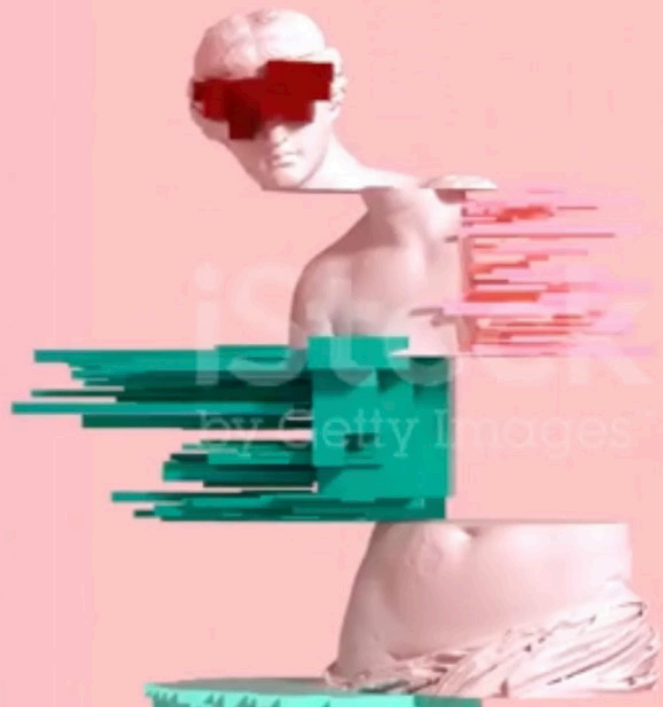


NFTs and the art of law

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INSIGHT

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As the use of cryptocurrency and digital assets continues to rise, the Firm is helping clients in a related growth area, non-fungible tokens (NFTs).

NFTs are based on the concept of blockchains, which are time-stamped digital ledgers that record the history of digital assets.

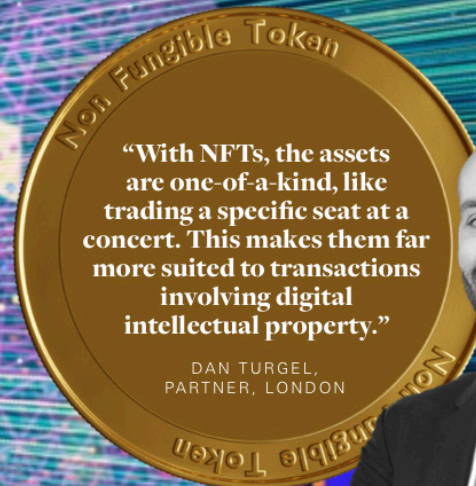
Every time a digital asset changes ownership for instance, a token is created and added to the chain. These tokens look identical, so they can easily be exchanged.

In contrast, NFTs contain unique identification codes and metadata that distinguish them. This means they are non-interchangeable and can't be replicated.

London Partner Dan Turgel explains: "Think of a normal blockchain token as a US dollar. You can exchange your dollar for someone else's dollar and there is no distinguishable difference between the two.

"But, with NFTs, the assets are one-of-a-kind, like trading a specific seat at a concert. This makes them far more suited to transactions involving digital intellectual property."

NFTs often contain 'smart contract' coding that can, for instance, detail limitations on the use of the NFT by a purchaser, provide for automatic royalty payments from resale transactions, and prove ownership. After the code for the smart contract is written, it is then permanently minted into a token on a blockchain.



Helping our clients

The Firm has been helping clients with blockchain matters for several years, but NFTs have become increasingly popular in recent times.

Dan says: "We work on blockchain matters for a broad range of clients, from mining companies wanting to use blockchain for their supply chain to helping crypto currency exchanges operate their businesses.

"We've been asked about NFTs a lot more in the past 12 months, especially since the concept of the metaverse has been gaining traction in recent times.

"As people come to accept that items don't have to be held in physical form to hold real value, there is more demand being put on digital assets that people hold in their virtual world or on social media, rather than in real life, for instance hanging a digital painting on your metaverse wall.

"That makes sense, because so many people now live a significant part of their lives online."

The Firm is already helping clients on several NFT matters.

Dan says: "Initially, we've been helping clients who want to invest in businesses that are developing NFT-based solutions.

"We've also been working with key tech clients to provide regulatory advice on payment and digital wallet solutions, and gaming clients, as they increasingly use NFTs to incentivise and reward gamers."

One of the biggest NFT-related matters we've worked on so far was for Softbank in its investment in digital football sticker and fantasy league company, Sorare.

Softbank led the latest round in Sorare, valuing it at around US\$4.3 billion. The company was barely a year old. The Paris-based company runs a soccer game where users can buy digital player cards and build teams to play against each other in online games.

The cards are traded in the form of NFTs, with changes of ownership recorded on the blockchain.

NFTs in action



US rock band **Kings of Leon** released their new album as a limited edition NFT, with six of the digital albums providing lifetime tickets to front row seats for the band's shows



NFTs in action



Artist **Beeple** hit the headlines when he who sold a collage in the form of an NFT for US\$69 million despite previously selling his art for as little as \$100

NFTs in action



Five digital artworks by **Andy Warhol** sold for US\$3.3 million at a 2021 auction at Christie's New York. The artworks were created in 1985 on an Amiga 1000 computer. The sale accepted payment in the cryptocurrency Ether and the winning bidders received their files as 27kb TIF files.

The legal challenges around NFTs

Looking forward, potential legal issues that arise from NFTs include:

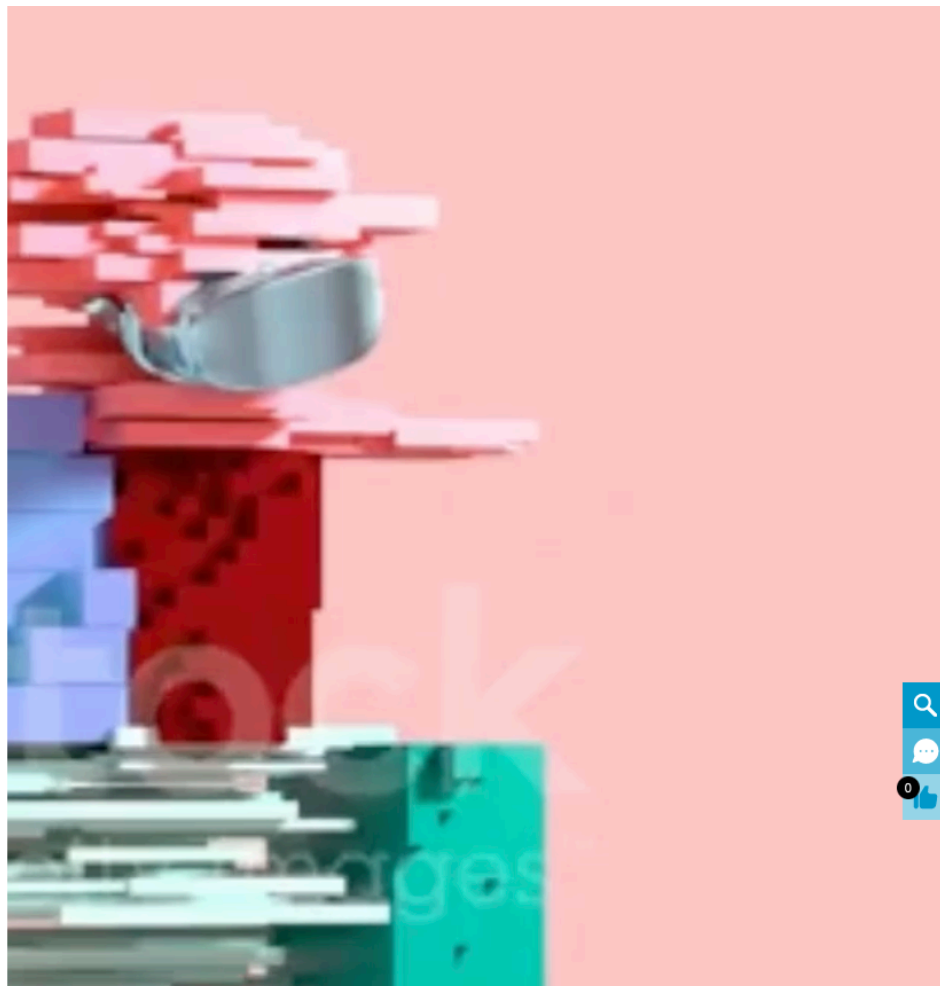
Regulation: from securities regulation to gambling laws, there are many considerations and they differ from jurisdiction to jurisdiction and from NFT to NFT.

Intellectual property rights: many who are active in the world of NFTs might not be familiar with the legal restrictions relating to copyrighted work, which increases the risk of potential infringement liability.

Royalties: the NFT's smart contracts enable the payment of royalties to the creator each time the work is resold. However, this might not occur if the NFT is resold through a different platform and the law provides no recourse for unpaid resale royalties in the US.

Data protection laws: data protection laws in some jurisdictions give individuals the right to erase their personal data, but the unchangeable nature of NFTs may limit an individual's right to correct or erase this data, so NFTs could violate data protection laws.

Data hosting and storage: an NFT and the digital asset it represents are typically stored separately. The NFT is stored on the blockchain and contains information on where the digital asset is located, but the actual asset is usually elsewhere. This could lead to complications if the server hosting the asset fails or otherwise goes offline, resulting in business interruptions, regulatory record keeping violations, loss of data or even rendering the NFT worthless.



An ever-growing market

With clients having to navigate these and other legal challenges, Dan is excited about the opportunity for the Firm to build its reputation in this fast-growing area.

He says: "We're being increasingly asked about NFT-related issues.

"Disputes will also be a big growth area for NFTs, because if there are disputes over equivalent physical assets, we can expect the same or more regarding digital assets.

"Looking ahead, our global footprint and broad expertise puts us in a great position to take the opportunity that NFTs present.

"It's a big challenge from a legal perspective because the technology is significantly further ahead than the legal regimes, so it's critical that we help our clients stay on top of the latest changes across jurisdictions. This is a truly global challenge.

"The metaverse is going to be revolutionary and it's not something that will go away. Many of our traditional clients are asking how it will impact their business. It is coming and everyone needs to be ready for it."

