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## **NFT: The Next Big Thing?**

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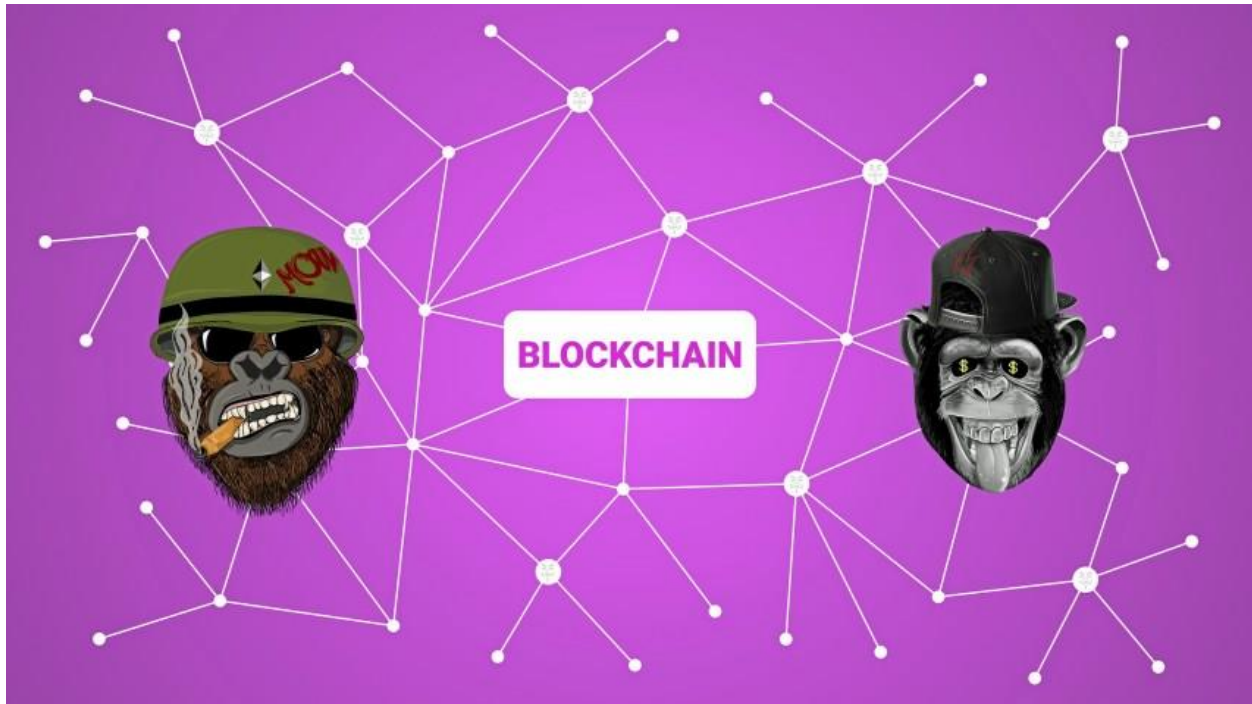


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In 2021, Non-Fungible Tokens (“NFTs”) have taken the world of digital art to [new heights](#). Artists are beginning to “tokenize” their art and sell them in NFT marketplaces for highly [lucrative prices](#) where bids can be made only with cryptocurrency. The “[hype](#)” surrounding NFTs grows by the day, thousands of new NFTs are being “minted” everyday. Even celebrities are [getting involved](#) in this digital movement. It seems however, that we have seen only the infancy of the blockchain based technology and that it may soon venture off [beyond the world of digital art](#). For those in the legal profession, it begs the question, what are NFTs really? And how do we regulate them?

## What Are Non-Fungible Tokens?

As the name implies, NFTs are unique digital files stored on a blockchain network – Ethereum normally. As [Ethereum.Org defines them](#):

NFTs are tokens that we can use to represent ownership of unique items. They let us tokenize things like art, collectibles, even real estate. They can only have one official owner at a time and they’re secured by the Ethereum blockchain – no one can modify the record of ownership or copy/paste a new NFT into existence. However, NFTs are not digital art themselves. A purchaser of an NFT does not acquire the copyright rights to the underlying work associated with the NFT. Instead, a purchaser acquires a record of ownership to a [digital asset](#). The owner of the NFT [does not control](#) the distribution, reproduction, display, or sale of the work itself. It is understandable, at this point, to wonder why such a market exists and why individuals are willing to

spend [millions](#) of dollars to record their names on a digital ledger. Although there is an inherent value in the crypto based digital ledger, some [opine](#) that the current value in NFTs is that it is fun and trending, and that smart money shouldn't look into NFTs as investments but rather as collectables.

## Copyright Concerns



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As the current trend shows, NFTs have become highly valuable in the world of art, specifically digital art. Establishing ownership in NFTs necessarily raises concerns under [intellectual property laws](#) such as what rights NFT purchasers have.

According to well-established [copyright laws](#), ownership of a copyright vests with the author of the work. Such ownership rights extend to any acts of reproducing the artwork, preparing derivative works, distributing copies, performing the work, and transmitting performances of it as laid out in [Section 106 of Title 17 of the US Codes](#). A purchaser of art, thus attains ownership of the physical copy of the art, rather than the copyright to the artwork which remains with the author.

Purchasers of NFTs are similarly limited in the ownership of their digital assets. However, unlike owners of physical art who are in actual possession of the created work, NFT purchasers are [not in sole possession](#) of a non-fungible digital file such as a .jpg or .gif. Clear concerns lay in the reality that reproducing digital files is rampant online. Sure, [art forgery exists](#), but even forgery requires immense talent and time, whereas copying an image online would take most people a

few seconds. The ease in making perfect replicas of digital art is [problematic](#) not only for NFT purchasers but for authors of original art as well. Bad actors are given [a new platform](#) where they can perpetrate art theft and fraud upon unwitting purchasers and slow to react copyright owners. Although this may be a larger concern for Copyright laws, it is still something to ponder upon as a growing number of individuals continue to engage in a digital art market that potentially facilitates illicit activities.

## **Beyond Art**



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Further, NFTs have broad reach and their utility and applicability are not limited to the world of art. As many pundits opine, an NFT can be minted for [anything](#) that can be created into a digital file. The National Basketball Association, for example, has created [NBA TopShot](#) which turns memorable on court moments into collectible NFTs (think of those basketball cards everyone had in the 90's but this time all digital). For football fans, the NFL has began selling NFT [commemorative tickets](#) with prices ranging from \$55 to \$500. Such applications are expanding the possibilities of what the technology can be and may perhaps indicate that it is [more than just a passing fad](#).

## **Securities? Commodities?**

But just what are NFT's really?

Some may view the new technology as a [security instrument](#), although that view must be tempered by the traditional lawyer phrase of “it depends.” There are two main hurdles for the classification of NFTs as securities. First, courts must adopt the [SEC’s view](#) that “Common Enterprise” is not a distinct element of investment contracts. Second, Securities “rely on the efforts of others.” To an extent, purchasers of NFTs rely on the efforts of others for their investments to appreciate in value. They rely on the creator of the NFT to continue to rise in stock and they rely on the NFT market itself to continue growing. However, this may not be the kind of [“reliance”](#) that the Securities act demands.

But, there are also those who make the argument that [NFTs may be regulated under the Commodity Exchange Act](#). The Commodity Futures Trading Commission (CFTC) has [determined](#) that virtual currencies such as cryptocurrencies fall within the domain of commodities. Although the CFTC has yet to make a determination on the nature of NFTs, [some believe](#) there is a strong likelihood that they too shall be classified as such.

### **Sit Back and Watch?**

However, the reality may very well be that NFTs currently escape the definition and classification of securities simply because we have yet to truly understand what this technology is, or what it can be. Some take the view that technology advances at a rate beyond our ability to define and regulate it — and this might just be the case for NFTs. Premature classifications and regulations may have the counter productive impact of stunting technological growth. Look at the internet, for example, Internet Exceptionalism was a major catalyst to the growth of the World Wide Web and allowed for the Rise of the Internet conglomerates we know today. Some see NFTs as the next great scam, while some believe in its potential to play a greater role in our day to day lives. But there are interesting times lying ahead.