

Derivative Works in the Age of Nfts: A Comparative Study of Uk, Us, And Indian Copyright Regimes”

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ABSTRACT

The field of copyright law now faces additional difficulties and complexities as a result of the quick spread of non-fungible tokens (NFTs). Unique digital assets known as NFTs—which frequently stand in for works of art, music, video, and other creative expression—have brought up important concerns regarding the boundaries of copyright protection as well as the rights of content owners and artists. This study investigates whether the exclusive rights—such as the ability to reproduce, distribute, and create derivative works—granted to copyright owners under traditional copyright law extend to the creation and selling of NFTs. It looks at how these rights are involved in minting and transferring NFTs and determines if these actions need permission from the copyright holder. The research work makes the case that the production and sale of NFTs can in fact come inside the purview of a copyright owner's exclusive rights through an examination of precedents in the law, case studies, and contemporary licensing practices. As a result, minting and selling NFTs without the required authorization may violate copyright. In order to prevent future legal problems, the paper's advice for NFT producers, sellers, and buyers emphasize the significance of securing the required licenses and outlining the boundaries of the law.

INTRODUCTION

The relationship between technology and intellectual property law offers a special set of opportunities and challenges as the digital landscape develops. Non-Fungible Tokens (NFTs) have become a groundbreaking way for producers and artists to make money off of digital property, but they also bring up important issues with ownership and copyright protection. Comprehending the legal structure that governs copyright is crucial for both authors and collectors participating in the quickly expanding NFT industry.

NFTs are distinct digital tokens that are kept on a blockchain and are generally connected to digital music, films, art, and other types of creative content. NFTs frequently function as a transferable certificate of ownership or authenticity, even though they do not directly contain the underlying digital content.¹

As NFTs have grown in popularity, concerns about how they relate to copyright law have surfaced. In particular, there has been discussion over whether the production and distribution of NFTs infringe against the exclusive rights granted to copyright holders. These exclusive rights—which are protected by copyright

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laws around the world—include the ability to duplicate the work, distribute copies, make derivative works, and present it in public or perform it in public.² If any of these actions are involved in the minting or sale of an NFT, they might be covered by these exclusive rights and require consent from the copyright holder. Moreover, the hazy boundaries between originality and derivative works make it more difficult to create and sell NFTs, which calls for a thorough analysis of the ramifications of the laws currently in place. In light of copyright law, this research project will analyse the legal ramifications of NFT production and sales. It will examine whether these actions fall under the exclusive jurisdiction of copyright holders and what legal repercussions can arise

¹ Pila, J., & Torremans, P. (2019). *European Intellectual Property Law* (3rd ed.). Oxford University Press, p. 327.

² Smith, B. (2021). "NFTs and Copyright: Navigating the Legal Landscape." *Journal of Intellectual Property Law & Practice*, 16(10), 930.

for people who produce or trade NFTs without the required authorization.³ The paper will explore the intricacies and potential risks involved with NFTs in the digital economy by looking at previous legal decisions, current licensing systems, and real-world examples. By doing this, it aims to give consumers, artists, and NFT makers a clear grasp of their legal obligations as they navigate this changing field.

EXCLUSIVE RIGHTS OF COPYRIGHT OWNERS

Original work authors are granted exclusive rights under copyright law to manage how and where their works are used and distributed. In order for writers, musicians, artists, and other content creators to profit financially from their work and keep control over how it is used, these rights are essential. The following are the main exclusive rights that copyright owners usually receive:

- **Reproduction Right:** This privilege gives the owner of the copyright authority over any and all copies and reproductions of the work in any format or media. Digital and physical copies are included with this. Because it forbids unlawful duplication of the work, this right is essential to the majority of copyright protections.⁴
- **Distribution Right:** This provision allows the owner of the copyright to regulate the public sale, rental, lease, or other transfers of copies of the work. This privilege guarantees the copyright holder the ability to control the distribution and commercial exploitation of their creations.⁵

³ Cornish, W., Llewelyn, D., & Aplin, T. (2019). *Intellectual Property: Patents, Copyright, Trade Marks & Allied Rights* (9th ed.). Sweet & Maxwell, p. 413.

⁴ Mendis, D. (2013). "The Clone Wars: 3D Printing, Copyright, and Reproduction Right." *European Intellectual Property Review*, 35(3), 155-165.

⁵ Bently, L., & Sherman, B. (2014). "Reproduction, Digital Copies, and Copyright: From the Statute of Anne to the Era of the Internet." *Cambridge Law Journal*, 73(3), 527-564.

- **Right to Create Derivative Works:** This legal protection gives the owner of the copyright the ability to direct the production of new works that are adapted or derived from their original creations. This can apply to any alteration made to the original work, including translations, adaptations, and alterations.

Ensuring that any new versions or adaptations are permitted and preserving the integrity of the original work depend heavily on this right.⁶

- **Public Performance Right:** This gives the owner of the copyright the only authority to permit or forbid the performance of the work in public, whether it be live or on video. For works like music, plays, movies, and other performance-based entertainment, this right is especially crucial.
- **Public presentation Right:** This provision gives the copyright holder authority over the work's public presentation. This includes putting up visual pieces in public areas or on websites, including paintings, photos, or sculptures. With the help of this right, the owner of a copyright is guaranteed autonomy over the location and mode of public presentation of their work.⁷
- **Digital Transmission Right:** Copyright law in certain jurisdictions, including the US, contains a digital transmission right for sound recordings specifically.⁸ This right gives the copyright owner control over how their work is digitally transmitted over the internet or other digital networks. In

⁶ Gervais, D. (2021). "The Digital Reproduction Right: Current Challenges." *Journal of the Copyright Society of the USA*, 68(1), 1-22

⁷ Rahmatian, A. (2022). "The Concept of Originality and Copyright Protection for NFTs." *European Intellectual Property Review*, 44(3), 145.

⁸ Dinwoodie, G. B., & Dreyfuss, R. C. (2012). "The Law Applicable to Digital Reproduction." *Columbia Journal of Law & the Arts*, 35(4), 331-373.

the era of digital distribution and streaming, where art is frequently ingested in digital form, this right is essential.

Application to NFTs

When it comes to NFTs, these exclusive rights can be directly implicated depending on how the NFT is created, sold, and used:

- **Reproduction:** If the original work is incorporated into or directly linked to an NFT, minting it may require creating a digital copy of the original piece.
- **Distribution:** If an NFT gives access to or contains a digital copy of the work, selling or transferring it may be seen as distributing a copy of the work.
- **Derivative Works:** An NFT that modifies or reworks the source material in any way may qualify as a derivative work.
- **Public Display:** The public display right can be important if the NFT is utilized to show the work in a virtual gallery or online.

In cases where any of these exclusive rights are involved, the copyright owner must provide permission or a license for the creation and sale of the NFT. Without such authorization, the creation and sale of NFTs could constitute copyright infringement, leading to legal disputes and potential liability for NFT creators and sellers.

LEGAL IMPLICATIONS OF COPYRIGHT OWNERSHIP IN THE CONTEXT OF NFTS

The legal implications of copyright ownership in digital art are complex and constantly changing, particularly in the context of NFTs. The movement of digital art into blockchain platforms raises more

concerns about the ownership and rights of these works of art. For example, the minting of an NFT often only confers limited usage rights as specified by the smart contract, rather than automatically transferring copyright ownership to the purchaser. This distinction becomes crucial because a lot of purchasers might think that owning an NFT gives them complete copyright ownership, which could cause problems if they want to share or reproduce the work. Additionally, the decentralized structure of blockchain makes enforcement more difficult because it may present few opportunities for artists to defend their rights against unauthorized use or duplication of their creations online, leaving gaps in the legal protection available to both producers and collectors. To tackle these obstacles, a thorough comprehension of current copyright regulations and how they might be tailored to the particularities of digital art and NFTs is required.⁹

The dynamics of the market are greatly influenced by the interaction between copyright law and NFT sales, especially when it comes to determining ownership and value. Since NFTs frequently depict digital art or media, it is now critical to have a clearly established copyright status. It's common for buyers to believe that acquiring an NFT gives them all related rights, but this is frequently untrue; authors typically keep copyright and sell the NFT just as a proof of ownership. This false belief has the potential to cause disagreements and erode buyer confidence, which will ultimately impact pricing and market liquidity. Moreover, the implementation of copyright assertions carries diverse consequences for secondary market dealings, wherein the legitimacy and origin of non-fungible tokens are scrutinized.¹⁰ Thus, as the legal environment changes in response to technology improvements and evolving consumer expectations, it is imperative that copyright rights be understood and communicated transparently in order to foster a strong and reliable NFT market.

⁹ Sarikakis, K. (2022). "Intellectual Property in the Digital World: The Case of NFTs." *Journal of Intellectual Property Law & Practice*, 17(4), 295-312.

¹⁰ Rahmatian, A. (2022). Copyright and Digital Rights Management in the Age of NFTs. (*European Intellectual Property Review*, 44(6), 377-389).

Claims of copyright infringement have consequences that go beyond the courtroom and have a big impact on how the NFT market operates. The threat of legal consequences acts as a deterrent as well as an incentive for compliance as artists and collectors negotiate the challenges of ownership and originality. Unauthorized reproduction-related disputes can cause market reactions to happen quickly as players work to rebuild confidence and protect the integrity of digital assets. As an example of how exclusivity connected with NFTs encourages investigation into the origins of digital works and the veracity of claims made in relation to them, consider the Bored Ape Yacht Club (BAYC).¹¹

Furthermore, China's dual-track legal system emphasizes the contradiction that exists between public and private law, highlighting the possibility of judicial disputes that could weaken the safe harbour protections afforded to intermediaries. Therefore, it is essential to actively monitor copyright claims in order to maintain sustainable market processes that uphold the rights of authors and promote innovation.

A contentious issue among legal scholars and practitioners is how non-fungible tokens (NFTs) are treated legally under UK copyright law. The main question is whether any of the exclusive rights provided to copyright owners are involved in the creation and sale of NFTs, and if so, if this means that only the copyright owner or a party designated by the owner may create NFTs.¹² One of the most essential exclusive rights granted to copyright holders under UK copyright law is the reproduction right. The owner can

manage who makes copies of the work

¹¹ Li, J. (2021). "NFTs and the Ownership of Digital Art: Copyright Issues and Legal Risks." *Berkeley Technology Law Journal*, 36(1), 51-89.

¹² Samuelson, P. (2021). "Ownership and Control in the Digital Era: Copyright Challenges in the Context of NFTs." *Stanford Law Review*, 73(2), 351-378

thanks to this right. Some academics contend that the reproduction right might be impacted by the NFT minting procedure.

According to Professor Tanya Aplin, an NFT may be considered a reproduction for the purposes of the Copyright, Designs and Patents Act 1988 (CDPA) if it includes creating a digital duplicate of the underlying work, for as by embedding it into the token or connecting to a high-resolution version. This implies that minting such an NFT might violate the exclusive reproduction right of the copyright owner without their consent.¹³

Another exclusive right that could be relevant in NFT transactions is the distribution right, which deals with the public distribution of copies of a work.

Dr. Eleonora Rosati emphasizes that the sale of a non-fungible token (NFT) may be seen as a distribution method, particularly if the NFT includes or grants access to the copyrighted material. She contends that NFTs may be covered by the copyright owner's distribution right since they frequently entail the transfer of a digital copy or a way to access the work. Therefore, if NFTs are sold without permission, they may violate this right.¹⁴

The UK copyright holders also have the sole right to create derivative works, which entail altering or modifying an original work. Andres Guadamuz, a legal scholar, points out that certain NFTs might be classified as derivative works, particularly if they change the original material or incorporate fresh digital components. An NFT may be deemed a derivative work if it is a changed version

¹³ Tanya Aplin, *Copyright Law in the Digital World: Challenges and Opportunities* (Cambridge University Press, 2020).

¹⁴ Eleonora Rosati, *"Copyright in the Digital Single Market: Article-by-Article Commentary on the Provisions of Directive 2019/790,"* Oxford University Press, 2021.

of an already published work, in which case it must obtain consent from the copyright holder in order to be produced or sold.¹⁵

A novel method of digital distribution is represented by the selling of NFTs, in which ownership of the token (and thus, the associated digital content) is changed hands between two parties. The transfer of the NFT may be construed as dispersing a copy of the work if it contains or is connected to a copyrighted work. This would need permission from the copyright owner under UK law. NFT sales, which enable the transfer of ownership or access to digital content, may be covered by the distribution right, according to recent legal assessments. Therefore, it may be considered copyright violation to sell NFTs that contain copyrighted content without authorization.

The moral rights of creators, such as the right of integrity, which enables them to protest against disparaging use of their work, are also safeguarded in the UK under copyright law. According to Professor Lionel

Bentley, NFTs that alter or fragment the original work may violate the moral rights of the artist, especially if the changes are deemed disparaging or detrimental to the artist's standing.¹⁶ This part of UK copyright law makes it more difficult to create NFTs because makers have to consider the original artist's moral rights in addition to their economic rights.

Many academics stress the need for licensing when it comes to NFTs because of the possibility of exclusive rights violation. According to Dr. Emily Laidlaw, licensing agreements are essential to guaranteeing the legality of NFT production

¹⁵ Andres Guadamuz, *"The Digital Object and the Law,"* Journal of Intellectual Property Law & Practice, 2021

¹⁶ Lionel Bentley, *"Moral Rights and Digital Art: A UK Perspective,"* European Intellectual Property Review, 2021

and sales. These agreements may outline which rights are retained by the copyright owner and which are granted to the NFT buyer.¹⁷ The production and sale of NFTs could easily infringe upon the exclusive rights of the copyright owner in the absence of such agreements, giving rise to legal problems.

It is true that the production and sale of NFTs in the UK may infringe upon a number of the exclusive rights granted to copyright holders, such as the rights to reproduction, distribution, and derivative works. Scholars concur that minting and selling NFTs may violate copyright if the copyright owner is not properly notified. Consequently, only the copyright holder or a third party that has been granted the required rights through a license agreement should be able to make or sell NFTs. This finding emphasizes how crucial it is to get express consent before participating in NFT transactions involving protected items.¹⁸

The emergence and commercialization of non-fungible tokens (NFTs) mark a revolutionary convergence of digital technology and intellectual property law, posing important queries regarding the applicability of conventional copyright concepts in this novel setting. These are particularly important problems in countries like the UK, where copyright law is regulated by the Copyright, Designs and Patents Act 1988 (CDPA), because the law aims to address the intricacies of digital ownership and the rights of creators in the rapidly changing digital landscape.¹⁹

The owner of a copyright is typically granted a number of exclusive rights under copyright law, such as the ability to make derivative works, distribute copies,

¹⁷ Emily Laidlaw, *"Re-imagining Copyright in the Age of Digital Reproduction,"* Modern Law Review, 2022

¹⁸ *ibid*

¹⁹ E. Rosati, *"Copyright Licensing and the Rise of NFTs: Legal and Practical Considerations,"* Intellectual Property Quarterly, 2023.

reproduce the work, and manage its public performance or exhibition. These rights are intended to guarantee that creators may profit from their creative endeavours by giving them control over how their intellectual property is used and commercialized.

The emergence of NFTs—unique digital assets validated by blockchain technology—challenges established ideas about copyright and ownership. NFTs can be used to indicate ownership of tangible or

digital goods, such as films, music, artwork, and other creative works.

Due to NFTs' distinct characteristics as digital and transactional entities, it is unclear whether or whether the formation and sale of these entities infringes against the exclusive rights of copyright holders, and if so, under what circumstances such activities are permissible.²⁰

The reproduction right, which gives the copyright owner the sole authority to make copies of their work, is one of the main rights under copyright law. This encompasses both direct copies and the conversion of a work into an alternative digital format in the context of digital media.

When a new work of art, music, or photography is "minted," or created, it frequently entails the development of a digital rendition of an already-existing work. To incorporate the work into the NFT, a copy of the work may need to be made. Alternatively, the work may need to be linked from the NFT to a digital file.²¹ This might be seen as a reproduction act under UK copyright law, requiring consent from the copyright owner.

²⁰ Akash Mukherjee, "Digital Copyright and NFTs: Emerging Issues in Indian Law," *Journal of Intellectual Property Studies*, 2022.

²¹ Eleonora Rosati, "Copyright in the Digital Single Market: Article-by-Article Commentary on the Provisions of Directive 2019/790," Oxford University Press, 2021.

Thus, the manufacture of NFTs without the owner of the copyright's consent may violate that right to reproduce. Legal scholars agree, arguing that minting an NFT constitutes a clear exercise of the reproduction right and should be under the control of the copyright owner whether it entails reproducing a work protected by copyright or generating a new digital file based on the work.

The distribution right is a crucial component of copyright law that is pertinent to NFTs. The copyright holder can regulate how copies of their work are distributed to the general public thanks to this right. This right typically covers the sale, renting, or lending of hard copy copies of a work in the real world. But in the digital sphere, distribution rights are becoming more and more important when it comes to the buying, selling, and transferring of digital assets.²²

One could classify the selling of an NFT as a type of digital distribution if it contains or grants access to a work that is protected by copyright. This is so that ownership or access to the digital content it represents can be transferred using the NFT as a method. The sale of an NFT may be construed as dispersing a copy of the work to the public if it contains a copy of the copyrighted work or is connected to a file holding the work.²³

Unauthorized distribution of copyrighted content is illegal in the UK and constitutes a violation of the exclusive rights of the copyright owner, even in digital format. Consequently, it may be illegal to sell NFTs that contain copyrighted content without the owner's permission. All participants in the distribution chain must get authorization; this means that in order to share the

²² Pila, J., & Torremans, P. (2019). *European Intellectual Property Law* (3rd ed.). Oxford University Press.

²³ WIPO (2021). "NFTs: Emerging Legal Issues." *World Intellectual Property Organization Magazine*, 17(2), 56-67.

work in this way, the NFT creator and any future vendors must both have the necessary rights. The ability to produce derivative works is yet another essential component of copyright defence. A translation, modification, or remix of a work that is protected by copyright is an example of a derivative work, which is a new work that is based on or derived from one or more previous works. In the case of NFTs, the process of producing the NFT may constitute a derivative work if it includes modifications to the original work, such as remixing, digital upgrades, or other creative changes. Examples of derivative works include NFTs that contain remixes of musical compositions or modified versions of digital artwork. Without the copyright owner's consent, making such an NFT would probably violate their exclusive right to produce derivative works. Concerned about the integrity of their work, artists and creators should pay special attention to this aspect of copyright law. Unauthorized derivative works violate the legal and moral rights of the copyright owner, including the creator's right to prohibit mutilation or distortion of their work. UK law provides moral rights in addition to the economic rights afforded by copyright, which safeguard the creator's reputation and personal interests. These include the right to object to the work being treated disparagingly (right of integrity) and the right to be recognized as the author of the work (right of attribution).²⁴ If the process of creating and selling NFTs includes changing the original work in a way that the author finds objectionable or if the creator is not given due credit, then there may be a violation of these moral rights. Even while the NFT itself

²⁴ Jane C. Ginsburg, *"Moral Rights in the US: Reconciling Copyright and Artistic Integrity,"* Columbia Law Review, 2020.

does not contain a direct copy of the original work, it could nevertheless violate the moral rights of the artist if it is made to alter a copyrighted artwork without the artist's consent. Moral rights are taken seriously in the UK, and violations of them may result in legal action. Consequently, it is essential to take into account the original creator's moral rights in addition to the financial rights linked with copyright while producing and marketing NFTs. It is crucial that NFTs are created and sold with the appropriate license due to the possibility of copyright and moral rights violations. Typically, this entails getting a license from the owner of the copyright, which details the rights being transferred along with the NFT and the circumstances in which it may be sold or otherwise transferred. The extent of the rights awarded, including whether the NFT buyer may show the work, make derivative works, or sell the NFT to third parties, can be described in a licensing agreement. The maker and distributors of NFTs might be sued for violating the exclusive rights of the copyright owner if they don't have such a license.

THE JURISDICTIONAL DIFFERENCES WITH RESPECT TO THE COPYRIGHT LAW AND NFT

Non-fungible tokens (NFTs) and copyright law interact in a variety of ways, and these interactions might range greatly between jurisdictions. Examining the main distinctions throughout jurisdictions, this part focuses on the UK, the US, and India. In order to successfully navigate the worldwide NFT market, NFT developers, purchasers, and legal experts must be aware of these distinctions.

Copyright Law and NFTs in the UK

The Copyright, Designs and Patents Act 1988 (CDPA) is the legislation that governs copyright in the UK. A variety of exclusive rights are granted to copyright owners by the CDPA, including the ability to duplicate, distribute, and develop derivative works derived from their copyrighted property. When thinking about the legal ramifications of producing and offering for sale NFTs, these rights are important.

1. **Reproduction Right:** In the United Kingdom, making an NFT that contains a digital copy of a work protected by copyright or provides a link to one may be construed as a reproduction act. Since unauthorized reproduction is considered copyright infringement under the CDPA, permission from the copyright owner would be necessary for this.
2. **Distribution Right:** It is possible to classify the purchase or transmission of NFTs that depict or include copyrighted content as a sort of distribution. As distributing copies of a work without permission violates the copyright holder's exclusive rights, in the UK this would normally require a license from the copyright owner.
3. **Derivative Works:** An NFT may qualify as a derivative work if it entails producing a new work that is based on an already-existing one, such a digital remix or adaptation. According to UK law, making derivative works without the owner of the copyright's permission is likewise illegal.
4. **Moral Rights:** Rights to attribution and the ability to object to unfavourable treatment of a work are examples of moral rights included by UK copyright law. Dealing with NFTs that alter or neglect to give credit to the original work presents an additional level of complexity because these rights are proprietary to the creator and cannot be transferred.

Copyright Law and NFTs in the United States

The Copyright Act of 1976 governs copyright law in the United States. Although the UK's copyright rules and those pertaining to NFTs have many similarities, there are some significant distinctions in how these laws are implemented.

1. **Reproduction Right:** Just like in the UK, the reproduction right is involved when preparing an NFT that contains a copy of a work that is protected by copyright in the US. But the U.S. Copyright Act is sometimes read more loosely, especially when it comes to the definition of "substantial similarity" in infringement prosecutions.
2. **First Sale Doctrine:** Under the "first sale doctrine," an owner of a copy of a work that was obtained lawfully may resale it without the copyright holder's consent in the United States. It is still unclear and hotly contested, though, how this concept applies to digital assets like NFTs, since digital sales frequently entail creating new copies of the work, which may not fall under the doctrine's purview.
3. **Fair Use:** In the United States, the term "fair use" is interpreted more broadly, permitting the unrestricted use of copyrighted works for purposes including parody, commentary, and criticism. This might be the case for some NFTs, but evaluating whether fair use is applicable would depend much on the particulars of each instance.
4. **Moral Rights:** The United States places a lower priority on moral rights than the United Kingdom, with the Visual Artists Rights Act (VARA) primarily recognizing them for visual artists. Creators' approaches to NFTs may be influenced by this narrow definition of moral rights, especially when it comes to adaptations or changes made to the original work.

Copyright Law and NFTs in India

The Copyright Act of 1957, which has undergone numerous amendments to accommodate new digital concerns, governs copyright law in India. Although the way this law is applied to NFTs is still being worked out, the following important points are pertinent:

1. **Reproduction Right:** Just like in the UK and the US, permission from the copyright holder in India is necessary in order to create an NFT that involves duplicating a work that is protected by copyright. Under Indian law, reproduction without authorization is blatantly illegal.
2. **Right of Distribution and Communication:** The copyright legislation in India covers both the right of distribution and the right to notify the public about the work. Both rights may be involved in the selling of NFTs, particularly if the NFT contains publicly transferable or accessible digital content. A license would be necessary to prevent infringement.
3. **Moral Rights:** The right to integrity and attribution are two moral rights that are strongly protected by Indian copyright law. These rights are especially important when NFTs change or modify the original work because those changes are not allowed.
4. **Technology and Digital Issues:** India's approach to copyright law in relation to technical and digital issues is continuously developing. Although the legal framework addresses the dissemination and reproduction of digital works, it is unclear how specifically it applies to NFTs, and if the industry grows, more legislative or judicial clarification may be required.

Copyright laws apply to the creation and selling of NFTs, although how these rules are applied differs from jurisdiction to jurisdiction. Although the United States, India, and the United Kingdom all adhere to similar principles, there are notable distinctions in the how rights like morality, reproduction, and distribution are handled. Understanding these jurisdictional distinctions will be crucial for navigating the legal system and guaranteeing compliance with copyright laws in several nations as the NFT industry continues to develop.

CONCLUSION

Non-fungible tokens (NFTs) can be created and sold within the parameters of the exclusive rights granted to copyright holders. When an NFT is minted and sold, these rights—which usually cover reproduction, distribution, and the creation of derivative works—may be infringed.

In addition to being technological breakthroughs, the production and selling of NFTs are also legal actions that touch on well-established copyright legal precepts. The Copyright, Designs and Patents Act 1988 (CDPA) grants copyright owners certain exclusive rights, which can be exercised in the UK during the manufacture and sale of non-fungible tokens (NFTs).

These rights encompass the ability to reproduce, distribute, and produce derivative works. Making a digital copy of the underlying work or producing a derivative work are two possible steps in the minting of an NFT, both of which need permission from the copyright owner. Furthermore, it might be argued that selling a non-file transfer (NFT) that contains a copyrighted work or provides a link to one can be considered a distribution method, falling under the exclusive rights of the copyright owner.

NFTs can only be lawfully made and sold by the copyright owner or a party who has been granted the necessary rights through a license agreement, as these activities are in fact covered by the exclusive rights afforded to copyright owners in the UK. A copyright infringement may result from the unauthorized minting or selling of NFTs that distribute, replicate, or alter a work protected by copyright, putting the violator at risk of legal action.

To prevent infringement and maintain the viability of this new kind of digital trade, it is essential for individuals operating in the NFT market to comprehend and respect the legal rights of copyright holders as the digital landscape changes. Therefore, in the context of NFTs, acquiring the necessary license is crucial to ensuring compliance with UK copyright law.

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