

Introduction to NFTs and Copyright

Background

Non-fungible tokens, or [NFTs](#), are unique digital assets that are built on a blockchain and are sold or traded on digital markets. They have been around since 2014 and have become a mainstream concept in recent years thanks to their popularity in the art and pop-culture spaces. However, NFTs also have a lot to offer the business world and can be an effective tool for brand building, connecting with audiences, boosting loyalty and beyond. Businesses have plenty to gain by entering the NFT space, but to ensure they remain protected, it's critical that they consider NFT copyright issues at the outset.

In the early days of NFTs, copyright protection was largely an afterthought. This was due in part to speed to market considerations as well as a lack of understanding around secondary market purchases, essentially the copyright questions that can arise if an NFT is re-sold and the second buyer isn't required to sign any terms and conditions. Even today, copyright is sometimes not given the attention it deserves, as corporate NFTs are largely created by stand-alone innovation teams that are often siloed from colleagues more focused on intellectual property (IP) protection.

However, lack of scrutiny in this area leaves businesses vulnerable to a host of legal issues, including unchecked and unapproved monetization of their IP or sticky situations where a company has no control over how its IP is being used or manipulated, which could lead to significant brand damage. In today's NFT landscape, businesses must understand copyright in a commerce workflow, just as they would for a physical product, and ensure considerations are made for every stage of an NFT's life cycle.

To understand copyright issues, it's first helpful to know how NFTs are minted and sold. The term minting simply means creating an NFT on a blockchain network, such as [Ethereum](#), by building a code-based digital asset with a unique ID. After the minting process is complete, the NFT can be posted for sale on an NFT marketplace. Anyone looking to buy an NFT needs a [crypto wallet](#) that can accept and house the asset as well as enable the user to purchase from the marketplace using cryptocurrency.

[Smart contract](#) technology powers and captures all NFT sales and defines the rules of ownership. In most cases, NFTs come with a license that stipulates exactly how the NFT can be used, for example as a collectible, as a ticket, with full IP rights to the image, etc. Before minting, a business must figure out those details.

There are several important things to know when considering NFT copyright. First off, the owner of an NFT based on a physical asset does NOT inherit the fundamental rights to that asset. Think of how this plays out in the physical world. Owning a poster of a famous work of art does not give one the right to copy, transform or monetize that piece of art.

QUICK TAKEAWAYS



NFTs, or non-fungible tokens, are unique digital assets built on a blockchain and sold or traded on digital markets. They've gained much attention in the pop-culture space but are also valuable business tools.



When making NFT copyright decisions, it's important to consider all phases of an NFT's life cycle, including primary and secondary sales.



NFT copyright can be complex, but it must be addressed at the outset of an NFT project. Failure to do so leaves businesses vulnerable to misuse of their intellectual property (IP), which could lead to legal issues and brand damage.



The same holds true for NFTs. That said, copyright for physical assets and digital assets can and should differ. Just because someone signs the terms on a physical item, such as a coin for example, doesn't mean those terms automatically correspond to an associated NFT or impact its initial and secondary sales. Complete NFT copyright protection requires more in-depth coverage, and there are a few important concepts to understand and key steps to take.

First, companies must clearly define their terms and conditions at the outset. There are a couple of broad schools of thought on how to address this. In the first and more traditional approach, the brand owns the licensing of the digital asset, which means NFT owners lack the ability to replicate or monetize the NFT's IP, a straightforward restriction on use.

On the other side of the spectrum is the Creative Commons Zero (CC0) approach, which effectively gives up any copyright on an asset and assigns it to the NFT owner. In this scenario, an NFT owner would have the ability to use that NFT in a wide variety of ways, including selling products based on it to bring in revenue. From the original owner's perspective, the main play here is that if the value of the NFT goes up as a result of someone else's use, they too would benefit in the long run. However, there's no legal protection confirming this inevitability. No matter which path a business chooses, it's important to think through the process and implications of the copyright choice before minting to avoid thorny legal issues down the line.

Once terms and conditions are clearly defined, companies must then ensure they're going through the copyright process for both initial NFT sales and secondary market sales. Make sure the purchasing workflow clearly displays terms and conditions for both first-time and secondary buyers. These terms must always show up during a sale and clearly state all stipulations.

Another element of making good copyright decisions is having a clear understanding of NFT marketplace rules. An NFT marketplace is, in essence, a digital store where NFTs are exhibited and made available for trade or purchase. There are a variety of marketplaces to choose from, many of which specialize in a specific NFT niche. Most require certain rights to be able to utilize, exhibit and sometimes replicate content. No matter what marketplace is used, it's important for businesses – and all creators – to have a thorough understanding of these rules and how their NFT may be used on the site before signing up.

There is much to think about when it comes to NFT copyright, and as the space continues to mature, more complexities arise. For example, many businesses are now airdropping NFTs into users' wallets as a perk or "thank you" for business. Cases like these, which involve a push transaction from a business, versus a pull transaction in which the consumer knowingly interacts, raise additional questions about the best approach to NFT copyright. Opinions will differ, but no matter where you land, the biggest business takeaway should be that NFT copyright can be complex and must be addressed head-on, at the outset of a project. Understanding the stipulations and implications of copyright is critically important, and failing to consider them can leave a business vulnerable to costly and potentially damaging IP misuse.

HOW DO I FIND OUT MORE?



Read: CoinDesk's article, "[NFTs and Intellectual Property: What Do You Actually Own?](#)"



Review: "[The Tangled Truth About NFTs and Copyright,](#)" from The Verge



Peruse: "[Demystifying NFTs and Intellectual Property: Trademark and Copyright Concerns,](#)" by Finnegan, an intellectual property law firm

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