in copyright related works.
- Possibility of Copyright infringement: NFTs can be minted from unauthorized reproductions of creative works, enabling large-scale copyright infringement. Blockchain's immutability makes the removal of infringing NFTs difficult, while the pseudonymity of creators hinders accountability. Since copyrights 'ownership' are not inherently transferred with an NFT, individuals can mint NFTs of copyrighted works they don't own, leading to copyright infringement<sup>33</sup>. While the NFT provides a record, the underlying asset is still vulnerable to unauthorized use. In the case Thaler v Perlmutter (2023)<sup>34</sup>: The court upheld the Copyright Office's decision. The court stated that human authorship is a core necessity of U.S. copyright law, and works created solely by AI cannot qualify for protection. Ownership of a machine or prompting an AI system does not equate to authorship. If AI-created works are not copyrightable, the NFTs minted from such works may lack enforceable IP protection. Buyers might own the token but not any exclusive copyright rights.
- Weak Enforcement and Regulatory Mechanisms: The rapid growth of NFTs has outpaced legal and regulatory frameworks, resulting in significant uncertainty and a

<sup>31</sup> Gaurav Dhingra, First Principles Analysis of the Implications of IPR Law on NFT, ipleaders(Apr.17,2022) <https://blog.ipleaders.in/first-principles-analysis-of-the-implications-of-ipr-law-on-nft/>.

<sup>32</sup> Tarantino v. Miramax, LLC, No. 2:21-cv-08979 (C.D. Cal. filed Nov.16, 2021).

<sup>33</sup> Vanshika Kapoor, An overview of NFT and IPR ipleaders (Apr.8, 2024), <https://blog.ipleaders.in/an-overview-of-nft-and-ipr/>.

<sup>34</sup> Thaler v. Perlmutter, No. 22- 1564 (BAH) (D.D.C filed Aug. 18, 2023).

lack of consistent enforcement mechanisms. Moreover, traditional copyright enforcement tools— injunctions, takedowns, damages—are poorly suited to decentralized NFT markets. There is also a clash between the territorial nature of copyright and the global and borderless nature of NFTs. Tracking infringers across borders or compelling compliance from blockchain platforms is prohibitively complex and expensive.

- Lack of Uniformity in Legal Framework: The legal treatment of NFTs varies across the world, being classified as securities (in some U.S. contexts), digital assets (EU's Mica framework), or intangible items (India). Current copyright laws such as the Berne Convention, US Copyright Act, Indian Copyright Act, do not formally recognize NFTs as instruments of copyright protection. Courts around the world also have not yet developed a consistent or uniform approach to copyright disputes involving NFTs. The absence of harmonization and uniformity of the framework makes it difficult for copyright owners looking for worldwide protection. This is exacerbated by the fact that the use of NFTs and the decentralised blockchain are cross border in nature.
- Licensing and Overlapping Rights: Creative works associated with NFTs may involve multiple rights—copyright, trademark, and publicity rights—each requiring separate licensing. Licensing terms for the underlying digital asset are often unclear or non-existent within NFTs, leaving buyers uncertain about their usage rights. This lack of clear licensing can lead to disputes, especially when the NFT is traded on secondary markets.
- Violation of Privacy and Personality Rights: Celebrities and athletes have increasingly found their likenesses exploited in unauthorized NFTs. This can be considered a violation of privacy and personality rights.

### **Conclusion & suggestions:**

The potential use of NFTs as a form of evidence of copyright ownership and the possibility of using blockchain as a form of legal asset is a recent and yet ongoing theory and list of ideas which have emerged as a result of the emerging world of digital space and the increasing use of copyright and the related market shifting to digital field. With such an advent, along with the globalisation increasing the chances of cross border transactions and international copyright

situations, the need for NFTs that use blockchain, which are versatile in nature and provide security from hacking is quite attractive. However, the decentralised nature of blockchain related systems like NFTs while providing far reaching and well-connected options, pose a major problem when it comes to proper regulation. The clear set laws which serve to protect the interests of copyright holders under the legislation, have difficulty recognising and working with NFT related tokens and that clash of protection/safeguards and operating methods cause confusion in copyright transactions.

Furthermore, due to the recent introduction of the NFT use in the market, there has been no uniform legal framework in the aspect of international law and the various local copyright laws of different countries have not developed or adapted enough to the use of such a system of decentralisation and difficulty in implementation of regulation inherent in NFTs and blockchain. As such, it can be concluded that despite the potential use of NFTs as a tool in copyright, there is still a gap between the method of use and the accompanying regulations. Therefore, it can be concluded that more data and experience is necessary for the method implementation of NFTs in copyright and its possible usage smoothly in the market as well as the accompanying necessary legal framework as safeguards and regulation.

The following suggestions aim to provide a smooth implementation which would be a collaborative international effort to harmonize legal standards for NFTs to address jurisdictional challenges and provide consistent protection for copyright holders worldwide:

- Emphasize the Need for a Clear Legal Distinction: The future legal frameworks must create clear, explicit definitions for these two concepts. It could also propose that NFT marketplaces be required to have clear disclaimers to prevent consumer misconception and curb market speculation.
- Propose the Integration of Smart Contracts into Legal Frameworks: The paper highlights the potential of smart contracts for automating royalty payments and enforcing licenses. The key component of future legal frameworks should be the formal recognition and standardization of smart contracts as a legitimate mechanism for managing and enforcing copyright licenses, particularly in secondary markets.
- Address the Challenge of AI-Generated Works: The Thaler v Perlmutter case<sup>35</sup>, which

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<sup>35</sup> Thaler v Perlmutter, No. 22 -1564 (BAH) (D.D.C filed Aug 18, 2023).

established that human authorship is a requirement for copyright protection in the U.S. A strong suggestion would be to explicitly call for new legal frameworks to address the copyright status of AI-generated content, as the current lack of protection for these works creates significant uncertainty for the NFTs minted from them.

- **Highlight the Importance of Judicial Precedent:** The conclusion correctly notes the lack of uniform legal frameworks. However, it could be improved by acknowledging that while legislation lags, courts are already establishing crucial precedents in cases like *Hermès v. Mason Rothschild* and *Juventus v. Blockeras*, which apply traditional intellectual property laws to the new technology. Therefore, a key suggestion is to propose that legal professionals and creators should carefully study these evolving case laws as they currently form the basis of NFT-related copyright enforcement.

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