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Nexus Between NFTs and Intellectual Property Law

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ABSTRACT

NFTs have emerged as the "go-to" method for proving ownership of a variety of rare goods, including digital artefacts and artwork. Jack Dorsey, the former CEO of Twitter, sold his first tweet, "just setting up my twittr," as an NFT for more than \$2.9 million. Eminem bought a "Bored Ape Yacht Club" NFT for \$452k, making it his own NFT acquisition. A very fundamental but crucial question then arises: What is an NFT? Non-fungible tokens (NFTs) are assets that have been tokenised via a blockchain. They are given particular identifying numbers and metadata that set them apart from other tokens. Depending on how much the market and their owners are willing to pay for them, NFTs can be traded and exchanged for fiat currency, cryptocurrencies, or other NFTs.

Owners of NFTs may include organisations with consumer-facing trademarks and logos, writers of books and screenplays, musicians, game developers, and even individuals who create actual works of art. There is a substantial possibility that these owners' rights will be violated because they are likely to share their assets with others, which they can use to create an NFT. NFTs do not, however, always come with IP rights. "There is a clear difference between owning an NFT and owning the underlying intellectual property or other assets included within the NFT; owning an NFT is merely a showcase on the shelf".

In this study, we will explore the concept of non-Fungible tokens along with their relationship with various intellectual property rights in India as well as around the globe. An attempt has been made to analyse the Intellectual property issues concerned with NFTs and to provide recommendations for the same.

Keywords: *Assets, Blockchain, Digital, Intellectual property, Owners, Non-Fungible tokens.*

I. INTRODUCTION

"The NFT market is anticipated to increase from \$3.0 billion in 2022 to \$13.6 billion by 2027, with a compound annual growth rate (CAGR) of 35.0 per cent".

The NFT business is one of the most prosperous ones right now, and experts predict that it will continue to expand and prosper in the years to come. In 2021, the non-fungible tokens used in

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art, sports, collectables, metaverses, and gaming were the most prevalent. Everything made and released on the NFT markets is meant to enable individuals to take advantage of digital art while also enabling them to use tokens in other ways².

An NFT, like any other physical asset, is owned according to the laws of supply and demand. The uniqueness of NFTs is thought to increase their value. An NFT, like any physical artwork or sculpture, can be an investment, a way for a collector and an artist to connect, or something with sentimental value in the art world. There are, however, issues with intellectual property rights and ownership. So, it is necessary to make a distinction between the ownership of an NFT and the IP rights associated with it. In this article, an attempt has been made to understand the meaning and concept of a Non-Fungible Token (NFT). The author tries to analyse the relationship of NFTs with Intellectual Property Rights.

II. NON-FUNGIBLE TOKENS (NFTS)

“Non-fungible tokens (NFTs) are assets that have been tokenized via a blockchain”. NFTs are perfect for creating and monitoring ownership of both fully electronic and tokenized physical assets since they each carry a unique identifier and metadata about the linked asset that cannot be substituted or copied³. Because NFTs are nonfungible, they cannot be exchanged for one another like fungible assets such as commodities or other assets where the underlying assets are thought to be of equivalent value. For this reason, banks tend to exchange a destroyed bill for a new one.

III. INTELLECTUAL PROPERTY RIGHTS

Intellectual creations, innovations, works of literature and art, as well as names, symbols, and other identifiers that are used commercially, are all considered to be intellectual property. In order to foster human innovation for the good of society, intellectual property protection aims to do two things: first, it makes sure that creators receive a cumulative profit from the use of their work, this will support creative thinking and provide investors with a respectable return on their R&D expenditures. The use of one's creations by others may be prohibited by intellectual property, which may belong to an individual, business, or other organisation.

Intellectual property is a significant resource for every business. It's critical to understand how to utilise, defend, and uphold the intellectual property rights that an individual or company has

² Keyur Asarkar, *Non-Fungible Tokens (NFTs) – An IPR Perspective*, 4 INT'L J. LEGAL SCI. & INNOVATION, 793, 793-794 (2021)

³ Joshua Fairfield, *Tokenized: The Law of Non-Fungible Tokens and Unique Digital Property*, 97 INDIANA L. J. 1262, 1263 (2022)

in order to succeed in business, regardless of whether you have a business plan or not. A business's production of specific tangible assets that are relevant to its activities is referred to as intellectual property. In India, the phrase "intellectual property" refers to any sort of creation over which a person or organisation has legal control, including trademarks, inventions, designs, and other types of production. Intangible assets that can be regarded as company property are owned by almost all businesses. Trademarks, copyrights, patents, designs, and other forms of intellectual property are the most common types of rights in India. A unique collection of traits and structures make up each category of intellectual property. To ensure the security of employment and firm assets, it is essential to make the proper decisions.

(A) Various Kinds of IPRs

- a. Trademarks:** Any signs, labels, terms, and/or voices that are exclusive to a good or service are defined as trademarks. The trademark of LU, for example, is a depiction of its brand and is safeguarded by IPRs.
- b. Copyrights:** This appertains to any issued work, such as articles, books, movies, songs, online content, artwork, etc. Doraemon, a cartoon is copyrighted by Disney.
- c. Patents:** A patent safeguards any innovation from the contravention or copying once it is used commercially.
- d. Industrial designs:** These are characteristics such as size, structure, shapes, material, or constituents that are used in a product by an industrial procedure like a chemical or mechanical procedures
- e. GI:** A GI is a name or sign which is put on certain goods to recognize a certain geographical area of origin. The GI tag for its Darjeeling tea, for instance, is held by Assam.

IV. NEXUS BETWEEN NFTS & IP RIGHTS

“NFTs are digital files that allow for the embedding of creative works or other content, such as videos or artwork”⁴. As long as copyright confers an exclusive right over original works of authorship, which is clearly distinct from the ownership of any digital product in which the works are embedded, anyone using, for example, a sound recording or a video game clip in an NFT would need prior approval from the copyright holder of such work⁵. As a result, there is

⁴ Joshua Fairfield, *Tokenized: The Law of Non-Fungible Tokens and Unique Digital Property*, 97 INDIANA L. J. 1262, 1263 (2022)

⁵ Andy Ramos, *The metaverse, NFTs and IP rights: to regulate or not to regulate?*, WORLD INTELLECTUAL

minimal disagreement regarding the applicability and legitimacy of the current regulations to NFTs.

“According to the Berne Convention for the Protection of Literary and Artistic Works, which has been ratified by 181 nations, contracting parties are required to provide writers exclusive rights over their works, regardless of the medium or mode of expression”. Several international agreements have also been added to the Berne Convention, such as the 1996 WIPO Copyright Treaty, which upgrades the Berne Convention for the digital age. The storing of a protected work in digital form on an electronic medium (such as an NFT) is defined in this agreement as a reproduction, requiring prior consent from the copyright holder.

(A) NFTs and Copyright

As earlier established, NFTs are a representation of an underlying asset or creation. With NFTs, digital artworks are usually the underlying creation. These artworks are subject to copyright protection in favour of the creator of the work. Copyright affords the creator a bundle of rights which include the right to display, modify, distribute and reproduce the work. The creator owns the copyright in the creation once the art is created even before the NFT is minted or listed on a marketplace. This is to say that the creator of the art underlying the NFT has exclusive access to this bundle of rights.

(B) NFTs and Patents

An NFT blockchain owner can licence the technology that drives their NFT and permit users to purchase genuine collectables of the brand by using patents. Nike, a well-known shoe business, has a patent on "cryptographic digital assets for footwear," allowing buyers to verify the legitimacy of the purchased item while simultaneously carrying a digital collectable version of their sneaker in their wallet (Cryptokicks)⁶. It's critical to keep in mind that an idea must be novel and eligible for patent protection in order to be protected.

(C) NFTs and Trademarks

The primary goal of a business owner attempting to mint an NFT for an underlying asset is to differentiate themselves from the competitors in the market. In contrast, trademark violation happens when an unpermitted or competing party tries to mint, sell, or resell that NFT while using the asset owner's registered trademarks without the consent of the owner.

PROPERTY ORGANIZATION (March 1, 2023, 10:00 PM), https://www.wipo.int/wipo_magazine/en/2022/02/article_0002.html

⁶ Pravertna Sulakshya, *NFT And Its Relationship With IPR*, MONDAQ (Mar. 4, 2023, 8:00 PM), <https://www.mondaq.com/india/fin-tech/1132188/nft-and-its-relationship-with-ipr>

(D) Issues with IPR in the sale of NFTs

The acquisition of intellectual property rights in an NFT is not a certainty upon the purchase of an NFT. So, even though the right to the NFT may have been properly transferred to the new owner, the NFT collector does not now have the authority to change or replicate the NFT. Yet, it is possible to sell an NFT and transfer it that way, which may also entitle the original inventor to royalties through the smart contract's functionality. The advantages of purchasing an NFT are frequently mentioned in the descriptions of the goods available on an NFT marketplace. Yet, such privileges typically are devoid of the transferring of any form of intellectual property rights because IP rights can only be transferred through legally binding contracts.

V. CONCLUSION

The obvious conclusion is that NFTs are not, at least legally, as disruptive as some think since virtual worlds and digital items have already been around for a couple of decades. Like any physical painting or sculpture, an NFT can be an investment, a way to connect a collector and an artist, or something that has sentimental value in the art world. Nonetheless, there still exists challenges related to IP rights and ownership of a Non-Fungible Token. So, while examining the intellectual property challenges of NFTs, it is necessary to make a distinction between the ownership of an NFT and the IP rights associated with it. The rights granted by an NFT seller are determined by the rights granted through a licence or assignment, which varies from one NFT to another⁷. Regardless of the field, the protection of works, especially those that are new, is crucial in this rapidly expanding digital world. The regularisation of these NFTs, as well as every other element of the digital or virtual world, is also urgently required and should be codified as separate legislation.

⁷ Keyur Asarkar, *Non-Fungible Tokens (NFTs) – An IPR Perspective*, 4 INT'L J. LEGAL SCI. & INNOVATION, 793, 793-794 (2021)