

# The NFT Paradox: Ownership Without Rights? A Maze of Overlapping Claims

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## *Abstract*

*With the rise of Non-Fungible Tokens (NFTs) the digital asset ownership was revolutionized, offering new opportunities to for artists, collectors, and investors. This paper examines the impact created on intellectual property (IP) rights by NFTs and legal complexities surrounding the same. While NFTs offer a unique form of digital asset ownership through blockchain technology, they often create confusion regarding the rights actually transferred to buyers. The distinction between token ownership and copyright ownership remains blurred, resulting in challenges related to moral and economic rights, unauthorized reproductions, and the resale of digital works. Through case studies and legal precedents, the research highlights the growing conflict between creators and NFT owners, exploring instances of copyright infringement, personality rights violations, and platform liability. Additionally, the paper proposes the implementation of stronger regulations, transparent smart contracts, and mechanisms like Droit de Suite to ensure fair compensation for creators. Emphasizing the need for a balanced legal framework, this study calls for a reassessment of IP laws to address the evolving landscape of digital ownership in the NFT marketplace.*

## I. Introduction

As Artificial intelligence and developing technologies integrate into our daily lives, they disrupt the traditional legal frameworks. The emergence of Non-Fungible Tokens (NFTs) and blockchain technology represent one of the most significant innovations, allowing the tokenisation of digital assets on blockchain platform. It has reshaped the digital economy, opening new avenues for trading assets. However, the commercialisation of these digital tokens introduced legal challenges, particularly surrounding copyright, moral rights and personality rights of the creators.

As technology advanced, the legal and ethical challenges, surrounding IP rights, also multiplied. In this context, it became necessary to differentiate between the ownership of an NFT and the IP rights associated with the underlying work. The excitement around NFTs often overshadows the fact that owning an NFT does not confer ownership of the underlying intellectual property, causing widespread confusion. Moreover, the lack of

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clear regulations in this area pertaining to copyright and resale rights of the NFT has allowed infringement of the creators' rights without consequence. More often than not, the buyers believe that they own more than they actually have legally acquired the rights over, leading to a series of disputes.

This research critically examines the intersection of NFTs and copyright law. It argues for the development of strong regulations to curb the exploitation of rights through NFT trade and maintain the integrity of intellectual property in the digital realm. In doing so, it provides a comprehensive analysis of how NFTs challenge traditional concepts of ownership and copyright and why a re-evaluation is required for creating dynamic IP laws to adapt to the evolving digital marketplace.

## II. NFTs and Ownership



<sup>1</sup>An NFT is a unit of data stored on a blockchain, a digital ledger, deriving its value from underlying assets.<sup>2</sup> Unlike fungible assets like cryptocurrencies, NFTs are distinct and cannot be exchanged easily.<sup>3</sup> Essentially, NFTs serve as certificates of authenticity for digital or physical

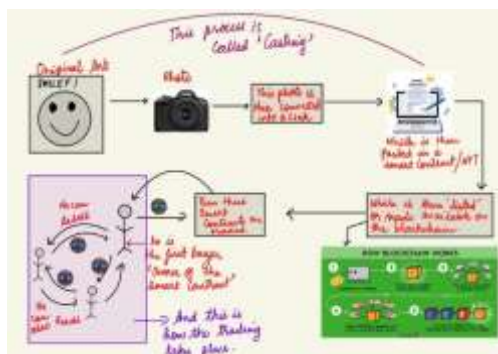
assets, allowing ownership to be traced and verified publicly on the blockchain while limiting unauthorized minting. The evolution of the Metaverse facilitates the entire process by allowing the seller and buyer to engage effectively, creating a high-value marketplace with numerous opportunities for all parties involved.<sup>4</sup>

<sup>1</sup> Yupeng Dong and Chunhui Wang, 'Copyright Protection on NFT Digital Works in the Metaverse' (2023) NingboTech University, China, and Zhejiang University, China, published online 30 June 2023.

<sup>2</sup> Indian Copyright Act 1957, s 14 (c)(i)(A).

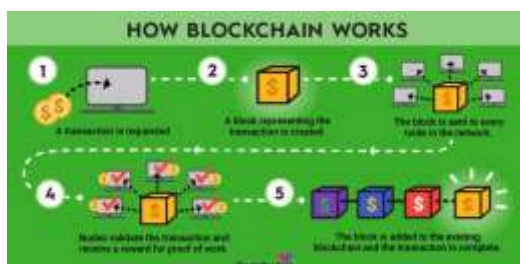
<sup>3</sup> Mark Conrad, 'Non-Fungible Tokens, Sports, and Intellectual Property Law Issues: A Case Study Applying Copyright, Trademark, and Right of Publicity Law to a Non-Traditional Ownership Vehicle' (2022) 32 J Legal Aspects Sport 132.

<sup>4</sup> C Wang (n 1).



If I take a photo of an artwork, the picture will then be converted into a link, smart contract, or a token that will be traded as an NFT, while the original artwork will remain where it is. Hence, an NFT does not contain the actual asset, but rather a reference to that asset, much like a contract stating, “Person A owns a **digital file** of Asset X,” Incident to the distribution

of a creator’s work.



<sup>5</sup>Under Indian copyright law, Section 17 grants the author of a work the first ownership of their creation. When read alongside Section 14(c), it becomes clear that the copyright owner has the legal right to reproduce their work in electronic form. This provision also

grants them the right to issue multiple copies of their work. In essence, artists can rely on this section to create electronic copies of their work, such as NFTs, and use them for public communication, trade, and monetization. However, selling an NFT of their artwork does not equate to relinquishing their copyright. They are merely sharing their work through a different medium. The lack of awareness about this distinction contributes to the confusion surrounding NFT transactions.

Additionally, the ‘principle of exhaustion’ of rights does not apply to copyright in NFT digital works.<sup>6</sup> Unlike traditional copyright law, which allows free resale of tangible goods after the first authorized sale The Tom Kabinet case<sup>7</sup> established that online sales of e-books constitute public dissemination<sup>8</sup>, not distribution, and are therefore outside the exhaustion doctrine. Similarly, EU law excludes NFTs from distribution rights, meaning resale or transfer of NFT-linked digital works requires the copyright holder’s permission. The Hangzhou Internet Court also ruled that the exhaustion of rights doctrine does not apply to NFTs, confirming that copyright holders retain control over digital works even after the first sale. Further aggravating uncertainty regarding the rights of each party involved in the transaction.

<sup>5</sup> Anders Bylund, ‘What is Blockchain.’ (The Moltey Fool, Jan 2025) < <https://www.fool.com/terms/b/blockchain/>>

<sup>6</sup> C Wang (n 1).

<sup>7</sup> Case C-263/18 (19 December 2019).

<sup>8</sup> Indian Copyright Act 1957, ss 14(ii), 14(iii).

<sup>9</sup>This lack of clarity leads to “Fractional Ownership,” sparking the debate of ownership vs. copyright, where only the ownership of token is exchanged and not the underlying copyrights. The copyright, which includes exclusive rights to reproduce, distribute, or adapt the work, remains with the original creator unless explicitly transferred. This creates legal uncertainty, as platforms often fail to clarify the nature of the ownership. Resulting in infringements as seen in the *Ma Qianli case*, where unauthorized NFTs were created from a copyrighted artwork, *A Fat Tiger is Getting the Vaccine*.<sup>10</sup>



By, virtue of the ownership of an NFT of a digital asset, there exist a rights to resell. The original owner can transfer additional rights by explicitly specifying them in the smart contract. However, the bundle of rights and T&C transmitted to at first instance may not be understood in their entirety creating hinderance when such rights are carried forward pursuant to the resale of the digital asset. As a result, a communication gap is created, which causes additional complications. This raises important legal questions about the rights an NFT dealer truly acquires.

Example:<sup>11</sup>

In the year 1993 Miramax, Tarantino, and his production company, Visiona, signed agreements giving Miramax rights to the film ‘Pulp Fiction’, including copyright and trademark. However, Tarantino reserved certain rights, including the right to publish the screenplay in various forms, such as print and electronic formats.

Later the in the year 2021 NFTs were on the rise. Eventually Tarantino launched an NFT collection featuring handwritten portions of the *Pulp Fiction* screenplay and sold them on the OpenSea platform as NFTs in the year 2021. Miramax sued, claiming that this sale violated the agreement by infringing on its copyright and trademark rights, as Tarantino’s reserved “screenplay publication” rights didn’t extend to NFTs. (They couldn’t have foreseen the development of this technology when they first made the agreement and there was no way to include this. Also, the then present laws were not equipped enough to deal with such an issue.)

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<sup>9</sup> ‘China copyright infringement case: China issues first court ruling on NFTS.’ (Questel, June 2022) < <https://www.questel.com/resourcehub/china-copyright-infringement-case-china-issues-first-court-ruling-on-nfts/>>

<sup>10</sup> C Wang (n 1).

<sup>11</sup> Michael D. Murray, ‘NFT Ownership and Copyrights’ (2023) 56 Ind L Rev 367.

Hence this case is important as this highlights the need for developed laws plus the need to include AI based developments in future agreements. For those creating NFTs based on existing IP, it's crucial to review contracts to ensure they have the rights to do so. If NFT rights aren't clearly covered, legal disputes may arise, relying on party intent and industry norms to determine ownership and usage rights.<sup>12</sup>

<sup>13</sup>Another such example is *Free Holdings vs. McCoy*<sup>14</sup> where ownership confusion resulted in legal disputes, as it questioned whether McCoy still had rights to the first-ever NFT, Quantum. Here, Ownership of the NFT was separated from intellectual property rights. Reinforcing the importance of clarifying what rights are being transferred during NFT transactions. Underscoring that NFT ownership does not automatically confer intellectual property rights.

### III. The Dark Side

As discussed, the buyers assume they are purchasing full ownership of the digital asset, when in reality, they may not have even obtained the right to use it. This is further exacerbated by the "Dark Patterns." Dark patterns are misleading design tactics used in websites and apps to trick users into making choices they might not have made otherwise, usually benefiting the seller at the expense of the user.<sup>15</sup>

As a result, they not only remain unaware of the rights associated with the NFT they just purchased but also risk buying an inauthentic asset, leaving them vulnerable to financial loss and bound by complex terms and conditions. In NFT trade Dark patterns are utilised to dupe the purchaser, taking advantage of their fragmented ownership. The complexity/length of terms and conditions of NFT sales lead users to accept them without fully understanding their implications, making them vulnerable to unforeseen legal disputes. Much like the terms and conditions of usage we agree to on daily basis of different website and applications without giving a second thought.

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<sup>12</sup> Emily Dieli, 'Tarantino v. Miramax: The Rise of NFTs and Their Copyright Implications.'

<sup>13</sup>Miramax, LLC v Tarantino, 2:21-cv-08979-FMO-JC (C.D. Cal 16 November 2021), <<https://www.thetmca.com/files/2021/12/miramax-v.-tarantino.pdf>> accessed on 29 March 2025.

<sup>14</sup> 22-CV-881 (JLC).

<sup>15</sup> N Upadhyay and S Upadhyay, 'The dark side of non-fungible tokens: understanding risks in the NFT marketplace from a fraud triangle perspective.' (2025) 11 *Financ Innov* 62 <<https://doi.org/10.1186/s40854-024-00684-6>>

Editors of original artwork may also modify digital pieces to artificially inflate their value, causing buyers to overpay for works that lack authenticity. Furthermore, NFTs can be created and sold without proper authority—for instance, someone could take a photograph of artwork in a gallery, mint it as an NFT, and profit from it without the artist’s knowledge, leaving buyers unaware of the original source. Similarly, individuals may use deepfake technology to create NFTs featuring famous personalities, misleading fans into believing these digital assets are officially associated with those individuals, thereby encouraging them to make uninformed purchases. And there are other such instances, For example the case of fake Pixelmon NFT which when purchased and clicked on introduces a malware in the system that would target the purchasers cryptocurrency wallets.<sup>16</sup> But on the flip side the rights of the original creators are also at risk.

#### IV. Be-Wild-Ered Rights

Intellectual property rights are a set of privileges that include specific protection for the original author. Copyright is a type of IPR that stems from a creative and external manifestation of a person’s imaginations, reflecting on their personality and morality. Hence, these fundamental rights are retained with the original creator and are non-transferable.

**Moral rights** are enshrined in the Berne Convention,<sup>17</sup> which India is a signatory to.<sup>18</sup> They grant authors the right to attribution and the right to integrity. The problem of fractional ownership due the ownership v. copyright dilemma in NFT trade exacerbate and complicate the enforcement of these moral rights of the original creator. The right to sell, use and modify comes in addition to the right for ownership of anything. But when such rights lack clarity and overlap with the IP rights of the original creator the problem arises. With each alteration and resale of NFT, the moral rights of the creator are diluted.

When an owner of an NFT uses the image corresponding to the code he purchased, he indirectly represents the creator/author. Given that the art has a subjective interpretation, the owner of the NFT might use the image

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<sup>16</sup> Lawerance Abrams, ‘Fake Pixelmon NFT site infects you with password-stealing malware.’ (BleepingComputer, May15, 2022) <<https://www.bleepingcomputer.com/news/security/fake-pixelmon-nft-site-infects-you-with-password-stealing-malware/>> accessed on 29 March 2025.

<sup>17</sup> Berne Convention for the Protection of Literary and Artistic Works, Art 6bis. (as amended on September 28, 1979).

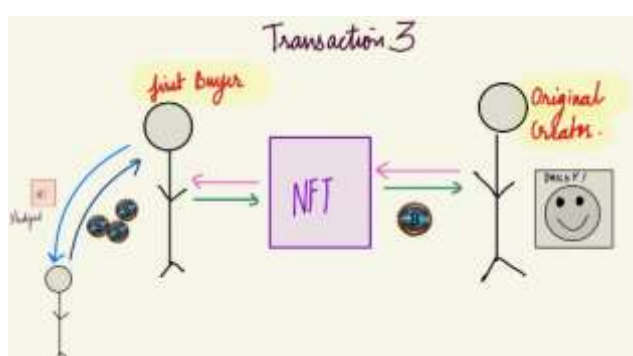
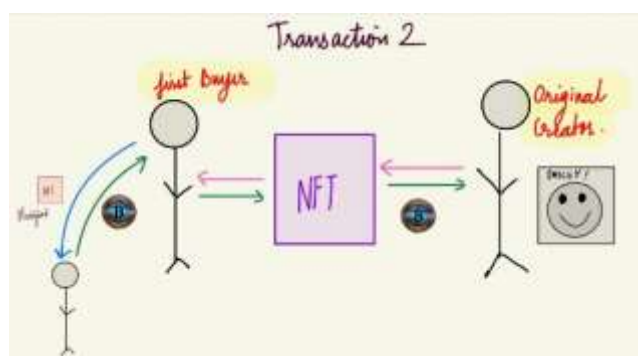
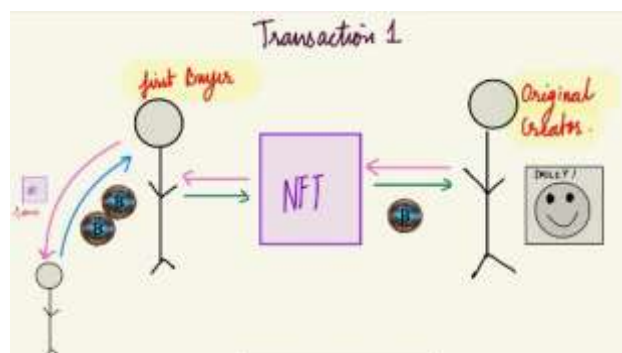
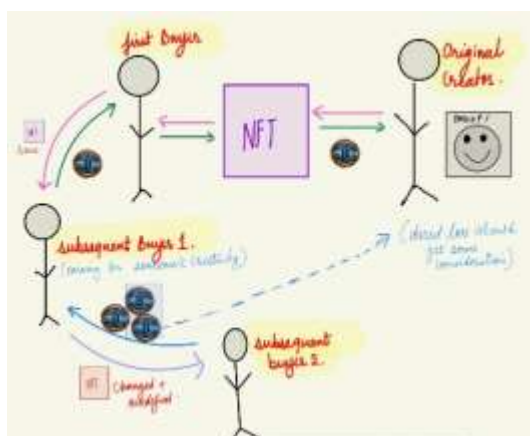
<sup>18</sup> Indian Copyright Act 1957, s 57; (which allows authors to claim damages if their work is distorted or mutilated.)



in a way that directly contradicts the creator's ideology. Breaching the right of attribution.

Also, when an NFT is modified, which is rather simple given that all they have to do is change the sequence of the codes, they may do so in a way that undermines the creator's integrity. Even if copyright infringement occurs, creators have limited recourse due to the ease of unchecked exchanges facilitated by technology, which complicates tracking ownership. Additionally, infringers may be unaware of the rights they are violating, further complicating litigation.

Along with the moral rights, the creator also has parallel **economic rights**. [Conflicting with the economic rights of the owner.]<sup>19</sup> This ensures that no one can gain monetary benefits from the copyrighted artwork. The issue of resale further deepens the wound of breaches when the resale value of an NFT is greater, leaving the creator without compensation for subsequent sales.



The transactions highlight a quandary:

<sup>19</sup> Gerald Dworkin, 'The Moral Right of the Author: Moral Rights and the Common Law Countries' (1994) 19 Colum-VLAJL & Arts 229.

- T1 – Sale at a higher price – same NFT – breach of economic rights.
- T2 – Reselling at the same price – modified NFT – breach of moral rights.
- T3 – Resell at a higher price – modify NFT – Breach of economic and moral rights.

T1 and T2 may not pose significant issues unless they lead to further disputes. But T3 could be problematic.

NFTs also raise concerns about **personality rights**,<sup>20</sup> especially when tokens represent famous individuals or public figures. Unauthorized use of likeness in NFTs can lead to identity theft. For example, Indian cases like *ICC Development v. Arvee Enterprises*,<sup>21</sup> where the court ruled that using a celebrity's name or likeness without permission is illegal. Similarly, when NFTs associated with a famous personality are intentionally or unintentionally<sup>22</sup> used in an incorrect

fashion it might prove detrimental to the rights of the person depicted and/or the original creator.<sup>23</sup>

Courts in many jurisdiction considers unauthorized reproduction, distribution, or alteration of a copyrighted work as infringement. In India this covered under Section 51 of the Copyright Act, 1957.

- *Nike v. StockX*<sup>24</sup>: StockX claimed that its NFTs of Nike sneakers were simply representations of ownership of physical goods. However, Nike argued that the NFTs violated their copyright and trademarks.
- *Hermès v. Rothschild*:<sup>25</sup> Artist Mason Rothschild's "MetaBirkins" NFTs infringed Hermès' IPR by creating unauthorized digital versions of their Birkin bags. Underscoring copyright and trademark violations when the underlying rights are not properly respected.

This casting and uploading without authorization is illegal and breaches many IP rights. Additionally, the resellers of a modified NFT can claim it is original art by arguing that their time, effort, skill, and creativity have gone into creating the 'derivative art,' thus asserting their own copyright. This approach can also be utilized by original creators to produce

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<sup>20</sup> Roberta Rosenthal Kwall, 'Preserving Personality and Reputational Interests of Constructed Personas through Moral Rights: A Blueprint for the Twenty-First Century' (2001) 2001 U Ill L Rev 151.

<sup>21</sup> 2003 (26) PTC 245.

<sup>22</sup> *Buck v Jewell-Lasalle Realty Co.*, 283 US 191, 198 (1931).

<sup>23</sup> TRIPS and Berne Convention have no provision for excluding innocent infringers from liability.

<sup>24</sup> 22-CV-00983 (VEC)(SN).

<sup>25</sup> 22-cv-384 (JSR).



derivative works of their own creations, resulting in the evergreening<sup>26</sup> of copyright.<sup>27</sup>

For instance, the *Yuga Labs, Inc.* case highlights how derivative works of Bored Ape NFTs led to legal challenges when terms were not respected.<sup>28</sup> Moreover, creators often lose **economic rights** as NFTs are resold for higher values, with little to no compensation for the original artist.

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## V. Confusion due to Unauthorised Reselling.

### (A) Balancing of Rights

Considering these actions there is a need for an immediate reaction. There is a need for reanalysis of the existing legal framework to bring the trade of NFT under the purview of IP laws, balancing the overlapping claims of the creators and the owners of NFT. Because every action involving the display of the NFT by the purchaser can constitute an IPR infringement. Then what is the point of buying an NFT at such high price when the

<sup>26</sup> Ifeanyi E. Okonkwo, 'NFT, Copyright and Intellectual Property Commercialization' (2021) 29 Intl J L & Info Tech 296–304.

<sup>27</sup> Thomas Faunce, 'The Awful Truth about Evergreening' The Age (17 August 2004) <<https://www.theage.com.au/national/the-awful-truth-about-evergreening-20040807-gdyero.html>> accessed 29 March 2025.

<sup>28</sup> BAYC Terms & Conditions, BORED APE YACHT CLUB, <<https://boredapeyachtclub.com/#/terms>> accessed 21 October 2024.

<sup>29</sup> Samnatha Hissong, 'How Four NFT Novices Created A Billion-Dollar Ecosystem of Cartoon Apes.' Rolling stones, Nov 2021. < <https://www.rollingstone.com/culture/culture-news/bayc-bored-ape-yacht-club-nft-interview-1250461/>>

owner has to use his rightfully purchased property in a very restrictive manner. This dilemma demands for a refreshment of the laws so that there can be a well-defined distribution of rights amongst the purchaser, sellers and creators of NFT.

This can be achieved by utilising Smart Contracts. A smart contracts records the characteristics of the asset, the details of the issuer and other relevant details, ensuring an efficient flow of the “Digital Commodities.” Essentially, when one purchases an NFT they are merely buying metadata if there no clearly defined rights attached therewith. Hence, a smart contract, fundamentally backed by encrypted codes, generates a proof of ownership of a digital asset while clearly outlining a reliable division of rights that takes place doing a transaction.

In a blockchain based smart contract one block after another in added to form a chain. Each block added is extensively verified and prevents the alteration/editing of the previous blocks. For example, 7 blocks (transactions) are added, if a anyone tries to change anything from block 3 they will also have to make changes from block 4 to 7. Ideally, preventing any possibility of illegal alterations. Additionally, all the transactions are maintained in the form of a digital ledger. Now in the case of blockchain based smart contracts, they can design a ‘fault switch’ which will automatically trigger a contact between the interested parties. This reduced extra workload, third party involvement, chances of burying the fine print, blind siding, unnecessary alteration of terms etc. In this way the purchaser can get verified set of rights, so that they are not purchasing metadata just for the sake of it. For the seller/creator it ensures that no more than the rights they want to divulge is transferred. For the original creator they can make sure the description of their work is conveyed forward to the  $n$ -th purchaser of their work, in the form of NFT, protecting their moral and personality rights.<sup>30</sup>

Unfortunately, the combination of Indian laws like the Contract Act, the Evidence Act, and the IT Act allows for the recognition of smart contracts at the cost of effective recourse when disputes arise. The Indian Contract Act, 1872, establishes that a contract must include free consent (Section 14), a meeting of minds (Sections 2(a) and 2(b)), and lawful consideration (Section 10) for it to be held valid. However, smart contracts operate through self-executing code, making it difficult to establish truly informed and voluntary consent, especially since once deployed, smart contracts cannot be altered. This creates a fundamental issue with Section 14, as

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<sup>30</sup> Nick Szabo, ‘Smart Contracts: Building Blocks for Digital Markets.’ (1996) [https://www.fon.hum.uva.nl/rob/Courses/InformationInSpeech/CDROM/Literature/L OTwinterschool2006/szabo.best.vwh.net/smart\\_contracts\\_2.html](https://www.fon.hum.uva.nl/rob/Courses/InformationInSpeech/CDROM/Literature/L OTwinterschool2006/szabo.best.vwh.net/smart_contracts_2.html)

parties may not be able to renegotiate terms or account for unforeseen circumstances. Additionally, Section 56, which allows for a contract to be voided if performance becomes impossible (frustration of contract), is not applicable in the case of smart contracts, as they execute automatically regardless of changed circumstances. The Indian Evidence Act, 1872, does recognize digital contracts under Section 65B, which allows for electronic records as admissible evidence, and Section 67A, which mandates that electronic agreements be authenticated through digital signatures.<sup>31</sup> However, smart contracts do not typically use legally recognized digital signatures, making their enforceability in courts highly uncertain. Moreover, S.18 of the Indian Copyright Act states that the contract has to be in writing. Similarly, the Information Technology (IT) Act, 2000, provides for the recognition of electronic contracts under Section 10A, but it also requires digital signatures for authentication under Section 3, which smart contracts lack. This creates a major loophole—while the law allows for smart contracts to exist, it does not provide them with the necessary legal validity required for enforcement.<sup>32</sup>

A potential solution could be allowing parties to a smart contract to share limited access with a government regulator, making such sharing compulsory but ensuring strict liability for the government in case of data leaks. A major benefit of implementing a government-specified blockchain registry is that it would provide smart contracts with greater evidentiary value and eliminate fraud risks, addressing one of the primary deficiencies in the current legal framework. However, blockchain-based transactions expose contract terms to third parties, potentially making them vulnerable to external litigation.

Additionally, responsibility for copyright infringement should also fall on intermediary NFT platforms, which can be held liable if they facilitate the sale, distribution, or exhibition of infringing works, regardless of claims of innocence. Courts in the US and EU have ruled that intent is irrelevant, making platforms liable as secondary infringers unless intermediary immunity applies.<sup>33</sup> In India, Section 79 of the IT Act, 2000 offers some protection to intermediaries that act as neutral platforms and promptly remove infringing content upon notification.<sup>34</sup>

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<sup>31</sup> Sharma M, Gupta S. 'E-Signing of Contracts and documents in India.' (Corporate & Commercial, 5 Aug 2021) [https://singhania.in/blog/e-signing-of-contract-and-documents-in-india#:~:text=The%20Information%20Technology%20Act%2C%202000,available%20in%20electronic%20form%20and\](https://singhania.in/blog/e-signing-of-contract-and-documents-in-india#:~:text=The%20Information%20Technology%20Act%2C%202000,available%20in%20electronic%20form%20and)

<sup>32</sup> Apurva Agrawal, 'Block Chain and Smart Contract in India.' (July 2023) <https://www.linkedin.com/pulse/blockchain-smart-contract-india-apurva-agarwal/>

<sup>33</sup> C Wang (n 1).

<sup>34</sup> *MySpace Inc. v Super Cassettes Industries Ltd.*, 2016 LawSuit (Del) 6574.

However, platforms must exercise due diligence and cannot evade liability through standard terms if found negligent.

- *Napster*:<sup>35</sup> held platforms accountable for user-generated infringement.
- *Peterson v. Google LLC & Elsevier Inc.*:<sup>36</sup> held that platforms like YouTube are not directly responsible unless they knowingly permit copyright violations, a principle applicable to NFT platforms.

The liability of NFT platforms is a critical concern. Hence, stricter consequences for intermediaries may help correct market behaviour.

### **(B) Remedies at a Snapshot<sup>37</sup>**

- DROIT DE SUITE<sup>38</sup> - the right of resale, allows artists to receive a percentage of the sale price each time their artwork is resold. Ensuring that the creator benefits from the increasing value of their work or any share of the profit, as it is their hard work that is being traded.<sup>39</sup>
- DROIT D' AUTEUR<sup>40</sup> – Author's Right, granting creators exclusive rights to their original works. Where they can never waive off their IP rights, instead only licence<sup>41</sup> their Right to Distribute.

This would be converted into the rights of the owner of the token to commercially exploit the NFT in a limited sense, such as CryptoKitties.<sup>42</sup> A share of which could be given to the creator in Royalties, respecting the owner's Right to Display the NFT they purchased.<sup>43</sup>

- S 2 (Z):<sup>44</sup> Where the modifier and creator can come to terms when they share a joint right to the subsequent art produced.

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<sup>35</sup> *A&M Records, Inc. v Napster Inc.*, 239 F.3d 1004 (9th Cir. 2001).

<sup>36</sup> *Peterson v Google LLC*, (22 June 2021) In Joined Cases C-682/18 and C-683/18.

<sup>37</sup> M Murray (n 11).

<sup>38</sup> Victor Ginsburg, 'The Economic consequences of Droit de Suit in the European Union,' (March 2005) European Center for Advanced Research in Economics and Statistics, Université Libre de Bruxelles and Center for Operations Research and Econometrics, Louvain-la-Neuve.

<sup>39</sup> *Leatherman Tool Group v Cooper Industries, Inc.* 131 F.3d 1011, 1014-15 (Fed. Cir. 1997).

<sup>40</sup> Rudolf Monta, 'The Concept of Copyright versus the Droit D'Auteur' (1959) 32 S Cal L Rev 177.

<sup>41</sup> Indian Copyright Act 1957, S 30.

<sup>42</sup> Terms of Use, CRYPTOKITTIES, <<https://www.cryptokitties.co/terms-of-use>> accessed on 21 October 2024.

<sup>43</sup> M Murray (n 11).

<sup>44</sup> Indian Copyright Act, 1957 (14 of 1957).

If a subsequent creator invests time, effort, and creativity to modify a product, they should obtain copyright for their work, regardless of tangibility. Incidental to their right to create derivative works. The creation is fixed in the form of unique code that can be reproduced and distributed, meeting the essentials of copyright.<sup>45</sup>

- A comprehensive regulatory framework: Designed to clearly define the rights of the creators, owners, purchasers, and sellers of the NFT, clearing the web of overlapping rights. Ex: make it compulsory for the creator to enlist a concise and easily visible list of rights being transferred in order to curb dark patterns.<sup>46</sup> For example, under the Indian Legislation, a combination of laws like the Evidence Act, IT Act, and the Contracts Act do facilitate the creation of Smart Contracts, drawing from the concept of meeting of minds, but they lack the enforcement norms, leaving a remedy seeker high and dry. Secondly, with the pace of transactions where a particular NFT keeps the ability to change multiple hands and jurisdiction within a short span of time, it is exceedingly difficult to establish privity to contract and Locus Standi.
- Comprehensive AI law: Preventing the alteration of metadata's string of numbers that make the original NFT untraceable. Also, it is important to make sure that at the entry point, the website demands the correct set of documents, verifies the authenticity of the copyright, and keeps track of changes as they come.<sup>47</sup> Protecting the work in the digital landscape.<sup>48</sup>
- Smart contracts and blockchain technology: Enhancing transparency in NFT trade by creating a permanent public ledger of transactions, ownership changes, duration of right<sup>49</sup> and provenance. This transparency prevents copyright holders from obscuring rights or falsely claiming originality, as all modifications are traceable.

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<sup>45</sup> *Apple v. Franklin Computer Corp.*, 714 F. 2d 1240 (3d Cir. 1983).

<sup>46</sup> Runhua Wang, Jyh-An Lee, Jingwen Liu, 'Unwinding NFTs in the shadow of IP law' (2024) 61 AmBusLawJ31.

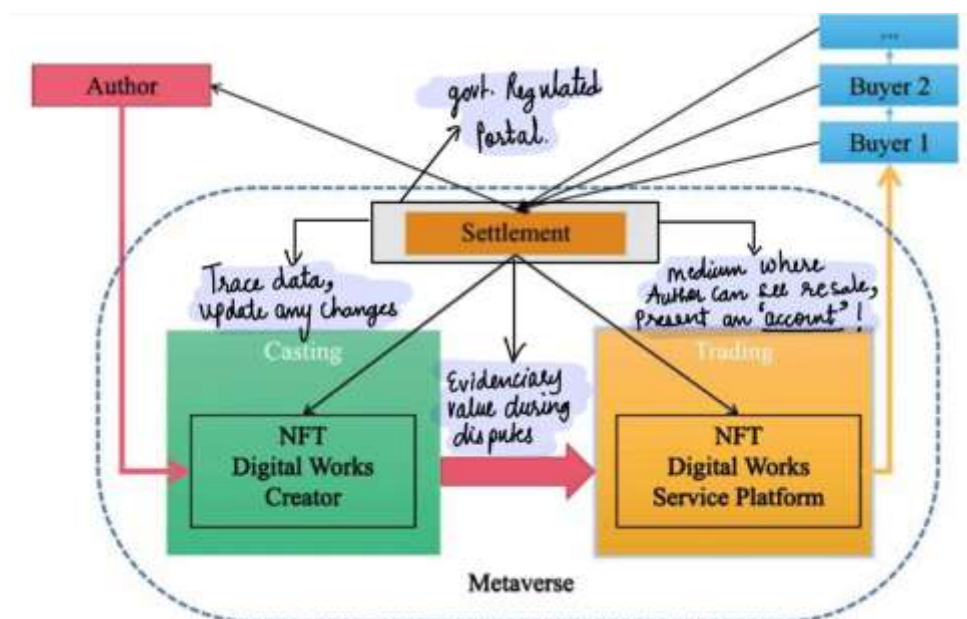
<sup>47</sup> The EU Directives on Copyright in the Digital Single Market (2019); Digital Millenium Copyright Act 1998;

<sup>48</sup> WIPO Copyright Treaty 1996, art 1(4).

<sup>49</sup> Indian Copyright Act 1957, s 22.

→ Other civil remedies like damages,<sup>50</sup> interim injunctions<sup>51</sup> on sale, fair use (as the owner has purchased it. He has paid consideration for it.)<sup>52</sup> and rectification of the metadata or removal of the NFT.

In this way, NFTs, if used correctly and under accurately curated laws, could offer a more transparent and equitable framework for managing the lifecycle of copyrighted works. If utilised to its full potential, such a framework of law could revolutionise copyright tracking and recording, even reducing the litigation burden on the courts to an extent.



**CRAFTING A RESOLUTION/SETTLEMENT FRAMEWORK.\***

## VI. Settled? No!

It is essential to protect the expression of the people in order to encourage creativity in the society. While making sure that the rights given to the copyright holder doesn't restrict the flow of knowledge. The popularity of NFTs raises questions about why people spend large sums on works available online. Maybe because the value lies in authenticity and a connection to the original creator. Example: digital images of the Mona Lisa are free online; owning an NFT signed by Leonardo da Vinci would significantly enhance its value due to its unique ownership certificate. This

<sup>50</sup> Indian Copyright Act 1957, s 56.

<sup>51</sup> Indian Copyright Act 1957, s 58.

<sup>52</sup> *University of Oxford and Ors v Rameshwari Photocopy Services and Ors*, MANU/DE/2497/2016; Indian Copyright Act 1957, S 52(1)(a).

\*'Settlement' denotes an ideal marketplace.



bragging right is tied to the original creator's confirmation, which fuels the success of NFTs.

The lack of verification processes in the NFT space, coupled with cybersecurity concerns and identity theft, undermines the trust in this authenticity. As anyone could falsely claim authorship in the absence of robust verification mechanisms. Inadvertently, NFT platforms may become venues for copyright infringement, where unverified creators exploit IP for profit. With every resale of an NFT, the rights get diluted, increasing the number of people demanding control over limited rights. Therefore, the legal landscape must adapt to protect creators and buyers alike, preventing abuse and ensuring fairness, fostering a marketplace that can create a balance between overlapping claims.