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The IPKat is pleased to host the guest post below, authored by **Ioanna Lapatoura** (University of Nottingham), on the latest tech craze: non-fungible tokens or NFTs.

Here's what Ioanna writes:

## Copyright & NFTs of Digital Artworks

by Ioanna Lapatoura

### Overview

Over the past few weeks, the sales of **NFTs (non-fungible tokens)** attached to digital artworks and other content, including **music albums**, unique **sports moments clips**, and even Twitter CEO's **first tweet** (!), has skyrocketed. Even though artwork-related NFTs are not new to the blockchain communities (see **CryptoKitties**), the few weeks old digital art-craze has started with the NFT sale of Nyan Cat, a GIF featuring a cartoon cat for unprecedented amounts - 300 **ETH** (the **cryptocurrency** used in the **Ethereum** blockchain), equivalent to approximately \$600,000 USD.



Source: **Chris Torres**

Then, **Christie's**, the world renown auction house, sold the first ever purely digital work of art in NFT form, Beeple's 'Everydays - The First 5,000 Days', for \$69.3 million USD.



Source: **Beeple**

### What are NFTs?

To demystify the hype around NFTs, we need to look at what they are. NFTs, or 'Non-Fungible Tokens', stand for blockchain-based tokens, or units of value, with a unique ID that are linked to a specific asset, most commonly by using its **URL**. To better understand their non-fungible nature, every single NFT has a unique value. Therefore, it is non-exchangeable with any other token, as fungible cryptocurrencies, such as Ethereum.

Anyone can create or 'mint' an NFT as well as sell it, and this information becomes securely stored in a blockchain, enabling the authentication of its owners. This is achieved, because a **blockchain** is a decentralised and highly-encrypted system, which makes an immutable and chronologically-ordered digital record of data.

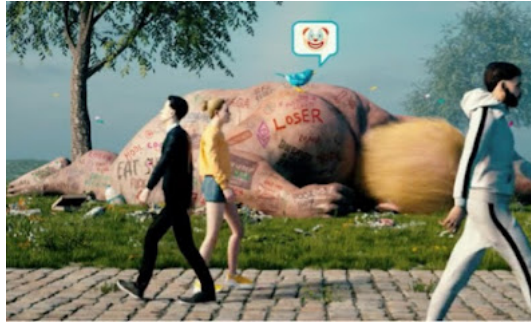
### What attracts people in investing on NFTs for digital artworks?

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So, if digital artworks can easily be copied for free, the million-dollar question is: *Why do people invest in purchasing NFTs for such works?*

In relation to NFTs connected to digital pieces of art, the idea that they are scarce, unique versions of the work, turns them into valuable assets. In practice, NFTs are digital authenticity records of ownership for the digital artwork, logged in a blockchain system. Even though exact (and infringing) digital copies of the artwork can be made, only a certain number of unique versions of it (NFTs) will be attached to the original. It follows that, digital artwork is viewed as a commodity that can increase in value and can be re-sold at a higher price. And only the NFT owners/ collectors, might be able to profit from it. A good example is the NFT for Beeple's animated artwork 'Crossroad', which initially sold for approximately \$66,000 USD, while its re-sale generated an enormous profit to its collector, reaching \$6,6 million USD.



Source: **Beeple**

### Are there any kind of rights conveyed to an NFT owner?

It is wrongly assumed by many, that ownership of an NFT equals to copyright ownership or a proprietary right over the original actual asset. The reality is that an NFT is proof of owning a unique digital version of an asset, rather than the asset itself. To better understand this, think of an NFT as a limited-edition copy of a poster, rather than the actual original poster. What you own, is a scarce version of the artwork.

Then one has, but to ask: *Who owns the copyright of the NFT's underlying digital artwork?*

An explanation comes under **UK copyright law**, according to which the author is generally its first copyright owner. More than this, copyright ownership is retained by the artist, even after the sale of the work. As such, the NFT owner does not have a right to print or make copies of the work, without the copyright owner's permission. An exception to this rule would be the existence of an express term in the NFT's encoding, for transfer of copyright ownership to the NFT owner alongside a sale.

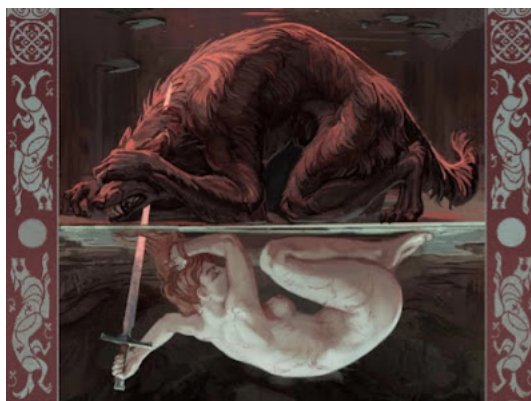
So, *does the NFT owner actually enjoy any rights in relation to the artwork?*

The answer is, usually, yes. By owning an NFT over a digital artwork, buyers often enjoy certain limited usage rights in relation to the artwork connected to it. These are predetermined by the NFT creator and limitations can be placed upon, for instance, how the work is presented.

### NFTs & Copyright Ownership

In an ideal world, the copyright owner of an artwork would also be the creator of its NFT. But, as one would expect, infringers find their way around in the digital sphere and more IP-related problems are created. In fact, apart from unauthorised copying of the digital files of the artwork, there is a new stream of alleged infringers, that 'mint' NFTs based upon copied artwork without permission, which they put up for sale. This can be a real problem, as the decentralisation, encryption and anonymity features that are inherent in blockchain ecosystems, may make it difficult to ascertain who the copyright holder is.

This phenomenon has recently been **reported** by several artists. An example, is digital artwork produced by artist 'Weird Undead', which has been tokenised without consent for sale:



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On the face of it, most of us would agree that the NFT from the aforementioned example is copyright infringing. But, is it really? When thinking about the core of NFT creation, an NFT is neither the actual original work nor a copy of the work, but only a tokenised version of it, which does not incorporate the full work into the blockchain, but, as we said at the beginning, contains only a URL linked to it. As a result, NFT 'minting' does not involve copyright infringement, as it is not equivalent to uploading, and thus, communicating to the public, an infringing copy of the original work that the NFT represents.

This view is supported by **some commentators**, who interestingly argue that any potential false authorship claims included in the NFT's metadata - possibly also made by those who tokenised Weird Undead's artwork - may result in infringing the moral right of attribution, rather than economic rights in the work.

## Conclusion

Without doubt, NFTs have made a strong appearance in the global market. Their impact on the traditional model of auctioning art is evident, as they make a cost-efficient alternative, without incurring any storage or artwork insurance expenses. A downside is that, in contrast with the acquisition of tangible art, NFT owners do not actually 'own' the digital artwork. Nevertheless, this has not stopped substantial investments from being made for their acquisition.

Issues like that of copyright ownership may be blurred by the NFT-'minting' of others' works, when combined with a blockchain system. However, copyright infringement may not be an issue for NFTs. Lastly, as the NFT/IP sphere is not yet developed to its fullest potential, there is still uncertainty and undisputable difficulty in attempting to enforce your IP rights against infringers.

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