

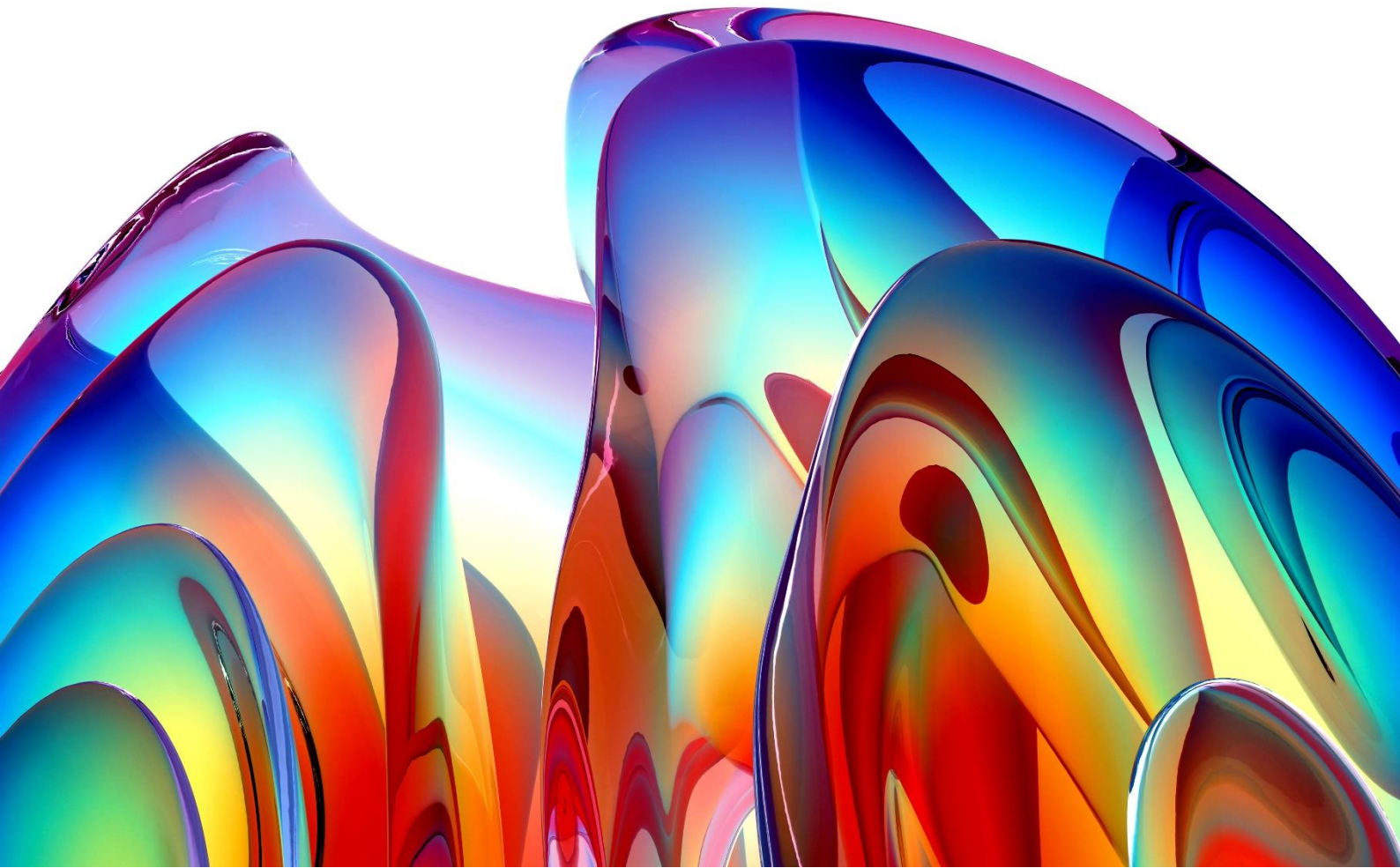
IP AND NON-FUNGIBLE TOKENS

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Section 1: What are NFTs?

Non-fungible tokens (or more commonly known as NFTs) are typically unique tokens on a blockchain which link or point to any type of digital assets, such as images, films and music. NFTs usually contain a collection of records or metadata such as a unique token ID, other information relating to the underlying digital asset, and can also contain information about how the digital asset may be used.

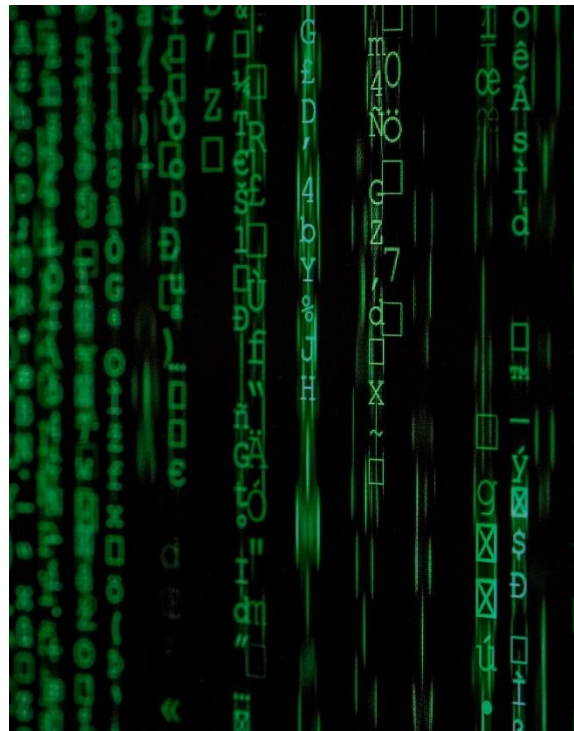
In essence, the NFT functions like a certificate of the digital asset to which it is linked but it is distinct from the digital asset. Therefore, ownership of an NFT does not necessarily mean ownership of the underlying digital asset – instead, the rights that the holder¹ of the NFT will have depends on what the issuer² of the token had intended to confer.

Features of NFTs

NFTs have several unique features which make them popular.

First, an NFT is “non-fungible”, meaning that each NFT is unique, which creates scarcity (i.e. no two people can own or copy the same NFT).

Second, as an NFT is a record of an underlying digital asset on a blockchain, it is less susceptible to tampering, which helps to ensure that the data records relating to the NFT are more secure. This also allows for transactions relating to the NFT to be easily verified by other users or nodes on that blockchain.



Uses of NFTs

The uniqueness of each NFT allows for the particular copy of a digital asset (which is the subject of the NFT) to be treated as unique. Further, NFT records can allow the persons who have previously owned the NFT to be traced, so the authenticity of the copy (e.g. whether it came from an authorised source) can then be ascertained.

These features allow for new ways of deploying and creating value for digital assets.

¹ In this document, the term “holder of NFT or owner of NFT” refers to a person who has ownership of or the right to hold an NFT.

² In this document, the term “issuer or NFT issuer” refers to the party which mints and issues an NFT.

For example, an international sneaker brand recently released a limited number of unique customisable digital sneakers on a blockchain. The digital sneakers could be purchased as NFTs, and each NFT was connected to a real-life limited-edition sneaker. Therefore, the NFT allowed the NFT holder to prove that it owned the digital sneaker originating from the brand, enabling the redemption of the physical sneaker counterpart.

Separately, in digital spaces such as the metaverse, some brand owners have granted holders of NFTs digital collectibles which they can display in their virtual digital spaces, thereby ensuring that the digital collectibles being displayed are authorised by the brand owners.

Therefore, NFTs can be applied to any digital asset that needs to introduce scarcity, uniqueness or provable ownership. Possible uses for NFTs may extend to applications such as ticketing and controlled access to digital assets, membership passes, and storage of academic, medical, real estate or other records.

NFTs as property

Although the law is still developing, there is some case law to suggest that an NFT (separate from the underlying digital asset to which it has been linked) may also be regarded as property, and therefore, attract special rights and protections at law.

In a recent Singapore High Court case for example, it was held that the NFTs being considered in that case satisfied the legal criteria to be considered as property. This meant that protections such as an injunction could be granted to protect the proprietary rights relating to the NFT (*Janesh s/o Rajkumar v Unknown Person [2022] SGHC 264*).

Section 2: Intellectual Property Rights and NFTs

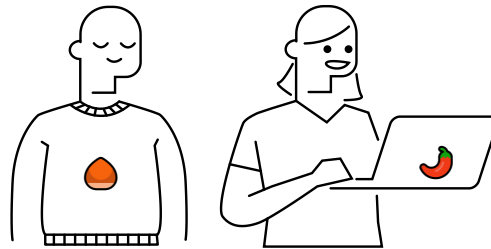
It is a common misconception that ownership of an NFT will also grant ownership of the IP rights in the digital asset it points to. This is not necessarily the case. It is therefore important to identify the type of IP subsisting in the underlying digital asset and to ensure that you properly understand the rights that you will attain as an NFT holder in respect of the digital asset.

Furthermore, there may be multiple types of IP rights that would be relevant to a digital asset which is the subject of an NFT. The following are illustrations of NFTs, and examples of IP rights that may be relevant when considering digital assets:



Illustration 1: A series of NFTs created by an artist incorporating logos of real-life brands

“🍊” is a logo for clothing and “🌶️” is a logo used for electronic devices. Both logos have been registered as trade marks, which means that the logos cannot be copied or used in respect of the same products without consent from the owner of the registered trade marks. These logos are also protected under copyright law as artistic works, and similarly, cannot be copied without consent of the owner.



In the above illustration, the artist owns the copyright to the artwork of the figures which form the subject of the NFTs. However, as the artwork contains reproductions of the registered trade marks, i.e. “🍊” and “🌶️”, the artist requires permission from the rights owners to use the logos in its artwork and NFTs.

Illustration 2: An NFT of a digital copy of a famous real-life artwork

Assuming the subject of the NFT is a digital replica of the real-life art piece and the creator of the NFT is not the copyright owner of the art piece, the creator would have to ensure it has the relevant rights from the copyright owner to create and distribute the NFT.

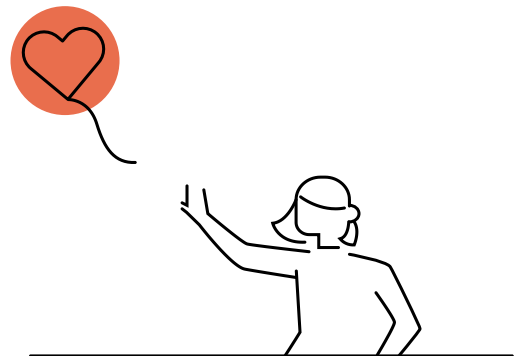
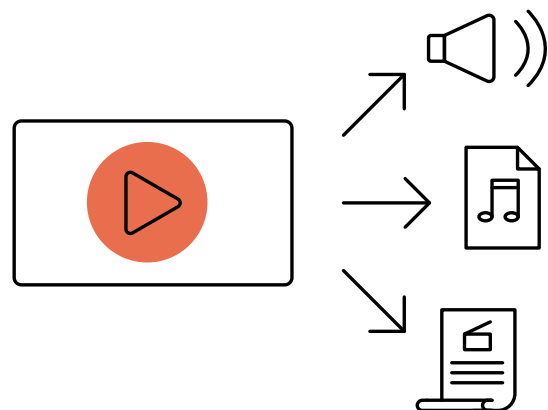


Illustration 3: NFT of a movie scene which incorporates the original audio of the scene

Generally, a movie comprises various copyright works. For example, there could be copyright to the audio-video recording, the musical score and the script, and they may each belong to different parties. Hence, the issuer of the NFT would have to seek rights clearance from all the relevant copyright owners to create and distribute the NFT.



The following are real-life examples of how copyright and trade mark rights in NFTs can affect the sale and distribution of NFTs.

Copyright

When an underlying digital asset is used or created without permission, it is an infringement of IP rights, most commonly in such a context, the [copyright](#) in the digital asset.

Example

In late 2021, a famous director minted and sold NFTs relating to a movie he directed. The underlying digital assets comprised scenes from the movie, each featuring digitised excerpts from the original script, along with snippets of audio commentary from the director himself. The production company alleged that these NFTs were sold by the director in breach of contract, and infringed amongst other things, the copyright in the movie which was owned by the production company. Conversely, the director asserted that his contract with the production company conferred on him certain limited rights, including the right to engage in acts such as the sale of the NFTs.

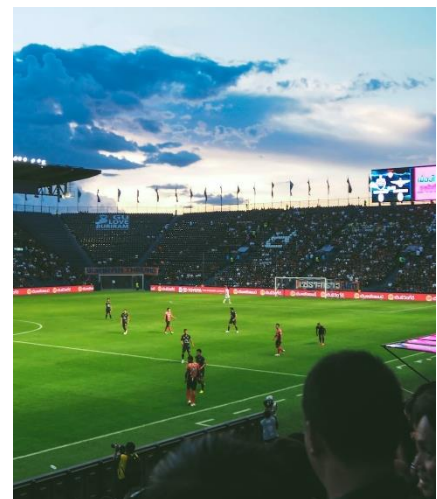


Trade Marks

NFTs may also attract issues in relation to [trade mark law](#), since dealings in NFTs may infringe a registered trade mark or amount to passing off.

Example

In December 2022, an NFT issuer created and marketed NFTs featuring images containing a football club's trade marks and a former player wearing the club's jersey. The football club successfully obtained a court order to prevent the NFT issuer from minting and selling the NFTs on the basis that the NFT issuer did not have the rights from the football club, and the NFTs were likely to cause confusion as to the commercial origin of the NFTs and to mistakenly associate the NFTs with the football club.



Acquiring NFTs – Check the Terms and Conditions

As highlighted in the examples above, NFT issuers and NFT holders should therefore carefully review the terms and conditions relating to the NFT and underlying digital assets to understand the rights associated with any NFT acquisition.

An NFT may be acquired by way of purchase or for free. It should not be assumed that the acquisition of an NFT will automatically transfer the IP rights associated with the underlying digital asset. For instance, where the subject of an NFT is an artwork, it is often the case that the NFT holder may receive only a limited licence to display the artwork for limited non-commercial purposes, and the holder will not be allowed to commercially exploit the NFT by selling physical copies of the artwork, or displaying the artwork in order to obtain profit.

Generally, the rights that an NFT holder may acquire are set out in the terms and conditions of the acquisition. Therefore, any person intending to acquire an NFT should carefully review the following documents to understand, among others, what IP rights in the underlying digital asset will be acquired by them:

- (i) terms and conditions of the online marketplace where the NFT is being offered (such terms may specify if an NFT sale is accompanied by an assignment or licence of IP rights in the underlying digital asset); and/or
- (ii) the contract for the acquisition of the NFT which may contain terms relating to the IP rights associated with the underlying digital asset.

Section 3: Frequently Asked Questions (FAQs)

Q1: What should I take note of when purchasing an NFT?

You should read the terms and conditions relating to the NFT carefully. These can usually be found in the terms of sale and terms of the platform provider. The metadata of the NFT may also provide an indication but you will have to verify if these are intended to have contractual effect.

These terms may specify the IP rights that you will receive, and set out what you can and cannot do with the NFT and the underlying digital asset. If you have any doubts, you should confirm your understanding with the issuer or holder of the NFT (as the case may be) prior to purchasing the NFT.

Q2: I have purchased the NFT of a piece of digital art. Am I able to commercialise the artwork or create derivative artworks?

As discussed above, one should not assume that ownership of the NFT is equivalent to owning the IP rights in the underlying digital asset. Whether you can commercialise the

artwork or create derivative artworks will depend on the rights you have acquired as the NFT holder.

For example, the terms of sale may state that by purchasing the NFT, all IP rights in the underlying artwork will be assigned to you, or the terms of sale may only grant you a limited licence in relation to the artwork. In the latter case, you may only use the artwork within the scope of the licence granted. Therefore, if the licence is for non-commercial use, then commercial use will be in breach of the licence.

Q3: I would like to create an NFT. What do I have to consider when creating the NFT?

This depends on whether you own the rights to the underlying asset which will be the subject of the NFT (for example, copyright in the artwork or piece of music). If you do not, you will have to ensure that you have permission to use the underlying asset to avoid inadvertently infringing the IP rights in the asset, such as copyright and trade mark rights, of other parties. [See Section 2 above.](#)

In a recent case, a rare book was acquired for a large sum of money and the purchaser intended to commercialise the contents of the book through issuing a series of NFTs replicating excerpts of the contents. However, the purchaser was unable to do so, since they had not acquired the copyright to the book's contents.

If you are the owner of the underlying asset, you may also wish to consider securing appropriate IP protection (e.g. filing for trade mark registration for the underlying asset) so that you are in a position to control unauthorised use of the underlying asset by holders of the NFT. In respect of applying for trade mark protection for your mark in Singapore, you may wish to refer to IPOS' [circular](#) on Classification Practices on NFTs and Metaverse-related Goods and Services.

Q4: I have created an NFT of my artwork. What should I consider in distributing and selling my NFT?

You should consider what rights you wish to grant to holders of your NFTs, and what purposes such holders can and cannot use your NFTs for. For instance, you may wish to make clear that holders of your NFTs do not own the IP rights to the artwork in your NFTs and not make derivative versions of the artwork.

You should also consider how you will make these terms binding on all holders of your NFTs, including purchasers and subsequent purchasers. Often, this is done through the inclusion of terms in the contract of sale for the NFT. You should check whether your marketplace platform allows you to include such terms in the sale of your NFT. Some platforms include standard terms that are binding on all transactions occurring on their platform. In relation to other intricate rights such as fund-raising rights, or giving NFT holders the right to vote on your platform, you may wish to seek further legal advice on whether such rights can be given effect to, and if they are regulated under Singapore law.

Q5: An NFT is using my copyright or trade mark without my permission. What can I do?

You may wish to check the terms of the relevant NFT platform provider to see if the platform provider is able to render assistance to stop the NFT issuer from issuing the NFT on their platform. If such assistance is not available, you may wish to seek further legal advice on enforcement of your rights and remedies available. IPOS offers regular complimentary IP Legal Clinics for Singapore Citizens, Permanent Residents and Singapore registered businesses to seek preliminary advice on IP infringement matters from lawyers. Find out more [here](#).