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**NON-FUNGIBLE TOKENS (NFTS) AND COPYRIGHT LAW:
NAVIGATING UNCHARTED WATERS**

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Abstract

Can two minds independently emerge with the same idea, crystallizing it, and if they do, who owns it? Back in kindergarten, it did not matter if you and your friends drew the same three mountains, a rising sun, a winding river, and a little hut; no one would lead you to court for having the hut facing south. The principle of Originality has always been preached from the onset of schooling, but is later criticized under intellectual property law, where the independent reuse of an idea can lead to legal consequences. Being a system designed to protect creators and their original work, even if two minds independently emerge with the same idea, will end up in a legal tangle; it does not matter if you saw the other person's work first, what matters is who put it out first and how it is protected. This is Copyright law. To put it succinctly.

The recent surge of Non-Fungible Tokens (NFTs), unique digital tokens recorded on a blockchain, has added new complexities to this landscape. NFTs make it possible to own provable digital assets such as art, music, or collectibles, but crucially, acquiring an NFT does not transfer ownership of the underlying artwork or its intellectual property.

The rise of NFTs has brought along a lot to catch up on for the millennials. In 2022, pop icon Justin Bieber purchased a digital artwork NFT for over \$1.3 million. Despite common misconceptions, owning an NFT does not mean acquiring the intellectual property rights tied to the underlying artwork.

This article explores how courts, creators, and collectors are navigating these uncharted waters and evaluates whether the current legal framework is equipped to address the digital

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decentralization of creative assets that NFTs have ushered into the global intellectual property market.

Introduction

The digital market has opened various portals for artists, musicians, and developers to reach out and connect to share their work with a global audience in an instant, a far cry from the simplicity of childhood drawings exchanged in the classroom. As the lines between inspiration and imitation blur between the creators and the seated audiences it becomes difficult for the legal provisions that once worked to protect creativity have become increasingly difficult to apply. Particularly in respect to NFTs, the popularity soared, but the legal provisions soon caught up, for in the case of *Hermès v. Mason Rothschild* here court ruled in favor of Hermès, finding that Rothschild's "MetaBirkin" NFTs misled buyers into thinking they were tied to the luxury brand. Since they resembled the iconic Birkin bag too closely, they were held to infringe trademark rights and weren't protected as free artistic expression and did not qualify for First Amendment Protection this case set a key precedent for applying IP laws in the NFT space.

Before we delve into the platonic relationship between NFTs and Copyrights an accurate understanding of the underlying structure and function of NFTs is essential to addressing their legal implications.

Non-Fungible Tokens(NFTs) made their first appearance in the early 2020s, with instant popularity through initiatives like CryptoPunks in 2017 and Crypto Kitties, which allowed for blockchains backed ownership of virtual items. These seminal projects provided with the guarantees of digital scarcity and collectible appeal, establishing the groundwork for NFTs today.

The market surged significantly between 2020 and 2021, as NFTs soon became part of public awareness through prominent sales, such as Beeple's fetching \$69 million at Christie's, along with celebrity-driven acquisitions like Justin Bieber's \$1.3 million NFT purchase. This increase underscored that NFTs were not merely collectibles, but also served as instruments for artists and creators to earn from their creations without relying on traditional middlemen.

Nevertheless, the rapid growth was accompanied by doubt and a downturn in the market. By late 2022, trading volumes for NFTs saw a considerable decline, prompting worries about

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speculative practices, unclear legal situations, and the viability of digital ownership models. At present, NFTs are transitioning towards practical uses like tickets for events, membership roles, digital identities, and confirming the authenticity of art moving beyond simple aesthetic or speculative purposes. Yet, as the lines between inspiration and imitation blur, the legal principles that once served to protect creativity have become increasingly difficult to apply.

Yet, as the lines between inspiration and imitation blur, the legal principles that once served to protect creativity have become increasingly difficult to apply. This article examines how the blurring boundaries between inspiration and imitation challenge the application of traditional copyright law in India, with a focus on the emergence of NFTs. It analyzes what legal ownership of digital creative works means in a decentralized, blockchain-based environment, thereby addressing the fundamental question of what it truly means to own a creative work in the digital age.

Brief History and Mile Stones

The concept of non-fungible tokens (NFTs) can be traced back to early experiments on the Bitcoin blockchain in 2012 through "Colored Coins." These were small denominations of Bitcoin encoded with metadata to represent digital assets such as property deeds, coupons, or even company shares. Although rudimentary and limited by Bitcoin's design, Colored Coins marked the foundational idea of digitally representing ownership.

The evolution of NFTs began with early blockchain asset tokenization using "colored coins" between 2012 and 2014, setting the foundation for representing unique digital assets on decentralized networks. This groundwork culminated in 2017 with the launch of CryptoPunks and CryptoKitties on Ethereum, which leveraged smart contracts to popularize NFTs as unique, transferrable collectibles. The NFT market soared in 2021, marked by major events such as Beeple's digital artwork selling for \$69 million at Christie's, and has since expanded into diverse sectors including music, real estate, and digital identity, with ongoing advances addressing scalability and sustainability concerns (World Economic Forum, 2023; Cointelegraph, 2024)³

³World Economic Forum. (2023). Evolution of Non- Fungible Tokens

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A significant turning point arrived in 2017 with the emergence of CryptoPunks, a project by Larva Labs consisting of 10,000 unique algorithmically generated pixelated characters. These were among the first digital assets to be formally recognized as NFTs on the Ethereum blockchain. Soon after, CryptoKitties, a game allowing users to collect and breed virtual cats, achieved viral success and gained mainstream attention. Its popularity even congested the Ethereum network, signalling the growing scale and public interest in NFTs.

NFTs are cryptographic tokens that represent unique digital assets and are typically built on blockchain networks such as Ethereum. The term "non-fungible" indicates that each token is distinct and cannot be exchanged on a one-to-one basis with another, unlike fungible tokens such as cryptocurrencies.

NFTs utilize smart contracts to embed metadata and ownership details into tokens. This architecture ensures verifiable scarcity, traceable provenance, and immutable ownership. As a result, NFTs have enabled digital ownership for assets including digital art, collectibles, gaming items, virtual real estate, and even academic credentials.

Ownership Transfer and Copyright Protection of the Works

NFTs are unlikely to enjoy copyright protection because they merely represent certain works on the blockchain technology. They would not classify as original works or derivative works under intellectual property law. However, the Works on which the NFT is created may enjoy copyright protection. The rights in these Works are held by the Author/assignee, as mentioned below.

Under Section 2(d) of the Copyright Act, 1957, the author is the creator and initial copyright owner of a work, except where co-authored, commissioned, or created in employment, in which cases ownership may vest with others. Copyright ownership grants exclusive rights under Section 14, including the right to reproduce and mint NFTs of the work

<https://www.weforum.org/agenda/2023/02/web3-nfts-digital-asset-economy//>

Cointelegraph. (2024). A brief history of NFTs: From inception to global recognition.

<https://cointelegraph.com/news/a-breif-history-of-nfts-from-inception-to-global-recognition>

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Copyright ownership under Section 14 grants exclusive rights, including minting NFTs of the Work. The owner of the copyright in the Works can transfer the entire copyright in the Works to an individual/entity by assignment or provide the individual/entity certain rights over the Works such as the right to mint the NFT by way of a license. For minting an NFT, one must possess the right of reproduction of the Work and communication of the Work to the public. Without such right, minting an NFT of the Work will amount to an infringement of copyright.⁴

The minting and transfer of Non-Fungible Tokens (NFTs), while indicative of ownership of a unique digital token on a blockchain, do not ipso facto confer copyright in the underlying work, thereby necessitating a clear demarcation between the proprietary rights in the token and the intellectual property rights vested in the original content.⁵

While the transfer of an NFT may provide a foundation for digital ownership, it does not, in the absence of express contractual licensing, confer any legal claim to the underlying intellectual property. Like building on shifting ground, owning the token without securing IP rights leaves one vulnerable to the landslides of copyright law.

Ownership of a non-fungible token (NFT) does not, in itself, confer any copyright in the underlying work; the rights associated with the NFT and the copyright in the digital asset exist independently and only operate in tandem when expressly stipulated by a valid written assignment or license agreement between the parties. Ownership of a non-fungible token (NFT) and the copyright in the digital asset are distinct legal constructs. They only operate in tandem when expressly governed by a valid written assignment or licensing agreement.

Comparative Legal Landscape: NFTs in India, the US, EU, and UK

The regulation and legal interpretation of Non-Fungible Tokens (NFTs) vary considerably across jurisdictions, with most countries yet to develop dedicated laws. Some have started adapting traditional legal principles to accommodate the rise of NFTs, while others remain in a legal vacuum.

⁴<https://www.klaw.in/nfts-and-copyrights/>

⁵U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence (Mar. 2023), <https://copyright.gov>.

India currently lacks specific regulatory or legislative frameworks recognizing NFTs. Regulatory authorities such as the Reserve Bank of India (RBI) and Securities and Exchange Board of India (SEBI) have not issued direct guidelines on NFTs. NFTs are recognized primarily as "Virtual Digital Assets" (VDAs) under the Income Tax Act, 1961, subject to taxation but without tailored regulations. Existing laws, such as the Copyright Act, 1957, Information Technology Act, 2000, and the Indian Contract Act, 1872, govern NFTs by default. Indian courts have yet to establish authoritative judicial precedent on NFTs, resulting in uncertainty for creators, buyers, and platforms. Additionally, concerns about money laundering have prompted discussions on applying Anti-Money Laundering (AML) and Counter Financing of Terrorism (CFT) regulations to NFT marketplaces, potentially requiring compliance obligations similar to those for cryptocurrencies. The lack of a comprehensive regulatory framework contributes to legal ambiguities.⁶

In the United States, while NFTs are also not yet defined under federal law, the legal system has seen significant judicial activity in this domain. Courts have applied existing laws especially those related to trademarks, copyrights, securities, and consumer protection to NFT disputes. A prominent example is *Hermès International v. Rothschild*, where the court held that NFT-based "MetaBirkin" artworks infringed upon Hermès' trademark rights, dismissing artistic free speech claims. Moreover, the Securities and Exchange Commission (SEC) has expressed concern that certain NFTs, particularly fractional or investment-based offerings, may qualify as securities under the Howey Test, potentially triggering registration and disclosure requirements.

The European Union has taken a cautious but structured stance. NFTs are not directly addressed in the newly enacted Markets in Crypto-Assets (MiCA) Regulation of 2023, which excludes unique digital assets from its main provisions. However, where NFTs resemble financial instruments or are used in ways that raise investor protection concerns, regulators retain discretion to apply MiCA rules. Meanwhile, copyright issues tied to NFTs are governed under the EU Digital Single Market Directive, which deals with the digital use and licensing of copyrighted content. Despite this framework, NFT enforcement still varies across EU member states, and harmonized judicial interpretation is lacking.

⁶<https://finlaw.in/blog/is-nft-legal-in-india-in-2025-heres-what-lawyers-are-saying>

In the United Kingdom, regulators and courts have adopted a technology-neutral, common law approach. The UK Jurisdiction Taskforce (UKJT) has recognized NFTs and other cryptoassets as intangible property, allowing them to be protected through legal mechanisms such as proprietary injunctions. This view was reinforced in *Osbourne v. Persons Unknown* [2022], where NFTs were treated as property capable of legal recovery. While the UK does not have NFT-specific laws, traditional legal tools especially those under the Copyright, Designs, and Patents Act 1988 are being used to resolve disputes. UK courts have also been relatively proactive in granting freezing and disclosure orders in NFT-related fraud or theft cases.⁷

In the US and UK, the role of smart contracts in defining legal rights connected to NFTs is drawing attention, as courts and regulators explore how automated contractual terms interact with traditional contract and IP laws.

In conclusion, India's NFT regulation remains at a nascent stage, relying on broad legal principles rather than tailored legislation. In contrast, the US, EU, and UK are progressively building a legal framework through case law, administrative interpretations, and regulatory adaptation. As global NFT markets grow and transactions become increasingly cross-border, these disparities in legal treatment may give rise to jurisdictional conflicts and enforcement challenges making the case for international guidance or harmonized standards all the more pressing.

Judicial Precedents Shaping the Legal Landscape of NFTs

- i. *Hermès Int'l & Hermès of Paris, Inc. v. Mason Rothschild, No. 22-cv-00384 (S.D.N.Y. Feb. 8, 2023)*⁸

Facts of the Case

Hermès, the luxury fashion house, owns trademark rights in the iconic “Birkin” handbag line, which has become a symbol of exclusivity and high-end branding. In 2021, digital artist Mason Rothschild created and began selling NFTs titled “MetaBirkins”, which depicted furry, digitally altered images resembling Hermès' Birkin bags. These NFTs were minted and

⁷<https://www.irccl.in/post/nfts-and-mapping-its-regulation-in-india>

⁸U.S. District Court (SDNY) *Hermès Int'l v. Rothschild, No. 22-cv-00384 (S.D.N.Y. Feb. 2, 2023)* (opinion and order), <https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2022cv00384/573363/140/>.

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sold on various platforms such as OpenSea, with some fetching thousands of dollars. Hermès filed a lawsuit claiming trademark infringement, dilution, and cybersquatting, arguing that Rothschild was using the goodwill associated with the Birkin mark to mislead consumers and unjustly enrich himself.

Issues Before the Court

The primary legal issues before the court were:

- (1) Whether Rothschild's use of the "MetaBirkin" mark infringed Hermès' trademark rights under the Lanham Act;
- (2) Whether the NFTs were protected as "artistic expression" under the First Amendment (Rogers v. Grimaldi test);
- (3) Whether Rothschild engaged in dilution by blurring, and whether consumers were likely to be confused;
- (4) Whether the sale of MetaBirkin NFTs constituted commercial speech or transformative art.

Court's Analysis and Findings

The court applied the Rogers v. Grimaldi test, which balances trademark rights against First Amendment protections. Under this test, an artwork using a trademarked term is protected unless the use (a) has no artistic relevance, or (b) explicitly misleads consumers. Although the court acknowledged that NFTs could be considered artistic, the jury found that the use of the term "MetaBirkin" was explicitly misleading and capitalized on Hermès' reputation. Consumer confusion was evident from emails, marketplace posts, and Hermès customers contacting the company asking if the NFTs were "official."

Final Judgment

On February 8, 2023, the jury ruled in favor of Hermès, holding Rothschild liable for trademark infringement, dilution, and cybersquatting. The jury awarded \$133,000 in damages to Hermès — consisting of \$110,000 for trademark infringement and dilution, and \$23,000 for cybersquatting. The court further restrained Rothschild from using the "MetaBirkin" mark and ordered the removal of infringing NFTs from marketplaces.

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Legal Significance

This case marked the first U.S. trial concerning NFTs and trademark law, and has become the leading precedent for disputes involving digital goods and IP rights. It confirmed that NFTs are not immune from traditional trademark laws, and that digital creators cannot hide behind the First Amendment when their works cause consumer confusion. It also emphasized that courts are willing to treat NFTs as commercial products, rather than pure artworks, when used in a branding context.

ii. *Juventus F.C. v. Blockeras S.r.l.*⁹

Citation: Juventus F.C. v. Blockeras S.r.l., Tribunal di Roma, Judgment No. 32072/2022

Brief Facts

Blockeras S.r.l., an Italian company, launched a series of NFTs under the “Coin of Champions” project, featuring digital trading cards of football legends. One such NFT depicted ex-player Christian Vieri wearing the Juventus jersey, using the club’s trademarked name and logos — including the word mark “JUVENTUS” and the iconic black-and-white striped kit design — without authorization from Juventus F.C. Although Blockeras had secured Vieri’s image rights, it had not obtained consent from Juventus for using its trademarks.

Issues Before the Court

Whether use of registered trademarks in an NFT (a digital asset) without the owner's consent constitutes trademark infringement under Italian law.

Whether the commercial use of such NFTs also amounts to unfair competition and misuse of brand identity.

Held

The Court of Rome granted a preliminary injunction in favor of Juventus F.C., holding that:

Juventus’ trademarks were well-known marks under Article 20 of the Italian Industrial Property Code, and their unauthorized use in NFTs amounted to trademark infringement.

⁹Italian Court (News Report of Decision) Juventus F.C. v. Blockeras S.r.l., No. 32072/2022 (Ct. First Instance Rome July 19, 2022) (reported in Steffi Tran, Italian Court Grants First Injunction In NFT Trademark Dispute, DWW, Nov. 22, 2022), <https://www.dww.com/articles/italian-court-grants-first-injunction-nft-trademark-dispute>.

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The use of a former player's image did not entitle Blockeras to use Juventus' brand assets, as the player's personal rights and club's IP rights are distinct.

Blockeras engaged in unfair competition by capitalizing on Juventus' commercial reputation and misleading consumers in the digital marketplace.

Relief Granted

Injunction restraining further minting, promotion, or sale of the infringing NFTs.

Daily monetary penalty for non-compliance.

Order to disclose relevant sales and wallet data linked to the NFTs.

iii. *Shenzhen Qice Diechu Cultural Creativity Co. Ltd. v. Yuanyuzhou Technology Co. Ltd. (Bigverse)*¹⁰

Court: Hangzhou Internet Court (People's Republic of China)

Facts of the Case

The plaintiff, Shenzhen Qice Diechu Cultural Creativity Co. Ltd., owned the exclusive copyright to a digital illustration titled "Fat Tiger Vaccinated", created by renowned Chinese artist Ma Qianli. Without authorization, an unknown user minted this image as a Non-Fungible Token (NFT) on the NFTCN platform, operated by the defendant Yuanyuzhou Technology Co. Ltd., also known as Bigverse. The NFT included a watermark indicating the original artist, yet it was listed and sold for RMB 899 (~USD 137). The defendant platform earned commission from the transaction and failed to verify the legitimacy of the content uploaded.

Issues Before the Court

The court had to determine: (1) whether minting and listing an NFT without the copyright holder's permission amounts to infringement of the right to communicate works via the internet, under Chinese Copyright Law; (2) whether the NFT platform operator (Bigverse) was contributorily liable for facilitating the infringement; (3) whether the exhaustion of rights doctrine applied to NFTs; and (4) what remedies were available to address infringement involving blockchain-based digital assets.

¹⁰Chinese Case (WIPO Lex Summary)
Yuanyuzhou Co. v. Qice Co., Int. People's Ct. of Hangzhou City, China, [2022] (WIPO IP Judges Forum Informal Case Summary, Nov. 2023), <https://www.wipo.int/wipolex/en/text/588796>.

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Decision of the Court

The Hangzhou Internet Court ruled in favor of the plaintiff, holding that minting and distributing an NFT without the copyright owner's authorization constitutes copyright infringement under Article 10(1)(xii) of the PRC Copyright Law. The platform operator was held contributorily liable, as it facilitated the transaction, earned commission, and did not implement adequate content screening. The court also clarified that the exhaustion of rights doctrine does not apply to digital tokens like NFTs, as they are not physical goods. Importantly, the court ordered that the infringing NFT be "burned" by transferring it to an inaccessible blockchain address. The defendant was also ordered to pay RMB 4,000 (~USD 600) in statutory damages and legal expenses.

Significance of the Judgment

This case is a landmark ruling in the field of digital copyright law, being the first in China to deal with NFT-based infringement. The decision reinforced that NFTs are not exempt from traditional IP law, and that platforms minting or selling NFTs must carry out due diligence and content vetting. The recognition of "burning" an NFT as a valid legal remedy is particularly notable, as it demonstrates judicial willingness to adapt enforcement measures to decentralized technologies. The ruling sets a precedent for future NFT-related IP disputes in China and has been widely cited in international legal commentary and by organizations like WIPO.

Conclusion

The digital revolution has shifted how we create, share, and own art and creative works, and NFTs have arrived as both a catalyst and a disruptor in this transformation. However, the NFT wave burst onto the scene so quickly driven by hype, celebrity involvement, and speculative frenzy that the legal system has struggled to keep pace. This fast-tracking of NFT culture, while opening exciting possibilities for artists and collectors, has also created confusion around what "ownership" really means in this new digital frontier. India's current copyright laws, like those in many parts of the world, were never designed with blockchain or NFTs in mind. As a result, the line between owning an NFT token and owning the intellectual property behind the work it represents remains blurred and frequently misunderstood. While some countries are slowly shaping judicial and regulatory frameworks

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to address these gaps, India still relies heavily on traditional statutes that offer limited guidance on NFTs.

The rapid surge of NFT popularity, though a sign of innovation, has arguably outpaced thoughtful legal development, leaving creators and buyers vulnerable to disputes and confusion. To move forward in a way that truly protects artistic rights without stifling creativity, lawmakers, courts, and industry players must engage in deliberate, nuanced dialogue. Clear rules about ownership, licensing, and transfer need to be established and smart contracts should reflect these legal realities more transparently.

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