

THE SAMPLE “CAN’T BE EVIL” NFT LICENSE

TERMS AND CONDITIONS¹

Last Revised on October 10, 2022

Background: The sample “Can’t Be Evil” NFT License Terms and Conditions set forth on the exhibits hereto (the “**Licenses**”) are provided as a template for NFT projects to consider when creating and selling NFTs that are associated with specific artwork or media. The Licenses sets forth the rights that owners of such NFTs obtain with respect to any artwork, media, or other content that is specifically linked to their NFTs. The text of the Licenses is made freely available to the public under the terms of CC0 1.0 Universal.

Deployment: It is envisioned that the Licenses may be tailored by creators of NFT projects to suit their specified needs. The Licenses could then be made available for review at a specific URL or other repository where such NFTs are made available for purchase. Further, the metadata and description for the underlying NFTs could include a link to such party’s deployed URL where the particular license can be accessed for review prior to initial or secondary purchase. Much like the underlying media for the NFT, the actual terms of the license should be stored using a permanent decentralized storage solution to ensure the terms of such license will always be accessible by NFT owners in the future.

AH Capital Management, L.L.C. (“**a16z Crypto**”) has deployed six immutable versions of the Licenses (the “**a16z Instances**”). The six a16z Instances are as follows, each of which is attached hereto as an Exhibit:

1. **Exhibit 1 – Exclusive Commercial Rights with No Creator Retention (“CBE-EXCLUSIVE”)** – Full exclusive commercial rights granted, with no hate speech termination. Creator does not retain any exploitation rights. Deployed to: <https://arweave.net/zmc1WTsplhFyVY82bwfAicIExLFH5IUcHHUN0wXg4W8/1>
2. **Exhibit 2 – Non-Exclusive Commercial Rights (“CBE-COMMERCIAL”)** – Full non-exclusive commercial rights granted, with no hate speech termination. Creator retains exploitation rights. Deployed to: <https://arweave.net/zmc1WTsplhFyVY82bwfAicIExLFH5IUcHHUN0wXg4W8/2>
3. **Exhibit 3 – Non-Exclusive Commercial Rights with Creator Retention & Hate Speech Termination (“CBE-COMMERCIAL-NO-HATE”)** – Full non-exclusive commercial rights granted, with hate speech termination. Creator retains exploitation rights. Deployed to: <https://arweave.net/zmc1WTsplhFyVY82bwfAicIExLFH5IUcHHUN0wXg4W8/3>
4. **Exhibit 4 – Personal License (“CBE-PERSONAL”)** – Personal rights granted, without hate speech termination. Deployed to: <https://arweave.net/zmc1WTsplhFyVY82bwfAicIExLFH5IUcHHUN0wXg4W8/4>
5. **Exhibit 5 – Personal License with Hate Speech Termination (“CBE-PERSONAL-NO-HATE”)** – Personal rights granted, with hate speech termination. Deployed to: <https://arweave.net/zmc1WTsplhFyVY82bwfAicIExLFH5IUcHHUN0wXg4W8/5>
6. **Exhibit 6 – CC0 (“CBE-PUBLIC”)** – All copyrights are waived under the terms of CC0 1.0 Universal developed by Creative Commons. Deployed to: <https://arweave.net/zmc1WTsplhFyVY82bwfAicIExLFH5IUcHHUN0wXg4W8/0>

In lieu of deploying their own version of a License, any NFT project may make use of the a16z Instances as-is in connection with their NFT project by referencing the URLs specified above, subject to the disclaimers contained therein. To do this easily,

¹ **Disclaimer:** The Licenses were created in partnership between a16z Crypto, Latham & Watkins LLP, and DLA Piper LLP (US) and should be tailored to meet your specific requirements. This document is for informational purposes only. The Licenses do not and should not be construed as legal advice for any particular facts or circumstances. The Licenses do not include the specialized terms relating to music rights and should not be used for copyrighted music without additional advice. The Licenses do not include the specialized terms necessary if third-party content is included in an NFT and should not be used for such NFTs without additional advice. The Licenses relate to copyright only (except for music rights under copyright which are complex with many options) and do not include other forms of intellectual property, including personality rights. and should not be used for NFTs requiring licenses for such rights without additional advice. The License are based on US law and may not be completely enforceable in other jurisdictions. The Licenses are not meant to replace consulting competent counsel who is aware of your specific facts and circumstances. None of the materials provided hereby are intended to be treated as legal advice or to create an attorney-client relationship. The Licenses might not reflect all current updates to the law or applicable interpretive guidance and the authors disclaim any obligation to update the form of the Licenses. We strongly urge you to contact a reputable attorney in your jurisdiction to address your specific legal needs.

Under applicable Rules of Professional Responsibility, portions of this communication may contain attorney advertising. Prior results do not guarantee a similar outcome. Results depend upon a variety of factors unique to each representation. Please direct all inquiries regarding the conduct of Latham & Watkins attorneys under New York’s Disciplinary Rules to Latham & Watkins LLP, 885 1271 Avenue of the Americas, New York, NY 10020, Phone: +1.212.906.1200 and the conduct of DLA Piper attorneys under California’s Rule of Professional Conduct to DLA Piper LLP (US), 2000 University Avenue, East Palo Alto, CA 95409, Phone: 650-833-2000.

developers should install the CantBeEvil.sol smart contracts in their hardhat development directory using "npm i @a16z/contracts". Next, developers can inherit the CantBeEvil.sol contract directly into their core NFT contract using the instructions in the a16z Crypto GitHub repository [here](#).

Drafting Notes:

1. Global (non-PUBLIC)

- a. Section 1.1 (revocability) – The decision of whether a License is designated as absolutely “irrevocable” is one that must be carefully considered by each NFT creator. On the one hand, designating a License as irrevocable gives NFT buyers assurances that they can never lose their licensed rights in the NFT Media. On the other hand, NFT creators may want to ensure their NFT Media is not used beyond the scope of a License (particularly for the PERSONAL and PERSONAL-NO-HATE Licenses) or in a way that is unlawful, racist, hateful, vulgar, etc. (see drafting note for Section 1.5 for the COMMERCIAL-NO-HATE and PERSONAL-NO-HATE licenses). We have tried to find a middle ground by providing for termination of each License due to material breaches of each License, with commercially reasonable efforts to provide notice by the Creator (see Section 3.2 of the license).
- b. Section 1.1 (copyright only) – The Licenses provide for rights under copyright only, as it holds the most relevance to holders seeking to make use of the NFT Media. However, projects featuring individuals such as celebrities or athletes may want to explore the applicability of personality rights or granting licenses in other types of IP as projects continue to build and experiment in the space. Consult with a lawyer for unique issues to granting licenses in these other categories of IP. The Licenses do not cover licenses to music rights (which are covered by copyright) because of the complexity of licensing music. We recommend that if the NFT Media includes music, NFT creators should seek advice from experienced counsel.
- c. Section 1.2 – In some cases, owners of other NFTs or future owners of a particular NFT may create derivative works that are similar to derivative works created by a particular NFT owner. To promote innovation, certain of the Licenses contain an acknowledgment of this possibility and a corresponding covenant of the NFT owner not to not sue the owners of the other NFTs or future owners of a particular NFT which create similar works.
- d. Section 1.3 – The Licenses expressly prohibit use of the project’s trademarks to allow the project to better safeguard its brand. This means that the name and iconic logos of the NFT project are not included in the NFT license, only the right to use the copyrighted artwork for each applicable NFT. Beyond assessing the business considerations, any project looking to grant a license in its trademark should also exercise care in drafting and implementation as licensing trademarks can be complex and generally requires the licensor to exercise quality control.
- e. Section 1.4 – Each License specifies that the license in the NFT Media is terminated if the underlying NFT is sold and will transfer to the new owner of the NFT. To avoid potential confusion, any sublicenses in the NFT Media are also terminated if the underlying NFT is sold by the owner that granted the original sublicense. In this way, buyers of these NFTs are assured that they are not buying an NFT that is encumbered by unknown sublicensed rights, and also to avoid confusion regarding how sublicenses should be policed if an NFT has repeatedly changed owners. We have provided in Section 1.1 that the Creator will be a third-party beneficiary to any sublicenses to permit the Creator to take action if the direct licensee has not done so. This section makes specific reference that the transfer must be “lawful” to transfer the license, to address the situation of someone losing their licensed rights because their NFT was stolen. Alternatively, the Creator may choose to instead provide that the ownership of the NFT (and the licensed rights that attach to such ownership) will simply be based on the records of the relevant blockchain, in order for the Creator to avoid becoming part of a dispute over the right to exercise the rights under the license by different persons claiming ownership of the NFT (especially as a subsequent buyer of the stolen NFT may have no idea it was stolen). However, the liability of various parties in these types of transactions are not yet established, and this alternative may still not be enough to avoid liability or involvement for the Creator in a stolen NFT scenario.
- f. Section 1.5 – In some cases, NFT projects will choose to collaborate with third party IP owners to include their IP in specific NFTs. Those third parties may not want to grant commercial licenses in their IP as included in such collaboration NFT. The Licenses do not account for specific licensing terms that might be unique to the IP of such third-party partners. The Licenses contain a representation by the NFT creators that the NFTs in scope of the Licenses do not include any third-party IP that would require permission from such third parties or would impose additional restrictions on use of the NFT Media. Projects looking to do collaborations may need to develop a separate license applicable only to such collaborations, and could supplement the Licenses with any such collaboration-license. Doing so will provide an opportunity to

develop a license tailored to the specific needs of the collaboration. Further, any collaboration or inclusion of third-party content in an NFT should be communicated clearly to the community. Such communication should give non-collaboration NFT holders additional certainty in their rights to make use of the NFT Media as set forth in this template.

2. EXCLUSIVE License

- a. Section 1.1 – Making the EXCLUSIVE License “exclusive” prohibits the Creator’s rights to take certain actions to commercialize the NFT Media. Under the US Copyright Act, an exclusive license is deemed a “transfer of copyright ownership” in the underlying rights being exclusively licensed (copyright laws in other countries are likely to be different). As such, the exclusive licensee has the sole ability to commercialize the rights in subject to the exclusive license, or to take enforcement actions against infringers of the rights subject to the exclusive license. Due to this legal formality, some of the other provisions may not be enforceable. An exclusive license may also create confusion about individual components of NFT Media (such as a hat or glasses) which are compiled into different combinations to form the unique image of the overall NFT Media for a specific NFT. An exclusive license raises the issue of the rights to use the copyrightable components in configurations other than the image of a particular combination of those components. The majority of NFT Creators will likely want to grant non-exclusive licenses to retain full commercial rights to the NFT Media making up a given collection, and each of its individual elements. Finally, under the nuances of US copyright law, an exclusive license of a copyright under US law may be deemed a “transfer” of the rights in the copyrighted work. Exclusive licensees may also try to record such an exclusive license in the US Copyright Office, and such recordation could create confusion and disputes about a transfer granted to subsequent purchasers of the NFTs if the original party that recorded such license with the US Copyright Office did not rescind their recordation or the new purchaser does not record its exclusive license. Thus, any purchaser of an NFT with an exclusively licensed NFT Media should check the US Copyright Office to determine if such a recordation has been made and ensure that the ownership of the licensed rights is updated to avoid future challenges to the subsequent purchasers’ ownership of the exclusively licensed rights.

3. COMMERCIAL License

- a. Section 1.1 – Under the COMMERCIAL License, the NFT creators retain the right to subsequently abandon the copyright in the NFT Media by applying CC0 to the NFT Media at a later time (see drafting note 7 below) because the NFT creators may decide to change the approach to exploiting rights to the NFT Media. This option is limited to Licenses for commercial rights holders whose rights are non-exclusive. While holders who purchase a Project NFT to obtain non-exclusive commercial rights could still commercialize the NFT Media under a CC0 framework, the CC0 framework allows any other member of the general public to undertake the same activities with the NFT Media as the holder because CC0 abandons the copyright to the NFT Media so a license would no longer be needed to distribute, reproduce, modify, perform and display the NFT Media even if the member of the general public does not own a Project NFT. The COMMERCIAL License does not restrict NFT Creators from making this subsequent decision, but NFT creators willing to foreclose the option should consider providing a covenant not to abandon the copyright in the NFT Media by adopting CC0 or otherwise, as such a covenant could provide holders of Project NFTs with a non-exclusive commercial license with additional certainty that their licensed rights will not be undercut by later actions of the NFT creators.

4. COMMERCIAL-NO-HATE License

- a. Section 1.1 – Under the COMMERCIAL-NO-HATE License, the NFT creators retain the right to subsequently abandon the copyright in the NFT Media by applying CC0 to the NFT Media at a later time (see drafting note 7 below) because the NFT creators may decide to change the approach to exploiting rights to the NFT Media. This option is limited to Licenses for commercial rights holders whose rights are non-exclusive. While holders who purchase a Project NFT to obtain non-exclusive commercial rights could still commercialize the NFT Media under a CC0 framework, the CC0 framework allows any other member of the general public to undertake the same activities with the NFT Media as the holder because CC0 abandons the copyright to the NFT Media so a license would no longer be needed to distribute, reproduce, modify, perform and display the NFT Media even if the member of the general public does not own a Project NFT. The COMMERCIAL-NO-HATE License does not restrict NFT creators from making this subsequent decision, but NFT creators willing to foreclose the option should consider providing a covenant not to abandon the copyright in the NFT Media by adopting CC0 or otherwise, as such a covenant could provide holders of Project NFTs with a non-exclusive commercial license with additional certainty that their licensed rights will not be undercut by later actions of the NFT creators.

- b. Section 1.6 – The COMMERCIAL-NO-HATE License includes some basic content standards on use of the NFT Media, and violations of such standards can be the basis for termination of the license. The latter part of the sentence clarifies that projects may delegate the decisions on whether those standards are being violated to a separate DAO, committee or other entity.

5. PERSONAL License

- a. No Modifications or Derivative Works – The PERSONAL License limits the use of the NFT Media to personal, non-commercial use. Unlike the licenses that grant commercial rights to the NFT owner, the PERSONAL license does not grant the NFT owner any rights to create modifications or derivative works of the NFT Media.

6. PERSONAL-NO-HATE License

- a. No Modifications or Derivative Works – The PERSONAL-NO-HATE License limits the use of the NFT Media to personal, non-commercial use. Unlike the licenses that grant commercial rights to the NFT owner, the PERSONAL-NO-HATE license does not grant the NFT owner any rights to create modifications or derivative works of the NFT Media.
- b. Section 1.6 – The PERSONAL-NO-HATE License includes some basic content standards on use of the NFT Media, and violations of such standards can be the basis for termination of the license. The latter part of the sentence clarifies that projects may delegate the decisions on whether those standards are being violated to a separate DAO, committee or other entity.

7. PUBLIC License

- a. Applying CC0 – Many of the concepts introduced in the other instances are not applicable in the CC0 context given CC0 is essentially dedicating all rights under copyright and neighboring rights in the NFT Media to the public domain. Thus, the PUBLIC instance does not include the following:
 - i. Personal or commercial use restrictions
 - ii. Termination of license upon sale or transfer of NFT
 - iii. Termination of license for violation of content standards or other breach

Creators considering the PUBLIC license should read the statements by the Creative Commons about the potential that the PUBLIC license might not be enforceable in some countries. The adoption of the PUBLIC license cannot be reversed.