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NFTs Explained – Ownership, Licenses, and the Law

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NFTs have been around since 2015 on the Ethereum blockchain and have significantly grown over the years especially in the digital art industry. However, not all NFTs are art related. Some NFTs are also attached to physical products where they could act like security.

“NFT” basically stands for a “non-fungible token”. The wording “non-fungible” essentially means unique and cannot be replaced. So unlike, currency, bitcoin, etc., which are interchangeable, NFTs are one of a kind. In the digital art space, NFTs are used to claim ownership on a piece of copyrightable work – be it a digital painting, photograph, design, and the like.

In 2021, Christie’s auction house sold an NFT of a digital artwork by Beeple, a relatively unknown artist at the time, for USD 69,346,250 to an anonymous buyer. Since then, there have been several questions on what exactly was purchased through the NFT. Whether or not it was an actual purchase i.e., transfer of ownership of the IP, a licence to use the IP or a transfer of only the art, sans anything else.

Who is the owner?

On purchasing an NFT on a piece of art, the purchaser is essentially granted a non-exclusive license to certain intellectual property rights. This can include the number of copies that can be sold, royalty payments, etc. This license is granted by way of a smart contract. A smart contract, once created, is minted onto a token i.e., the NFT on the blockchain. A key aspect to note here is that once minted, the NFT is extremely difficult to be changed or amended. Therefore, the license terms on the contract need to be fool proof but more importantly globally acceptable. Copyright laws vary from country to country and a seemingly fool proof license may not be so outside the country of origin.

In addition, while people use the terms ‘purchase’ and ‘license’ interchangeably it is important to understand that while you are purchasing the NFT, you are not purchasing the copyright in the art itself. There maybe a transfer of ownership of the digital art but there is no transfer of ownership of copyright. It is only a license to use the product as per the license terms within the smart contract of the NFT. This is similar to the purchase of a painting for example. The copyright in the painting remains with the artist. While the ownership of the painting may change hands several times, the copyright of the owner is never transferred.

What’s the purpose?

So, one might question the need for an NFT if there isn't a transfer of IP ownership. The idea behind the concept is that the NFT acts as an insignia on the product, wherein the ownership of the product will be imprinted and verified through the blockchain. There can be no dispute as to the ownership of the copyright, and the creator is entitled to royalty payments every time the license is invoked by the licensees.

NFT License

There is an NFT public license that is available freely. It is a basic license that covers the usual essential rights to be transferred. The language in this license provides for both general and commercial use. It's a boilerplate license and NFT owners can modify it according to their own purposes. However, as mentioned, copyright laws aren't standard. While the basic law of ownership of copyright is generally the same, in India specifically, there are requirements under the Copyright Act to include some obligatory language for a copyright license.

If the terms of the NFT license is drafted without taking into account these nuances in the law, it might become increasingly difficult to rectify given that once minted, it would be a struggle to modify the NFT license. There is also no central law governing NFTs and while it's become the hype and progressively more popular among collectors, only existing IP, IT and contract law govern NFTs now. If an NFT is considered security or a derivative, then the NFT would be governed by the Indian Securities laws as well. Another potential issue is jurisdiction. NFTs work on the blockchain where parties can maintain their anonymity and privacy. As IP laws remain territorial, interpreting and enforcing a NFT license accordingly would be interesting to say the least.