**NFTs as Securities: How Howey Applies and What Different Jurisdictions Do (2025)**

**Bottom line:** NFTs can be securities, but only if they are sold or made to look like investment contracts. Regulators look beyond labels to see what is really going on in the economy.

**Howey in one minute**

Under SEC v. Howey (1946), an “investment contract” (thus a security) exists when there is (1) an investment of money (2) in a common enterprise (3) with a reasonable expectation of profits (4) derived from the efforts of others.

Applied to NFTs: (1) is usually met at mint/purchase; (2) can exist even without literal pooling if value depends on an issuer-run ecosystem (captive chain/marketplace); (3) turns on profit-forward marketing and buyer intent versus consumptive use; (4) focuses on whether value depends mainly on the promoter’s ongoing managerial efforts. (Reuters, 2024)

**When an NFT looks like a security**

* **Fundraising pitched as investment.** The SEC said that Impact Theory's "Founder's Key" and Stoner Cats drops were unregistered securities since buyers were encouraged to believe that the teams would make money in the future (via venture building and Hollywood production).
* **Platform-dependent collectibles.** Courts let assertions go through that NBA Top Shot and DraftKings NFTs could meet Howey's requirements as long as the issuers controlled the market/blockchain and tied value to their work.
* **Fractional/revenue-sharing designs.** NFTs that give people the right to make money (via royalties, revenue splits, or equity-like governance) or fractional ownership are very similar to traditional securities when you look at the substance of the matter.

**When an NFT is *unlikely* to be a security (not always)**

* **Pure art/collectibles.** One-time art or collectibles sold for their beauty or value as collectibles without any promises of future management efforts usually doesn't meet Howey's profit/efforts requirements; any resale profits appear like normal collector behaviour. (Commissioners have warned against applying securities law to everyday items.)
* **Utility/game items bought for use.** Skins, tickets, and memberships acquired mostly for access or gameplay at "use-value" pricing, without profit marketing or issuer price support, are not usually covered by securities law.

**Jurisdictional snapshot (as of 31 Oct 2025)**

**European Union.**

MiCA mostly doesn't include crypto-assets that are truly one-of-a-kind and can't be exchanged for anything else (like single art NFTs). However, big "interchangeable" collections can be included, which means that disclosures and conduct requirements are required. The 2024–25 materials from ESMA stress the unique-NFT exclusion and support look-through when collections act like fungible offerings. Implication: one-offs have little regulation; collections that look like investments must follow MiCA rules even if they are called "NFTs."

**United States.**

There is no law that applies only to NFTs; authorities look at each situation individually. The SEC's actions in Impact Theory and Stoner Cats, as well as early civil cases like Dapper Labs/Top Shot surviving dismissal, show that there is a risk when the value of something depends on a stack controlled by the issuer or messages that focus on profit. Internal disagreements at the SEC say that you shouldn't regard regular collectibles as securities. In the end, the facts decide the outcome.

**China.**

NFTs are only authorised as "digital collectibles" that are closely watched. Authorities and the industry don't allow financialisation. You can't use NFTs to issue securities or loans, you can't use crypto to price or settle transactions, you have to use your actual identity for KYC, and there are strong limits or outright bans on secondary trading and fractionalisation. As a result, speculation is low, and "NFT-as-security" is a dead end.

**India.**

NFTs are in a legal grey area, but they are taxed like virtual digital assets: Platforms must follow AML laws, and there is a 30% tax on gains and a 1% TDS on transactions. There isn't a separate securities framework for NFTs yet, and SEBI hasn't given any definitive NFT recommendations yet. What this means is that it is lawful but not very regulated (apart than tax and anti-money laundering); you should stay away from profit-sharing systems that could attract the attention of collective investment groups.

**Conclusion**

In conclusion, NFTs exist in a legally ambiguous realm between digital collectibles and investment contracts and that’s great. Whether an NFT is a security or not depends on its economic substance and many other factors as hype etc, not its form. NFT issuers who promise profits, depend on management efforts, or set up projects that seem like investment schemes pass the Howey Test and are subject to securities regulation. On the other hand, NFTs that are only utilised for art, entertainment, or practical purposes are not included in that group. Different countries have different regulations for NFTs. For example, the United States uses a case-by-case approach based on Howey, the European Union uses a disclosure-based framework based on MiCA, China only allows NFTs to be "digital collectibles" that can't be traded, and India sees them as taxable virtual assets without full securities oversight. As regulatory frameworks develop, global trends indicate increased examination of profit-driven NFT projects, highlighting the necessity for transparency, consumer protection, and responsible innovation in this swiftly advancing field.

References

Reuters (2024) Are sales of non-fungible tokens investment contracts subject to regulation under U.S. law? 23 October. Available at: https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23