

## **NFTs could re-enter the art market thanks to improved treatment of copyrights.**

The NFT sphere experienced its big boom in 2021 when hardly anyone had not heard of these tokens. However, in 2022, there was a drastic downturn, and it seemed like NFTs would end up in the dustbin of history. But now, NFTs are making a comeback. This can be inferred from recently launched NFT projects, including unprecedented collaborations such as Coca-Cola and Onchainsummer. Law, which unfortunately has been somewhat sidelined so far, may also help in the successful return of NFTs to the mainstream art market.

Coca-Cola is the largest company ever to venture into the world of NFTs (at the time when the article was created in August 2023), emphasizing the artistic value of the project. Within it, tokens inspired by artworks of artists such as Jan Vermeer, Edvard Munch, and others will be released. This certainly isn't the last such significant project. On the contrary, the popularity of NFTs is expected to grow again. Almost every new project brings new interesting elements for its fans, and the industry as a whole is trying to simplify the difficult process of entry into the market for buyers. Nowadays, you can already buy some NFTs with a card, which was almost unthinkable two years ago.

Some publishers then establish trust in NFTs by more thorough treatment of copyright. For every NFT publisher, it is clear that a smart contract is an essential part of the token that allows its existence in the technical world. However, just as necessary should be a regular contract, that is, an agreement.

Some Web3 developers or passionate NFT publishers may now be scratching their heads. "Why should I even include any legal stuff in my tokens when it's been going on fine so far?" To some extent, they are right because NFTs have gone through their development so far without any "legal stuff," but its absence is one of the reasons why the overall NFT market plummeted by more than 95% at the end of 2022 and still remains in a downturn. Quality legal regulation could have prevented a drastic decline and can also help with recovery.

How? Quite easily, which we can demonstrate with practical examples. Let's consider artistic NFTs containing an image that is also an artwork by a specific artist. For better understanding, let's name our NFT "Banana." Let's imagine two theoretical situations: in the first one, Banana has a licensing agreement, while in the second one, it does not. Right after the release of the NFT with Banana, which includes a licensing agreement, it will gain more popularity than its counterpart without the agreement. The artistic value of both Bananas is entirely the same. So why can a licensing agreement have such an impact on the popularity and consequently the price of an NFT?

The answer lies in what we are actually buying. When we buy a piece of art, we are usually purchasing a tangible medium and, along with it, some scope of copyright to this work (according to the Copyright Act, copyrights themselves cannot be sold or bought; only their property law component can be transferred). The extent of these acquired copyrights can be determined by the author of the work. For example, when the author sells their physical painting and informs the buyer that they don't mind if the image is displayed at exhibitions, according to Czech law, this constitutes a non-exclusive license for commercial use of the work. However, if the author didn't mention anything about the possibility of exhibiting the painting during the sale and didn't sign anything, no license for that purpose was granted.

Similarly, it is the case with our Bananas. One Banana (with a licensing agreement) provides its buyer with a clear overview of the copyright that will transfer to the buyer upon purchase. The license adds an objective value to the NFT, making the token more attractive to fans and investors, subsequently positively affecting its price and popularity. Moreover, the presence of a licensing agreement within the token's internal structure, directly in the buyer's dispositional sphere, serves as protection against the buyer infringing on the token publisher's copyright, even unwittingly, for example, because they may not know the scope of their license.

The other Banana (without a license) does not explicitly provide any copyright to its buyers. However, a narrow part of the copyright is indirectly transferred because to issue the token through an NFT platform (such as Binance, OpenSea, Rarible, etc.), the publisher is required to agree to the Terms of Service of such a platform. These terms include provisions regarding licenses granted by the author to both the platform and the buyer of the NFT. The license for the buyer of Banana #2 is thus determined by a third party and is very limited, usually to prevent disputes with token publishers. The license could theoretically be determined by the original blockchain developer, i.e., the author of the software code. However, it is necessary to emphasize the technical complexity associated with this change. Blockchain represents software code whose task is to store various data and verify it. Ongoing analysis of this data and any non-technical recommendations from the blockchain could burden the system and complicate its operation.

The situation of Banana without a license (or, as we have discovered above, a license determined by a specific NFT platform) may seem relatively unproblematic, but it carries huge risks.

The first risk lies in the fact that our Banana could simply "withdraw" from the platform on which it was issued. This could happen, for example, by transferring it to another buyer who does not operate on that NFT platform. Every NFT platform essentially operates as a secondary market to individual blockchains. These platforms mainly facilitate operations on the blockchain itself. Therefore, it is highly likely that a person who purchases an NFT will not use the services of any platform. This will lead to the announced "withdrawal" of the token from the platform. Technically, the NFT will remain the same, but it will no longer contain a mention of the license from the original NFT platform, leading to uncertainty regarding the use of this token from a copyright perspective.

The second risk lies in the fact that an NFT platform is a purely private entity that helps publishers place their NFTs on the blockchain using their own smart contract. If the platform goes bankrupt and ceases to exist, the confirmation of the granted license will disappear as well. This creates a situation where the NFT exists on the blockchain, but the confirmation of the granted license is untraceable. After some time, buyers will not know that any license existed at all. The NFT publisher will also have difficulty proving the existence of the license.

These two risks together lead to the fact that a Banana without a license will be considered a risky asset by a large part of the conservative investor public, which will deter many potential buyers.

Remedying such an unfortunate situation is possible, but it requires drastic steps from the platforms. Ideally, NFT platforms should agree on a single format of a license agreement for users. However, due to the large number of platforms and high transaction costs, this negotiation

is unlikely to happen. Nevertheless, NFT platforms can address this issue individually by informing users about the benefits of license and other agreements related to issued NFTs.

Using the example of both tokens with and without a license, we can see how a single legal document can change the public's perception of the token, its popularity, and value. Similar strategies can be applied to tokens of other types.

Membership tokens, utility tokens, music or video tokens—all of these tokens should be backed by the appropriate legal document that ensures the position of its publisher and its buyer. This simultaneously sends a signal to a broader and more conservative part of investors about the credibility of a potential investment. Therefore, when issuing NFTs, it is advisable not to underestimate the securing of the legal aspect of the matter.

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