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What Is Non-Fungible Token (Nft) And What Is Not?

Non-Fungible Token (NFT) which we have heard more often since the beginning of 2021, is a digital asset that use blockchain technology and mostly operated within the Ethereum. NFT is a digital token that cannot be exchanged or replaced, and may represent many tangible objects in the real world, such as songs, art works, GIFs, virtual game items, videos, cartoons. NFT is technically not the work itself, whereas it is a metadata file that contains the unique combination of Token ID and contract address.

The reasons why NFT is so preferred especially in the art community are; it functions as a digital certificate/registry through the blockchain technology, thus providing transaction security, allows transactions to be carried out quickly and without any central authority in the digital environment. NFT also has a structure that can help to prove ownership of the work, allows the author to reach a wide audience and help them to overcome the physical borders/restrictions. Furthermore, this new format/media increases authors' opportunity for higher incomes rather than usual. In addition, thanks to its smart contracts structure, it also offers the authors an opportunity to transfer a share of each subsequent sale of the relevant NFT at the rate determined in the contract.

On the other hand, NFT purchasers, mostly want to have a unique digital asset with a collector's mind as well as to use it as an investment tool.

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It should be noted that in principle, NFT sales do not include the transfer of copyright on the work converted into NFT, it only provides the right to use the relevant NFT format. However, if the right owner who created the NFT wishes, can include the transfer of rights arising from the ownership of the work within the scope of the smart contract, provided that the relevant formal conditions are met.

Another issue that needs to be evaluated regarding NFT and copyright law is whether the conversion of a work to NFT violates the rights arising from authorship. The right to create the NFT should basically belong to the author of the digital work. However, anyone with sufficient technical knowledge and access, can create and sell NFTs. Therefore, it is also possible for a digital work to be converted into NFT and offered for sale by a person who does not have any ownership rights on that work. In this case, although it is a subject of debate in the doctrine, it is generally considered that the reproduction, adaptation and communication to the public rights of the author is violated. As a matter of fact, considering the disputes¹ seen in the courts around the world and reflected in the media, these disputes are generally based on the claim that NFTs were created and offered for sale by people that are not the real right holders. This situation indicates that many issues such as whether the transaction includes the transfer of copyrights, whether the work is original or

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¹ For example ROC-A-FELLA RECORDS, INC. vs Damon Dash Case 1:21-cv-05411-JPC and Quantin Tarantino vs Miramax Films "Pulp Fiction" dispute

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whether the work is sold by the real right owner, should be questioned by NFT purchasers.

Another matter of discussion is which law will be applied in disputes related to NFT. In this regard, there are opinions that state that NFT is a unique and independent asset from the moment it was created. Moreover, separate regulations should be made in this direction.² On the other hand, there are also opinions supporting that NFT is not an independent asset, it functions like a digital certificate representing an asset. ³ Therefore, general rules should be applied here as well, and since the NFT represents an asset, the regulations that are applicable to this asset should also apply to NFTs. ⁴

In our country, there is no regulation or court decision dealing with NFT and copyright law yet. At this point, it is clear that it would be beneficial to introduce comprehensive fundamental regulations for digital property rights in order to prevent loss of rights in the transactions of these digital assets. In the current situation, due to the lack of such regulations, it would be beneficial to indicate NFT individually as a format and to determine the scope of transfer and authorization in this matter separately in the contracts and legal transactions in order to prevent possible conflicts which are subject to the rights arising from the ownership of the work.

² Guadamuz "The Treachery of Images: Non-fungible tokens and copyright." Page 19

 $^{^3\ \}underline{https://haerting.de/en/insights/nfts-non-fungible-tokens-explaining-the-hype-from-a-legal-perspective/}$

⁴ Pınar Çağlayan Aksoy, Zehra Özkan Üner, NFTs and copyright: challenges and opportunities, *Journal of Intellectual Property Law & Practice*, Volume 16, Issue 10, October 2021, Pages 3-4