

IP Infringement

and ✨ NFTs ✨

Jacob Robinson

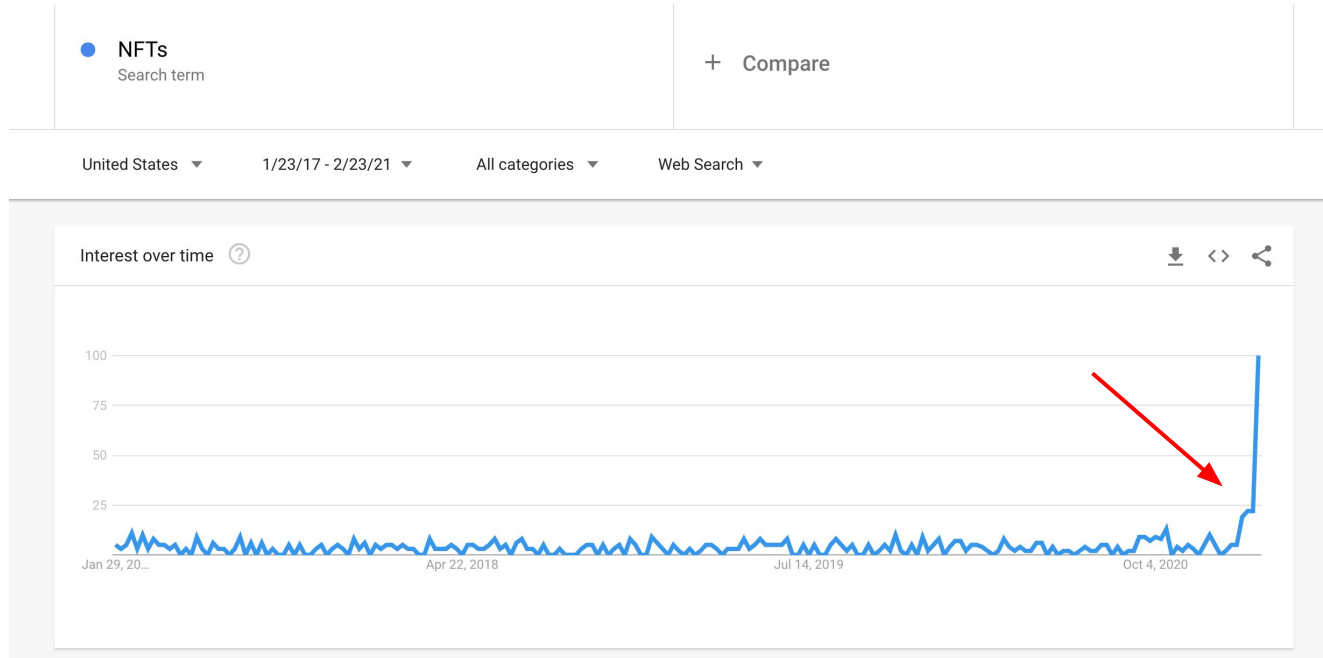


Lawyer
McCarthy Tetrault, Canada



Host (Blockchain law podcast)
Law of Code

NFTs exploded in popularity





Just another fad from the crypto weirdos?

 The New York Times

Why an Animated Flying Cat With a Pop-Tart Body Sold for Almost \$600,000

A fast-growing market for digital art, ephemera and media is marrying the world's taste for collectibles with cutting-edge technology.

1 day ago



Or the next big thing?

“This NFT world is likely the greatest unlock of artist opportunity in 100+ years. This isn’t a suboptimal or fringe version of the real-world art economy, it is a vastly improved one.”

— Scott Belsky,
Chief Product Officer at Adobe, Founder of Behance, Venture Partner at Benchmark

Source: [Medium](#)

But enough fun stuff. Let's talk about an important legal consideration: the underlying IP.

What happens if someone rips off your project?

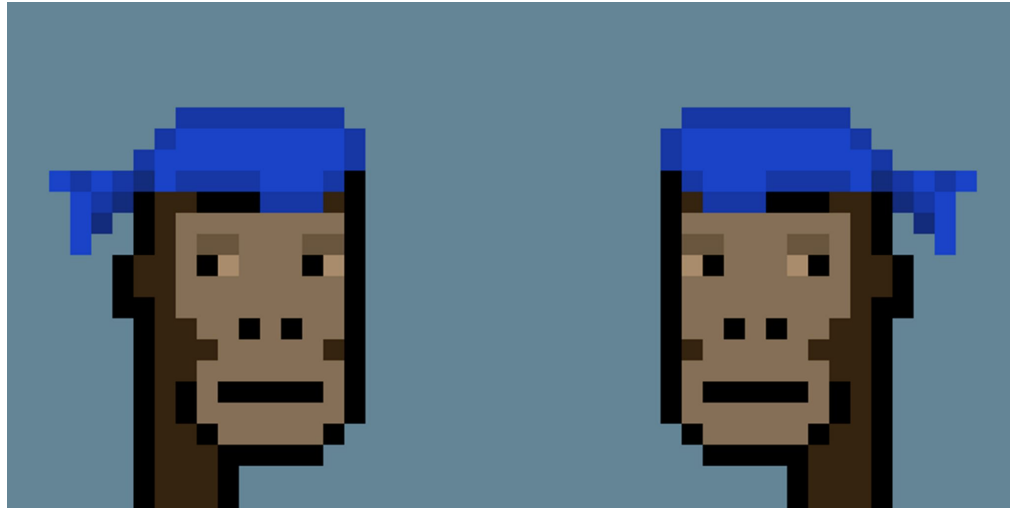
Outline

1. Copyright Infringement
2. Owners' Rights
3. The Process
4. Case Study
5. The Future

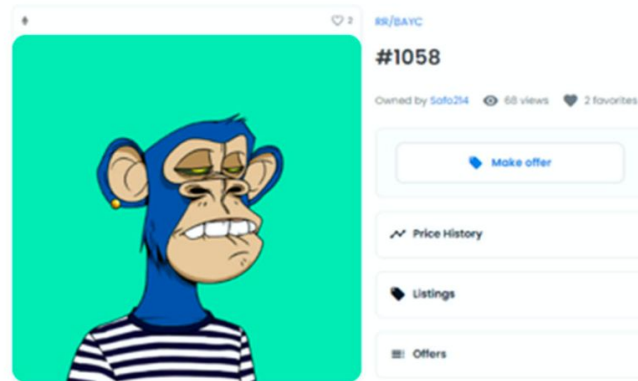
A large teal geometric shape, resembling a stylized arrow or a corner, occupies the left side of the slide. It has a diagonal edge separating it from the white background.

1. Copyright Infringement

Cryptopunks & Cryptophunks



BAYC & RR/BAYC



MetaBerkins



NOT
YOUR
MOTHER'S
BIRKIN

/MetaBirkins

Copyright Infringement

- Direct or primary infringement
- Indirect or secondary infringement

There are exceptions

Allowed

- ✓ Research
- ✓ Private Study
- ✓ Education
- ✓ Parody
- ✓ Satire
- ✓ Interoperability
- ✓ Backup copies

Forbidden

- ✗ Direct or primary infringement
- ✗ Indirect or secondary infringement



2. Owners Rights

Owners have the following rights:

- to first distribute an unpublished work and make copies of it (or a substantial part of it) and making it available to the public
- to reproduce the work in any material form (e.g. make a shorter version, translate, adapt)
- to perform the work in public
- to communicate the work to the public by telecommunication
- to exhibit an artistic work in public
- moral rights

Let's look at how an enforcement process works



3. The Process

MetaBirkins



NOT
YOUR
MOTHER'S
BIRKIN

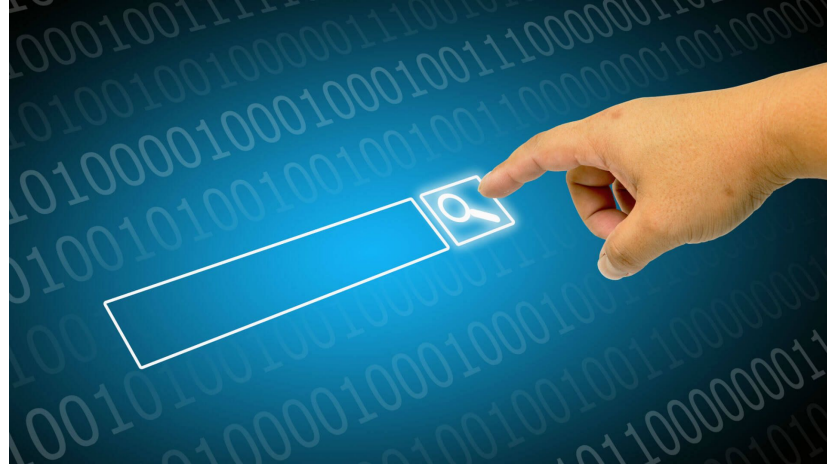
MetaBirkins

Step 1: Speak to a lawyer



Who can sue? What do you need to sue?

Step 2: Establish your claim



What can you prove?

Step 3: Enforcement



How do you want to address the issue?



4. Case Study

**So what does this look like, in
reality?**

What it looks like

MetaBirkins NFT Creator Allegedly Receives Cease and Desist From Hermès

What it looks like

<https://www.reuters.com> › legal › litigation › hermes-laws... ⋮

Hermes lawsuit over 'MetaBirkins' NFTs can move ... - Reuters

May 6, 2022 — Hermes sued Rothschild in January over his **MetaBirkins**, which depict the company's Birkin bags covered in colorful fur. Hermes' lawsuit said ...

<https://www.crowell.com> › AlertsNewsletters › all › In-t... ⋮

Hermès survives motion to dismiss in MetaBirkin NFT lawsuit ...

Jun 13, 2022 — So far, the “**Metabirkins**” **case** shows us that digital images interpreted as artwork may be entitled to free expression, and the use of NFT ...

What it looks like



SERIAL #: 97096366

FILING DATE: OCT. 27, 2021

OWNER: NIKE, INC

IC 009: Downloadable virtual goods, namely, computer programs featuring footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys and accessories for use online and in online virtual worlds

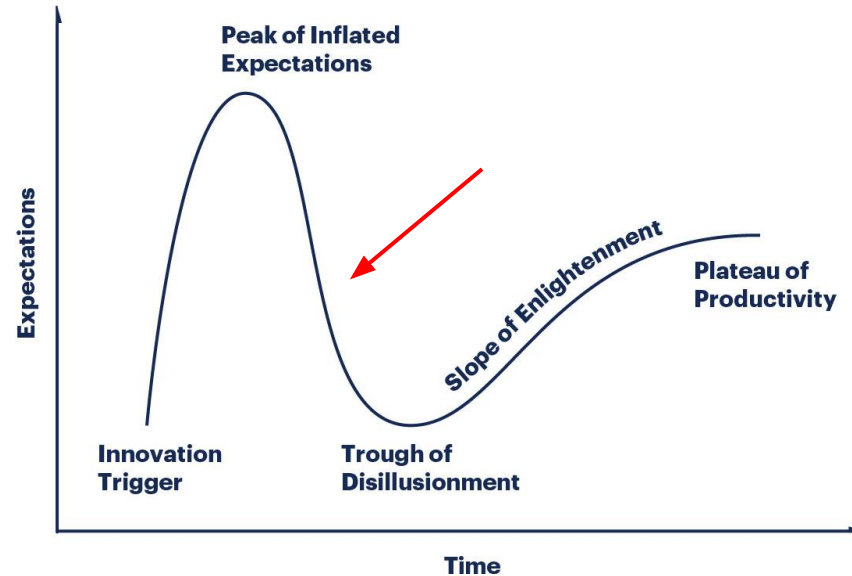
IC 035: Retail store services featuring virtual goods, namely, footwear, clothing, headwear, eyewear sports bags, backpacks, sports equipment, art, toys and accessories for use online; on-line retail store services featuring virtual merchandise, namely, footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys and accessories

IC 041: Entertainment services, namely, providing on-line, non-downloadable virtual footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys and accessories for use in virtual environments

The graphic represents only a portion of the application. For the full application, visit: https://tsdr.uspto.gov/#caseNumber=97096366&caseType=SERIAL_NO&searchType=statusSearch

**So, before we wrap up, where is
the NFT space today?**

Probably somewhere here:



Most likely, the “correction” will continue in the next 6 to 18 months

But I'd bet that after the correction, critical infrastructure gets built that paves the way for broader NFT use, with important legal considerations.

So maybe we're actually somewhere here:



Source: [Wait Buy Why](#)

Thanks!

Questions?

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