**NFTs as Securities: How the Howey Test Applies and Global Regulatory Perspectives**

**Introduction**

Non-Fungible Tokens (NFTs) have surged in popularity as unique digital assets for art, collectibles, gaming items, and more. This rise has prompted legal scrutiny over whether certain NFTs should be regulated as **securities** – financial instruments that carry monetary value and investment expectations. The classification of NFTs as securities is an evolving issue, hinging on an NFT’s specific characteristics and the laws of each jurisdiction. In particular, regulators and courts have looked to the U.S. Supreme Court’s **Howey Test** – a decades-old test for what constitutes an “investment contract” (and thus a security) – to assess if an NFT sale qualifies as a security offering[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=An%20,promoter%20or%20a%20third%20party" \t "_blank). This report provides an academic analysis of how the Howey Test might apply to NFTs, examples of when an NFT can or cannot be viewed as a security, and the current regulatory landscape (and outlook) for NFTs in the United States, Europe, China, and India. We focus especially on **gaming-related NFTs** as a case study, given their growing use and unique features, and examine the current, pending, and future outlook in each jurisdiction.

**The Howey Test: Defining a Security**

In U.S. law, the Howey Test (from *SEC v. Howey Co.*, 1946) defines an **“investment contract”** – one category of security under the Securities Act of 1933 – by a four-pronged criteria. Under Howey, an asset or transaction is an investment contract (and thus a security) if it involves **(1)** an investment of money **(2)** in a common enterprise **(3)** with an expectation of profits **(4)** to be derived from the efforts of others[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=An%20,promoter%20or%20a%20third%20party" \t "_blank). All four elements must be met. This substance-over-form test means that even if something is not a traditional stock or bond, it can be deemed a security if it functions like an investment contract.

**Investment of Money:** This prong is usually straightforward – if buyers pay money (or equivalent value) to acquire the asset, it’s satisfied. Even free distributions (airdrops) might count if they are part of a promotional scheme conferring some value to the issuer. With NFTs, whenever someone pays fiat or cryptocurrency to mint or purchase an NFT, this element is typically met.

**Common Enterprise:** This prong examines whether the investor’s fortunes are tied to those of the promoter or other investors. U.S. courts use two theories here: **horizontal commonality** (pooling of funds such that all investors share profits pro-rata) and **vertical commonality** (investor success linked to promoter success). NFTs are unique tokens, so one might argue each NFT is its own asset and there’s no pooling – e.g. the value of CryptoPunk #8376 is independent from CryptoPunk #8377[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/" \l ":~:text=Horizontal%20commonality%20requires%20the%20pooling,purchasers%20of%20the%20%2028" \t "_blank). However, courts have found common enterprise in NFT schemes when the issuer’s efforts or ecosystem connect the fortunes of NFT owners. For instance, purchasers of *NBA Top Shot* collectible NFTs alleged that **Dapper Labs** pooled proceeds and built a private marketplace (on its own Flow blockchain) to promote the NFTs’ value, tying all investors’ success to the company’s success[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/" \l ":~:text=8377%20%20are%20independent%20of,NFT%20within%20any%20given%20collection" \t "_blank)[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/#:~:text=The%20court%20held%20that%2C%20although,to%20Dapper%20Labs%27%20overall%20success). A U.S. federal judge agreed it was a “close call” but plausible that Top Shot NFTs satisfied Howey’s common enterprise element because the NFTs’ value depended on Dapper Labs’ ongoing efforts and platform[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=The%20court%20held%20that%2C%20although,to%20Dapper%20Labs%27%20overall%20success" \t "_blank)[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/#:~:text=The%20court%20further%20held%20that,the%20efforts%20of%20Dapper%20Labs). This illustrates that even without literal pooling, a **common enterprise** can be found if an NFT’s value is interwoven with an issuer-run ecosystem (e.g. a marketplace or game economy controlled by the developer). In gaming, if an NFT’s worth is linked to the overall success of the game or platform (which the developer manages), a common enterprise likely exists. By contrast, if each NFT functions in isolation with no centralized platform (rare in practice for NFTs), commonality is harder to establish.

**Expectation of Profit:** The third prong asks whether buyers are led to expect profits from their purchase. Importantly, profit in the securities law sense means a financial return or increase in value **attributable to the asset’s issuer or others’ efforts**, not just any price increase[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/" \l ":~:text=Absent%20any%20other%20factors%20,the%20asset%20is%20a%20security" \t "_blank). If NFT buyers are primarily **collectors or users** – for example, a gamer buying an NFT sword purely to use in-game – and are not induced to expect monetary gain, this prong may not be met. However, many NFT sales (especially during the boom) were marketed with investment language, emphasizing resale value or “limited” supply driving future price appreciation. Courts and regulators will look at marketing materials, sale structure, and buyer behavior: Were the NFTs sold in large quantities to speculators? Did promotional messaging highlight potential ROI or secondary market prices[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/" \l ":~:text=When%20purchasers%20buy%20an%20asset,correlated%20to%20the%20expected%20consumption" \t "_blank)[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/#:~:text=Royalties%2C%20dividends%2C%20and%20assets%20that,then%20shared%20with%20the%20purchaser)? For example, if a game developer sells NFT land or characters by touting that their value will rise as the game’s popularity grows, buyers are being led to expect profit. The U.S. SEC has indicated that **price appreciation resulting solely from market forces (supply and demand)** is generally not “profit” under Howey[epgdlaw.com](https://www.epgdlaw.com/securitization-of-nfts/" \l ":~:text=profits%20will%20be%20generated%20from,it%20can%20increase%20in%20value" \t "_blank). In other words, if an NFT’s value goes up just because it’s a rare collectible and more people want it (like a rare baseball card), that alone doesn’t make it a security. But if the value is expected to rise due to the issuer’s ongoing work (developing a platform, attracting users, etc.), that feeds into a Howey “profit” expectation. As a rule of thumb, **utility vs. investment** is a key distinction: NFTs bought for their utility or enjoyment (consumptive use) are less likely to satisfy this prong than NFTs bought as investments. In the context of gaming, if players purchase NFTs mainly to use in gameplay (and any resale profit would come from their own play efforts or general player demand), it looks less like a security. Conversely, if they buy gaming NFTs as passive investments – e.g. to later sell at a higher price without participating in the game – it leans toward a security, especially if the game studio’s actions drive that value.

**Efforts of Others:** The final prong examines whether any profits are to come “solely from the efforts of others,” i.e. largely from the promoter or a third party’s work rather than the investor’s own efforts[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=An%20,promoter%20or%20a%20third%20party" \t "_blank). In practice, courts interpret this broadly – the word “solely” is not literal, as even significant reliance on the promoter’s efforts can count. For NFTs, this asks: how much does the NFT holder rely on the issuer or project team to generate value? If an NFT accrues value because the **developers continue to build features, create demand, or perform services**, this prong is met[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/" \l ":~:text=Last%20but%20certainly%20not%20least%2C,some%20effort%20on%20their%20part" \t "_blank)[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/#:~:text=,and%20updated%20by%20the%20developer). For example, in a **play-to-earn game NFT**, if the game company must keep updating the game, attracting players, or arranging deals (say, partnerships that make the NFT more useful or famous), then the NFT holder’s profit comes from the company’s efforts. On the other hand, if the NFT’s value can increase through the holder’s own efforts or use – for instance, a player can level up an NFT character through gameplay to make it more valuable, or the NFT is usable across many platforms regardless of the original developer – then the case for “efforts of others” is weaker[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/" \l ":~:text=Absent%20any%20other%20factors%20,the%20asset%20is%20a%20security" \t "_blank)[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/#:~:text=In%20the%20context%20of%20gaming%2C,cease%20working%2C%20but%20the%20network). In a well-designed game where NFTs have **intrinsic utility** (skins, items, etc.), a user might purchase it primarily to enjoy those features; any later profit from resale is incidental and often due to that user’s own effort or the community’s organic interest. Regulators have noted that the more an NFT’s value depends on the creators’ ongoing management and promotion, the more it **“starts to look like a security”**[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/" \l ":~:text=Last%20but%20certainly%20not%20least%2C,some%20effort%20on%20their%20part" \t "_blank).

**Summary:** If an NFT sale involves people paying money into a venture, their fortunes are tied together (or tied to the issuer), they are told to expect profit, and that profit will come from the issuer’s continued efforts, then the **Howey Test suggests it’s an investment contract**. On the other hand, if an NFT is sold simply as a one-off item (like a digital collectible or a game asset for personal use) without any promises of future value from the issuer, it likely fails the test and is **not** a security. In reality, the line can be blurry. As SEC Commissioner Hester Peirce observed, selling a collectible with vague promises to “build the brand” isn’t usually treated like a securities offering[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=Notably%2C%20two%20of%20the%20five,guidance%20when%20NFTs%20started%20proliferating" \t "_blank). Thus, context and **“economic reality”** matter: regulators will look past the NFT label to how it’s marketed and used in practice. Below, we elaborate with examples.

**When Can an NFT Be Considered a Security?**

Not all NFTs are alike; some are structured or promoted in ways that closely resemble investment schemes. Here are scenarios and real examples where an NFT could be viewed as a security:

* **NFTs sold as investment in a business or project:** If the NFT sale is essentially a fundraising mechanism for a project, with buyers promised that the NFT’s value will grow as the project succeeds, it’s likely a security. A notable example is the *Impact Theory* case in the U.S. In 2023, the SEC charged Impact Theory, a media company, for an unregistered securities offering of its “Founder’s Key” NFTs. The company had explicitly **invited buyers to view the NFTs as an investment in the business**, even likening themselves to “building the next Disney” and suggesting early purchasers would see “tremendous value” as the company grew[nortonrosefulbright.com](https://www.nortonrosefulbright.com/es-419/knowledge/publications/7cd6583a/us-sec-continues-to-pursue-aggressive-and-arbitrary-regulation-of-nfts" \l ":~:text=On%20August%2028%2C%202023%2C%20the,tremendous%20value" \t "_blank)[nortonrosefulbright.com](https://www.nortonrosefulbright.com/es-419/knowledge/publications/7cd6583a/us-sec-continues-to-pursue-aggressive-and-arbitrary-regulation-of-nfts#:~:text=Impact%20Theory%20had%20also%20programmed,like%20rights). Purchasers were led to expect profits from the company’s future efforts, fulfilling Howey’s elements. The SEC concluded these NFTs were **investment contracts**, not mere collectibles[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=storytelling.,an%20investment%20into%20the%20business" \t "_blank). Similarly, in the *Stoner Cats* case, a startup sold cartoon cat NFTs to fund an animated web series. The marketing emphasized the Hollywood pedigree of the team and implied that if the show became popular, resale values of the NFTs would rise – again creating an expectation of profit from the creators’ efforts[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=The%20SEC%20focused%20on%20a,the%20secondary%20market%20to%20rise" \t "_blank). The SEC treated this as an unregistered securities offering in 2023, reinforcing that **fundraising via NFT with promises of future gains** falls under securities law.
* **Fractionalized or share-like NFTs:** When NFTs are used to represent fractional ownership or profit rights in an asset or enterprise, they start to look like traditional securities (stocks, shares, or investment contracts). For example, if a valuable piece of art or a revenue-generating asset is tokenized into multiple NFT “shares” so that investors can buy a portion and share in the profits (e.g. rental income, royalties, or eventual sale proceeds), those fractional NFTs would likely be deemed securities. In such a case, purchasers are **investing money in a common venture** and expecting profits from that venture’s success or income – classic Howey elements. Legal commentators note that if you sell NFTs that **“provide fractional ownership in a project or business,” allowing holders to vote on management and share in profits**, you are effectively selling shares of a enterprise[epgdlaw.com](https://www.epgdlaw.com/securitization-of-nfts/" \l ":~:text=,investing%20money%20by%20buying%20tokens" \t "_blank). For instance, consider an NFT that grants 1% of a game studio’s future revenue to the holder – that NFT is essentially a profit-sharing agreement (and thus a security). Another example would be a music NFT where buying the token gives you a cut of the artist’s streaming royalties: regulators would likely view that token as an investment contract in the artist’s income stream, not just a collectible. **Promised royalties or revenue streams** attached to NFTs are a red flag. The presence of a secondary market doesn’t help if the issuer actively promotes it: as one law firm advises, if an NFT is offered to the public with promises of liquidity (easy resale) and financial returns – especially backed by the issuer’s continued efforts or services – it starts **“to resemble a speculative investment as opposed to a digital collectible.”**[epgdlaw.com](https://www.epgdlaw.com/securitization-of-nfts/" \l ":~:text=,assets%20as%20investments%20that%20can" \t "_blank) In short, NFTs that function like **stocks, bonds, or revenue-sharing instruments** are very likely securities.
* **NFTs with active market support by issuer:** Even if an NFT is ostensibly a unique collectible, it can cross into security territory if the issuer is heavily involved in maintaining a profitable secondary market or otherwise boosting its value. For example, in the **NBA Top Shot** lawsuit (*Friel v. Dapper Labs*), plaintiffs alleged that Dapper Labs’ control over the marketplace (the only venue to trade those NFTs) and collection of transaction fees meant the company was actively supporting the value of the NFTs[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=had%20adequately%20pleaded%20horizontal%20commonality,to%20Dapper%20Labs%27%20overall%20success" \t "_blank)[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/#:~:text=vertical%20commonality%2C%20which%20requires%20that,could%20establish%20strict%20vertical%20commonality). The court found it plausible that Top Shot NFT buyers expected profits from Dapper’s efforts (running the private blockchain and marketplace), thus meeting Howey at the pleading stage[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=The%20court%20held%20that%2C%20although,to%20Dapper%20Labs%27%20overall%20success" \t "_blank)[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/#:~:text=The%20court%20further%20held%20that,the%20efforts%20of%20Dapper%20Labs). Similarly, DraftKings’ sports-themed NFTs – even though they used a public blockchain – were sold and traded exclusively through DraftKings’ own marketplace, with the company promoting their value. A federal judge in 2023 held that this could satisfy the Howey test because **all trading was effectively controlled by DraftKings**, binding the NFTs’ value to the company’s efforts and platform[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=Dufoe" \t "_blank). These cases show that **when an NFT’s value is not truly independent, but rather depends on an issuer’s ongoing managerial role (running marketplaces, hyping the project, reinvesting proceeds to develop the ecosystem, etc.),** regulators and courts may find a security. Another recent case involved *Astrals* NFTs promoted by a celebrity (Shaquille O’Neal) for a planned metaverse game: the court noted that the **success of the game and the value of the NFTs hinged on the developers’ managerial efforts with the funds raised**, again suggesting an investment contract[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=There%2C%20Judge%20Federico%20Moreno%20of,initial%20funding%20from%20the%20tokens" \t "_blank).
* **Speculative gaming assets and play-to-earn schemes:** In blockchain gaming, some NFTs double as investment vehicles. For instance, **“play-to-earn” game NFTs** (like characters or items in *Axie Infinity* or similar games) could be viewed as securities if buyers mainly purchase them to generate passive income or speculative profit, rather than for gameplay enjoyment. If a gaming company sells NFT assets while encouraging buyers that those assets will produce cash flow (through in-game rewards that have real-world value, or through resale as the game grows), that starts to mirror an investment scheme. The expectation of profit is present (earn tokens or sell at higher price), and the profits rely heavily on the developers keeping the game popular (efforts of others). In contrast, if a game NFT is sold simply as a cosmetic item or to access certain game content, with pricing similar to a normal game microtransaction and no suggestion of profit, it would not trigger securities concerns. The context and marketing are key: **a gaming NFT drop pitched as “own a piece of our game’s economy and reap future rewards” is far more likely to be deemed a security** than an NFT sold as “buy this cool sword to use in-game,” even if the sword might later be resold. Developers must be cautious – the **SEC has warned that selling in-game tokens or goods can raise securities law issues if traditional fundraising or profit-sharing elements creep in[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/" \l ":~:text=They%20may%20also%20trigger%20securities,game%20currencies%20or%20virtual%20goods" \t "_blank)**[**nftnow.com**](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/#:~:text=The%20mission%20of%20the%20SEC,fungible%20tokens.%20As). Many Web3 game companies have thus tried to structure token sales carefully or avoid U.S. markets, given the regulatory uncertainty[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/" \l ":~:text=seen%20the%20SEC%20charge%20NVIDIA,of%20the%20Howey%20Test%2C%201946" \t "_blank).

In summary, **an NFT is likely to be viewed as a security when it is marketed or structured as an investment**: buyers invest money, pool their funds (or share a common outcome), expect a profit, and count on the issuer or a third party to deliver that profit. Real-world examples like the Impact Theory and Stoner Cats NFTs show that even NFTs representing digital art or collectibles can be deemed securities if sold with the promise of entrepreneurial efforts and future gains[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=storytelling.,an%20investment%20into%20the%20business" \t "_blank)[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/#:~:text=The%20SEC%20focused%20on%20a,the%20secondary%20market%20to%20rise). Courts are increasingly receptive to these arguments, at least at preliminary stages, as seen with Top Shot and DraftKings NFT cases[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=The%20court%20held%20that%2C%20although,to%20Dapper%20Labs%27%20overall%20success" \t "_blank)[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/#:~:text=Dufoe). The **implication** is that NFT creators must be very careful: **calling something an “NFT” doesn’t exempt it from securities law** if, in substance, it’s an investment vehicle. Regulators apply a “substance over form” approach – if it walks and quacks like a security, it probably is one, regardless of novel terminology or technology.

**When Is an NFT *Not* a Security?**

On the flip side, many NFTs are **not** securities because they lack the hallmarks of an investment contract. Key examples and factors where an NFT would *not* be considered a security include:

* **Pure collectibles and art NFTs:** If an NFT is essentially a digital collectible (akin to a trading card or a piece of art) sold to collectors for its own sake, it’s generally not a security. Take the example of Beeple’s famous digital artwork NFT that sold for $69 million. Despite the huge price and the possibility that the buyer hoped it would appreciate, that NFT represented a one-of-a-kind piece of art – just as a physical painting is not a security, neither is a one-off art NFT bought as a collectible[epgdlaw.com](https://www.epgdlaw.com/securitization-of-nfts/" \l ":~:text=,and%20thus%20becoming%20a%20security" \t "_blank). The crucial point is there is **no ongoing “common enterprise” or promised effort by the artist to increase the token’s value** – the artwork stands on its own. Law analyses have noted that tokens tied to unique pieces of art or memorabilia, which serve as verifiable **certificates of authenticity on blockchain**, are **“unlikely to be rendered securities.”**[epgdlaw.com](https://www.epgdlaw.com/securitization-of-nfts/" \l ":~:text=,to%20facilitate%20transfer%20and%20tracking" \t "_blank) Such NFTs are *stand-alone assets* whose value is determined at sale by the subjective art/collectible market, and any later increase in price is driven by external market demand (the whims of collectors) rather than the issuer’s efforts[epgdlaw.com](https://www.epgdlaw.com/securitization-of-nfts/" \l ":~:text=,it%20can%20increase%20in%20value" \t "_blank). Simply put, buying a rare CryptoKitty or a unique avatar NFT for personal enjoyment or bragging rights is more like buying a rare comic book than an investment contract. **No matter how much the NFT’s price might rise on resale, if that rise is not due to the issuer actively managing or promoting a profit scheme, it’s not considered “profit from the efforts of others.”** Price appreciation from general market forces (like changing tastes or scarcity) is *not* the kind of profit Howey contemplates[epgdlaw.com](https://www.epgdlaw.com/securitization-of-nfts/" \l ":~:text=profits%20will%20be%20generated%20from,it%20can%20increase%20in%20value" \t "_blank).
* **Utility NFTs and in-game items for use:** Many NFTs provide immediate utility – they might be game characters, virtual land, event tickets, or membership tokens that confer certain privileges. If people purchase these **primarily to use or consume the underlying utility rather than as an investment**, the securities analysis tilts away from Howey. For example, consider an NFT that grants access to an exclusive online community or a subscription service. If a consumer buys it for that access (a **consumptive purpose**), and the pricing is in line with the value of the access, they are acting more like a customer than an investor. Any potential resale profit would be incidental or speculative on the user’s part, not because the issuer promised to boost its value. In gaming, an NFT sword or outfit bought to use in gameplay – especially if sold in unlimited quantities or at a fixed price – looks like a simple product sale. The **SEC has indicated that when digital assets are sold to users who are expected to actually use them (rather than to passive investors), and in amounts/prices reasonable for use, it’s less likely to be a security**[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/" \l ":~:text=When%20purchasers%20buy%20an%20asset,correlated%20to%20the%20expected%20consumption" \t "_blank)[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/#:~:text=As%20part%20of%20this%20prong%2C,purchasing%20the%20tokens%20in%20bulk). Additionally, if the **game or platform is sufficiently decentralized or the item can be used independently of the issuer**, the “efforts of others” prong weakens[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/" \l ":~:text=In%20the%20context%20of%20gaming%2C,cease%20working%2C%20but%20the%20network" \t "_blank). A telling example is that of **crypto collectible games**: if a developer sells an NFT pet in a game like *CryptoKitties* purely as a collectible pet for fun, without promising that “our team will make these pets more valuable,” then buyers have no guaranteed expectation of profit from the developer. They might hope the pet becomes rarer or more desirable, but that hope is not grounded in a common enterprise or others’ managerial efforts, only in collector sentiment.
* **No profit marketing or profit-sharing:** An NFT is not a security when **the issuer does not induce a profit motive** and does not share in secondary market profits with buyers. Many mainstream brands that have issued NFTs (e.g., a fashion brand releasing NFT art linked to their products) explicitly frame them as digital collectibles or loyalty tokens, *not* investments. They often avoid language about “future value” and instead highlight immediate perks (like unlocking an experience or simply owning a digital representation of a product). If the promoter isn’t making any ongoing promises – essentially treating the NFT sale like selling a collectible poster or a toy – securities law generally stays out. A notable point raised in the SEC commissioners’ dissent in the NFT cases was that the SEC historically doesn’t go after people selling **“watches, paintings, or collectibles”** just because they say they’ll work to make their brand more popular (which might indirectly raise resale prices)[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=Notably%2C%20two%20of%20the%20five,guidance%20when%20NFTs%20started%20proliferating" \t "_blank). That kind of vague, indirect hope is usually not enough for a security; otherwise, almost any collectible could be deemed a security, which isn’t the case. So, **NFTs that confer simple ownership of a digital item, with no contractual right to profits or ongoing obligations on the issuer beyond perhaps maintaining a platform, are usually not considered securities.** In practice, one can look at whether the NFT holders have any **formal entitlement** (like dividend rights, voting rights in a management decision, revenue share, etc.) – if not, and if the NFT is more akin to buying a product, it’s likely outside security laws.
* **One-off sales with no ongoing scheme:** If an NFT is sold one time (like an auction of a single artwork or a limited edition run) and the issuer’s involvement ends at the point of sale (apart from maybe authenticating the NFT), it is generally not a security. The buyer is not investing in a continuing venture; they just bought a unique item. Any future increase in value comes from **the community or market, not from the original seller’s efforts**. For example, when **Jack Dorsey sold an NFT of his first tweet**, the value was in the eye of the beholder (someone paid $2.9 million for it) – that NFT doesn’t represent a share of Twitter’s profits or any enterprise. It’s simply a collectible **(albeit a speculative one)**. It wouldn’t be classified as a security because the buyer wasn’t contributing money into a common project expecting the tweet NFT to generate business income. The test many lawyers suggest is: *Are NFT buyers essentially in the same position as someone buying a physical collector’s item?* If yes, then securities laws likely don’t apply[epgdlaw.com](https://www.epgdlaw.com/securitization-of-nfts/" \l ":~:text=,and%20thus%20becoming%20a%20security" \t "_blank). A caveat here is that even something looking like a collectible could be packaged as an investment – for instance, if someone sold **100 NFTs each representing a famous painting and promised to actively trade or monetize those paintings for profit**, that could become a security offering. But the typical art NFT by itself, or a one-off game item, is not packaged that way.

In sum, **NFTs that function as digital collectibles, art, or utility tokens without an investment scheme behind them are not securities.** Their value stems from their uniqueness, utility, or aesthetic appeal, and any price changes are driven by organic supply and demand rather than the issuer’s managed efforts. As one legal commentary put it, tokenizing an asset doesn’t magically turn it into a security: *“Digital certificates, although they use blockchain technology and are tokenized, are not ‘securities’ simply because they have market value and can be resold”*[epgdlaw.com](https://www.epgdlaw.com/securitization-of-nfts/" \l ":~:text=are%20unlikely%20to%20be%20rendered,the%20efforts%20of%20third%20parties" \t "_blank). The context – the **purpose and expectations** at sale – is key. If the **buyer’s mindset is more “I’m purchasing this to use/enjoy/collect” rather than “I’m investing in this to profit,”** and the seller’s conduct reinforces the former, then the NFT is just a product, not an investment contract.

**Jurisdictional Perspectives on NFTs as Securities**

The regulatory treatment of NFTs varies widely across jurisdictions. Below we examine the current state of play, pending developments, and outlook in **four major regions – the United States, European Union, China, and India** – highlighting how each is approaching (or could approach) NFTs that have securities-like features. The legal definitions of “security” differ by jurisdiction, and some places have created new crypto-asset categories, but a common thread is emerging: regulators are wary of NFT markets becoming the “Wild West” of unregulated investment and are starting to apply existing laws or craft new ones to address this.

**United States: Evolving Legal Landscape for NFTs**

**Current State:** The United States has no NFT-specific statute or comprehensive regulation as of 2025; instead, authorities apply existing securities laws on a case-by-case basis. The U.S. Securities and Exchange Commission (SEC) has been at the forefront of scrutinizing NFTs under the **investment contract** analysis (Howey Test). This means that if an NFT offering meets the Howey criteria, the SEC considers it a security subject to the federal securities laws (registration, disclosure, antifraud rules, etc.). In the past few years, the SEC has initiated high-profile enforcement actions signaling that certain NFTs *are* viewed as securities. We discussed two notable cases: **Impact Theory** and **Stoner Cats**. In both, the SEC alleged the NFT sales were unregistered securities offerings because purchasers had a reasonable expectation of profit derived from the promoters’ future efforts[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=storytelling.,an%20investment%20into%20the%20business" \t "_blank)[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/#:~:text=The%20SEC%20focused%20on%20a,the%20secondary%20market%20to%20rise). These actions in 2023 marked the first clear indication that the SEC is willing to regulate NFT issuers similarly to crypto-token issuers. Furthermore, in early 2023 the SEC reportedly issued a **Wells notice to OpenSea**, the largest NFT marketplace, suggesting the SEC believes some NFTs traded on the platform are securities and that OpenSea may have facilitated unregistered securities trades[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=Finally%2C%20late%20last%20month%20OpenSea%2C,wake%20of%20this%20Wells%20Notice" \t "_blank). Such a move could have wide implications, potentially requiring marketplaces to register as broker-dealers or exchanges if they list security-like NFTs.

However, U.S. law in this area is far from settled – **“whether transactions in NFTs constitute ‘investment contracts’ and thus securities remains an open question subject to an evolving legal landscape.”**[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=But%20whether%20transactions%20in%20NFTs,to%20an%20evolving%20legal%20landscape" \t "_blank) Notably, the SEC’s aggressive stance has met internal debate. Two SEC Commissioners, Hester Peirce and Mark Uyeda, **dissented** from the Impact Theory and Stoner Cats actions, arguing that the SEC was stretching the Howey Test without providing clear guidance. They pointed out that the SEC doesn’t normally treat sales of collectibles (like rare watches or art) as securities simply because the seller hints the items might appreciate[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=Notably%2C%20two%20of%20the%20five,guidance%20when%20NFTs%20started%20proliferating" \t "_blank). Their dissent warned that applying securities laws to NFTs without clear rules **“lacks any meaningful limiting principle”[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=market%20to%20rise." \t "_blank)**, potentially casting a regulatory net over many innocuous NFT transactions. Despite these concerns, for now the SEC appears willing to proceed on a **“regulation by enforcement”** path – tackling obvious investment-like NFTs through enforcement actions, while leaving truly consumptive or art-based NFTs alone.

On the judicial front, there have been a handful of **private lawsuits** where NFT buyers sued creators (or celebrities endorsing NFTs) for selling unregistered securities. Early decisions in these cases are shaping the legal understanding. As mentioned, a New York federal judge in *Friel v. Dapper Labs* held it was plausible that **NBA Top Shot NFTs are securities**, largely because the issuer controlled the trading platform and the blockchain, creating a dependent ecosystem[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=had%20adequately%20pleaded%20horizontal%20commonality,to%20Dapper%20Labs%27%20overall%20success" \t "_blank)[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/#:~:text=The%20court%20further%20held%20that,the%20efforts%20of%20Dapper%20Labs). In *Dufoe v. DraftKings*, a Massachusetts court similarly found that DraftKings’ curated NFT marketplace could satisfy the Howey test, even though the NFTs existed on an independent blockchain, because all trades went through DraftKings’ system[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=Dufoe" \t "_blank). Another case in Florida (*Harper v. O’Neal*) involving an NFT-driven metaverse project also survived a motion to dismiss; the court noted broad vertical commonality since funds from NFT sales were reinvested to develop the project and the promoters’ efforts were crucial to any future profit[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=There%2C%20Judge%20Federico%20Moreno%20of,initial%20funding%20from%20the%20tokens" \t "_blank). These cases have not yet reached final judgments, but they indicate U.S. courts are willing to apply Howey to NFTs on a fact-specific basis – some judges explicitly call it a “close call,” showing how fact-dependent these determinations are[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=The%20court%20held%20that%2C%20although,to%20Dapper%20Labs%27%20overall%20success" \t "_blank). The upshot is that **in the U.S., some NFTs are being treated as securities under existing law, but there is no bright-line rule**. Each project’s details matter, and there is uncertainty for creators and buyers alike.

**Pending Developments:** There is growing pressure for clearer guidance or legislation. As of late 2024, no U.S. federal law specifically addresses NFTs. Congress has debated broader crypto legislation (covering stablecoins, exchanges, etc.), but NFTs have only been tangentially discussed. Some lawmakers have asked the SEC to clarify when NFTs trigger securities laws, but formal guidance is lacking (the SEC’s 2019 “Framework” for digital assets touched on tokens generally, not NFTs specifically). We can observe that current SEC Chair Gary Gensler’s view is that **most crypto tokens are securities** by the Howey test[nftnow.com](https://nftnow.com/guides/securities-and-nfts-a-legal-guide-for-gamers-and-game-developers/" \l ":~:text=rules%20and%20regulations%20on%20how,be%20subject%20to%20securities%20laws" \t "_blank) – it’s not a stretch to assume he includes many NFTs in that bucket, especially those that are investment-like. On the other hand, the Commissioners’ dissents and public commentary show a possible willingness within the SEC to eventually exempt purely collectible NFTs. In the absence of new rules, one “pending” factor is how ongoing enforcement actions will conclude: **Impact Theory settled** (with the company paying a fine and offering refunds) without a court ruling, but if any NFT case were to be litigated to a judgment, it could set a precedent. Another pending matter is technological and market evolution – e.g., some NFT projects are exploring greater decentralization (removing the issuer’s control) to avoid the “efforts of others” prong; the legal community is watching whether such strategies hold up if tested. Also notable is that the **Financial Action Task Force (FATF)** internationally has recommended a “substance over form” approach for NFTs: treat them according to their true function (collectible vs. investment)[fintechcircle.com](https://fintechcircle.com/insights/nft-markets-since-crypto-winter-regulatory-landscape-across-jurisdictions/" \l ":~:text=,an%20NFT%20is%20determined" \t "_blank), which U.S. regulators are effectively doing. We might see the SEC or courts formally adopt language that certain types of NFTs (say, **fractional NFTs, NFTs with DAOs attached, etc.**) are presumptively securities unless proven otherwise, but that’s speculative at this point.

**Outlook:** In the near future, we expect the U.S. to continue using the existing securities framework for NFT issues. The SEC’s current posture suggests **more enforcement** actions could come, possibly targeting other NFT-funded projects (reports have indicated the SEC is probing NFT fractionalization and “NFT finance” platforms). The lack of explicit legislation means the Howey Test will remain the yardstick. Over time, court decisions (like the ones involving Dapper Labs or DraftKings) may refine how Howey applies to NFTs – for example, clarifying what constitutes a “common enterprise” in an NFT context, or how to gauge an NFT buyer’s expectation of profit. If these cases result in rulings, they will either validate the SEC’s approach or potentially push back if courts find the SEC overreaching. There is also an **innovation concern**: uncertainty and fear of enforcement have led some NFT and crypto-game projects to exclude U.S. users or seek more crypto-friendly jurisdictions. This could pressure U.S. regulators to eventually issue clearer rules distinguishing **“NFT collectibles” vs “NFT investments.”** Commissioner Peirce has advocated for safe harbors for crypto projects – perhaps an NFT-specific safe harbor (allowing, say, artistic NFTs without fear) could be considered, but nothing concrete yet. For now, any NFT project in the U.S. that raises money from the public with promises of future gains should presume it might fall under SEC jurisdiction. As one Reuters analysis in late 2024 put it, this area remains uncertain and **“subject to an evolving legal landscape”[reuters.com](https://www.reuters.com/legal/legalindustry/are-sales-nonfungible-tokens-investment-contracts-subject-regulation-under-2024-10-23/" \l ":~:text=But%20whether%20transactions%20in%20NFTs,to%20an%20evolving%20legal%20landscape" \t "_blank)**, so participants must stay alert to new developments.

**European Union: Regulatory Framework under MiCA**

**Current State:** In the European Union, there wasn’t historically a specific legal regime for NFTs either, and classifications as securities or financial instruments have been handled under existing laws on a case-by-case basis by member states. However, the EU has recently adopted a landmark regulation for crypto-assets known as **MiCA – Markets in Crypto-Assets Regulation**. MiCA, which was finalized in 2023 and will start coming into effect in 2024-2025, is the EU’s first comprehensive framework for crypto-assets and their service providers[eu.ci](https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-law/" \l ":~:text=MICA%E2%80%99s%20primary%20goal%20is%20to,ESMA" \t "_blank). MiCA’s aim is to harmonize rules across the EU, covering issuance of tokens, operation of exchanges and wallets, disclosure requirements, etc., to protect consumers and market integrity[eu.ci](https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-law/" \l ":~:text=A%20key%20aspect%20of%20MiCA,and%20monitoring%20of%20suspicious%20transactions" \t "_blank)[eu.ci](https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-law/#:~:text=The%20overarching%20objective%20of%20MiCA,compensating%20for%20any%20losses%20incurred). Importantly, MiCA **addresses NFTs** but in a limited way. The regulation *explicitly* **excludes truly unique, non-fungible assets from its scope**[eu.ci](https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-law/" \l ":~:text=MiCA%20specifically%20excludes%20certain%20crypto,they%20offer%20to%20their%20owners" \t "_blank). Recital and provisions in MiCA clarify that **“crypto-assets that are unique and not interchangeable”** (for example, digital art or collectibles where each token is one-of-a-kind) are not subject to the regulation’s requirements[eu.ci](https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-law/" \l ":~:text=MiCA%20specifically%20excludes%20certain%20crypto,they%20offer%20to%20their%20owners" \t "_blank). The rationale is that such NFTs do not present the same risks as fungible, widely-traded tokens, because their value is driven by their unique characteristics rather than mass investor speculation[eu.ci](https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-law/" \l ":~:text=applies%20to%20unique%20and%20non,they%20offer%20to%20their%20owners" \t "_blank). In essence, if you have a one-off NFT or a small series of distinct NFTs (like a specific piece of digital art or a token representing a unique physical asset), EU law currently doesn’t treat that as a regulated financial instrument under MiCA.

However, MiCA adds an important caveat: if NFTs are issued in a large **collection or series** where they are **“interchangeable within that series,”** then **they will *not* be considered unique and can fall under MiCA**[eu.ci](https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-law/" \l ":~:text=However%2C%20the%20regulation%20does%20include,to%20protect%20consumers%20and%20investors" \t "_blank). This addresses the phenomenon of 10,000-item NFT collections (like Bored Apes, CryptoPunks, etc.) which, while each token is technically unique (different image, attributes, serial number), they are often sold in a batch with the same structure and purpose. Regulators worry that calling such batch-issued tokens “NFTs” might be a loophole to avoid regulation. Under MiCA, if an issuer releases a large number of NFTs with similar features as part of one project, the **collection as a whole might be deemed a crypto-asset offering** subject to the rules. For example, if a company sold 5,000 “plot of land” NFTs for a metaverse game, even though each plot is different, the series could be regulated because they’re issued as a fungible lot in economic terms (price and traits might be similar or marketed together). Those issuers would then have to comply with requirements like publishing a white paper with disclosures, maintaining reserves if applicable, and getting authorization if they operate a platform[eu.ci](https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-law/" \l ":~:text=However%2C%20the%20regulation%20does%20include,to%20protect%20consumers%20and%20investors" \t "_blank). This is a nuanced approach: essentially, **truly one-off NFTs stay out of scope, but “NFT collections” might be pulled in if they resemble a crypto-asset issuance**.

Apart from MiCA, the EU’s existing financial regulations (like MiFID II for financial instruments) generally have not been applied to NFTs unless an NFT is structured in a way that it represents a financial asset (e.g. an NFT that’s basically a share or bond could still be caught by those laws). But so far, there haven’t been major enforcement actions or cases in the EU testing NFTs under traditional securities law definitions. EU regulators have been more focused on crypto currencies and stablecoins; NFTs have been seen more as a consumer product or part of the digital/creative economy. That said, **European regulators are wary of NFT-related risks** (fraud, money laundering, etc.), and MiCA’s measured inclusion of NFT collections shows an acknowledgment that some NFTs can be used for investment purposes. Also noteworthy: even outside securities regulation, **if an NFT is used for money laundering or other illicit finance, it can trigger EU AML laws**. In 2022, the European Commission even considered applying the Transfer of Funds rules (travel rule) to NFT platforms under AML provisions. So the regulatory net is slowly tightening in indirect ways.

**Pending Developments:** The ink on MiCA is barely dry, and one of its mandates is that the **European Commission must produce an assessment of the NFT market and consider a tailored regulatory approach** in the future[eu.ci](https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-law/" \l ":~:text=Looking%20ahead%2C%20the%20European%20Commission,while%20ensuring%20consumer%20and%20investor" \t "_blank). This assessment (likely to be conducted by 2024-2025) will evaluate whether the partial coverage under MiCA is sufficient or if new rules are needed to address consumer/investor risks in NFTs. The outcome could be a proposal for specific legislation or amendments to MiCA to cover NFTs more explicitly. For instance, if NFT trading and speculation continue to grow, the EU might implement **standards for NFT marketplaces** or require **disclosures for NFT sales** beyond what MiCA already covers for large collections. We are essentially in a trial period: MiCA explicitly said “unique” NFTs are out of scope, but also left room to act if that exclusion is abused. So, pending the Commission’s review, **we could see Europe pivot to tighter rules** (or confirm that no further regulation is needed, if the market is mostly art and collectibles). Another pending factor is how member states handle NFTs in the interim. Until MiCA fully applies (end of 2024 for most provisions), countries could have different interpretations. For example, **France** or **Germany** might consider certain security-like NFTs as falling under existing laws (like if an NFT grants profit rights, perhaps it could be deemed a transferable security or investment product under national law). Industry participants in Europe are eagerly awaiting guidance from ESMA (the European Securities and Markets Authority) as well, which under MiCA will have a role in supervising crypto-asset markets. So far, ESMA has not issued NFT-specific guidance, but it has highlighted the need to monitor “innovative” crypto segments.

**Outlook:** Europe’s approach is currently more flexible for NFTs than the U.S., especially for one-off art and gaming collectibles – **those are largely unregulated, which has allowed a robust NFT art market in Europe**. However, the outlook is for **increased oversight where NFTs function like investments**. Once MiCA is in effect, any company issuing an NFT collection at scale in the EU will need to analyze whether it must comply. Practically, this could mean that an EU-based platform selling a large series of gaming NFTs might have to publish a MiCA white paper (a disclosure document) and meet certain consumer protection standards. This could impose costs and slow down the “mint and sell” model for projects in Europe, but it also legitimizes the space by imposing uniform rules. For unique NFTs, the EU likely will maintain a light-touch approach, focusing on **fraud and AML** rather than treating them as securities. The Commission’s upcoming review might lead to targeted measures such as: defining when an NFT is considered fungible (for instance, if an NFT collection is marketed as an investment, treat it as fungible even if technically each token is unique), or setting threshold amounts (if NFT sales volume or values are above a certain level, then require registration). Another likely development is in **consumer law** – the EU might enforce stricter rules on advertising NFTs (ensuring companies don’t mislead buyers about potential profits, similar to how EU law monitors crowdfunding and speculative products).

In summary, the EU recognizes that **“each NFT’s uniqueness and value cannot be directly compared to another in a standardized market”**[eu.ci](https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-law/" \l ":~:text=In%20the%20same%20way%2C%20the,in%20a%20standardized%20market%20context" \t "_blank), which is why genuine one-offs aren’t regulated like securities. But at the same time, the EU is closing the door on using NFT labels to dodge regulation when essentially doing a public token sale. The implication for businesses is that Europe could become a more predictable environment for NFTs than the U.S., once MiCA is in force – projects will know whether they fall inside or outside the rules. For consumers, it means some protection (in terms of disclosure and oversight) when buying NFT collections that might be investments, while still being free to trade art NFTs without heavy regulation. Over the next couple of years, as MiCA comes fully into effect (by end of 2024) and further refinements are proposed, Europe might serve as a model for balanced NFT regulation, seeking to **“ensure consumer and investor protection”** without stifling innovation[eu.ci](https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-law/" \l ":~:text=The%20overarching%20objective%20of%20MiCA,compensating%20for%20any%20losses%20incurred" \t "_blank)[eu.ci](https://eu.ci/regulation-of-non-fungible-tokens-under-the-eu-law/#:~:text=Looking%20ahead%2C%20the%20European%20Commission,while%20ensuring%20consumer%20and%20investor).

**China: Digital Collectibles Under Strict Limits**

**Current State:** China’s stance on NFTs stands in stark contrast to both the U.S. and EU approaches. The People’s Republic of China has taken a very cautious, state-controlled approach to all crypto-assets. Notably, since 2021, China has *banned* cryptocurrency trading and mining outright. NFTs, which rely on similar blockchain tech, were initially expected to fall under the same ban. However, China did **not** ban NFTs outright; instead, it has allowed them to exist under the term **“digital collectibles”** (数字藏品) with heavy restrictions to prevent speculation[thefashionlaw.com](https://www.thefashionlaw.com/an-overview-the-state-of-nfts-and-marketing-with-nfts-in-china/#:~:text=As%20of%202021%2C%20China%20completely,towards%20%E2%80%9CCollectible%20Avatars%2C%E2%80%9D%20%E2%80%9Cdigital%20collectibles%2C%E2%80%9D)[thefashionlaw.com](https://www.thefashionlaw.com/an-overview-the-state-of-nfts-and-marketing-with-nfts-in-china/#:~:text=often%20associated%20with%20cryptocurrencies%2C%20many,%E2%80%9Cdigital%20collectibles%2C%E2%80%9D%20%E2%80%9Cvirtual%20assets%2C%E2%80%9D%20etc). Chinese tech companies and stakeholders deliberately avoid the term “NFT” and never refer to these assets as tokens or currency. The terminology shift is meant to emphasize that these are **cultural or consumer items, not financial instruments**[thefashionlaw.com](https://www.thefashionlaw.com/an-overview-the-state-of-nfts-and-marketing-with-nfts-in-china/#:~:text=often%20associated%20with%20cryptocurrencies%2C%20many,%E2%80%9Cdigital%20collectibles%2C%E2%80%9D%20%E2%80%9Cvirtual%20assets%2C%E2%80%9D%20etc).

In practice, China’s domestic NFT platforms (often run by big firms like Alibaba’s “Jingtan” or Tencent’s now-closed “Huanhe”) impose strict rules:

* **No secondary market trading:** The selling of NFTs for profit is effectively disallowed. Officially, buyers can purchase digital collectibles for personal use or enjoyment, but **re-selling them for a profit is prohibited or severely constrained**. For instance, Alibaba’s platform required users to hold a purchased NFT for at least **180 days before even transferring it to another person, and even then only as a gift (not a sale)**[scmp.com](https://www.scmp.com/tech/big-tech/article/3171414/tencent-alibaba-tighten-platform-rules-digital-collectibles-nfts#:~:text=,for%20at%20least%20180%20days). Some platforms limit transfers to once or impose caps on transferability. This kills short-term flipping and speculative day-trading of NFTs, aligning with China’s effort to prevent financial risk.
* **No cryptocurrencies allowed:** All NFT purchases in China must be made in local currency (RMB) and through approved payment systems – **cryptocurrency is banned**, so these platforms usually use private or consortium blockchains that don’t require crypto. This ensures NFTs don’t facilitate circumvention of China’s currency controls or crypto ban.
* **Real-name registration and oversight:** Users of NFT platforms must register with their real identities (linking to national ID), and platforms are registered as **“blockchain information services”** with the Cyberspace Administration of China[thefashionlaw.com](https://www.thefashionlaw.com/an-overview-the-state-of-nfts-and-marketing-with-nfts-in-china/#:~:text=In%20this%20context%2C%20several%20of,currency%20NFT%20activities%20as%20legitimate). This means the government monitors their operations closely. Indeed, many NFT issuers have obtained government approval by positioning themselves as part of the allowed blockchain tech industry (for example, being on the state-sanctioned Blockchain Services Network).
* **No “securitization” or fractionalization:** Chinese authorities have explicitly warned against any financialization of NFTs. In April 2022, three major Chinese financial and internet industry associations (under government guidance) issued a **joint statement** on preventing NFT-related financial risks. They declared that members must **“firmly not engage in the financialization of NFTs”** – meaning **no using NFTs as underlying assets for securities, insurance, loans, etc., and no creation of fractional NFTs or batches that could be traded like securities**[thefashionlaw.com](https://www.thefashionlaw.com/an-overview-the-state-of-nfts-and-marketing-with-nfts-in-china/#:~:text=April%2013%2C%202022%2C%20several%20industrial,its%20practices%20with%20this%20norm). They also pledged to not set up centralized marketplaces for NFT trading and to only support “redeemable, small-scale” transfer with strict control[thefashionlaw.com](https://www.thefashionlaw.com/an-overview-the-state-of-nfts-and-marketing-with-nfts-in-china/#:~:text=April%2013%2C%202022%2C%20several%20industrial,its%20practices%20with%20this%20norm). While this was not a law, it was a clear signal of policy, and industry players complied (it’s effectively a form of self-regulation mandated by the government).

This environment means that in China, NFTs are treated *not* as investment vehicles at all. They are more akin to licensed digital collectibles or memorabilia (often tied to traditional culture, art, or brand marketing). For example, a Chinese company might sell an NFT of a famous painting or an Olympic mascot, but buyers can only hold it or display it, not freely trade it on an open market. As a result, the NFT market in China, while active, is relatively insular and **detached from the speculative frenzy** seen elsewhere. Interestingly, Chinese law does consider digital property as protected by property rights (the Civil Code protects virtual property ownership)[thefashionlaw.com](https://www.thefashionlaw.com/an-overview-the-state-of-nfts-and-marketing-with-nfts-in-china/#:~:text=China%E2%80%99s%20regulatory%20regime%20for%20virtual,This), so owning an NFT is recognized in principle, but using it in any financial manner is constrained by regulation.

From a securities law perspective, since active trading and profit expectation are basically stamped out, Chinese regulators would likely say **NFTs are *not* securities** as long as they remain in this “collectible” domain. In fact, the official stance is that NFTs **“shall not be used as any kind of financial instrument”**[thefashionlaw.com](https://www.thefashionlaw.com/an-overview-the-state-of-nfts-and-marketing-with-nfts-in-china/#:~:text=jointly%20issued%C2%A0Proposals%20on%20Preventing%20NFT,its%20practices%20with%20this%20norm). This means an NFT that behaves like a security (fractional ownership, investment return promise, etc.) would simply not be tolerated – it would be viewed as an illegal securities issuance or illegal fundraising. Given China’s strict control, any attempt to circumvent the rules (for instance, a platform trying to allow profit-sharing or launching an NFT-based investment scheme) would likely result in swift enforcement actions, possibly under China’s fraud or illegal financing laws.

**Pending Developments:** The legal environment in China continues to evolve, but largely in tightening or formalizing these restrictions. In mid-2023, there were reports that Chinese authorities (like the Supreme People’s Procuratorate) were studying NFTs to clarify how to handle illegal activities involving them[pilnet.org](https://www.pilnet.org/wp-content/uploads/2023/12/Peoples-Republic-China-Crytocurrency-and-NFTs-Guide.pdf#:~:text=,opinion%20sought%20to%20point). One development was an opinion in 2023 suggesting that while NFTs themselves aren’t banned, they could be implicated in crimes like illegal fundraising or money laundering if misused[pilnet.org](https://www.pilnet.org/wp-content/uploads/2023/12/Peoples-Republic-China-Crytocurrency-and-NFTs-Guide.pdf#:~:text=,opinion%20sought%20to%20point). We might see more formal regulation come out to codify the current practice. For example, the government could issue specific rules on **“digital collectible” platforms** – requiring licensing, capital requirements, content censorship (to ensure no politically sensitive or fraudulent content is sold), etc. Already, the existing **blockchain regulations (CAC provisions of 2019)** cover blockchain service providers, which NFT platforms fall under, but we could get NFT-specific guidelines. The closure of Tencent’s Huanhe NFT platform in mid-2022 indicated that regulatory pressure can cause even big players to retreat if the government signals disapproval. In 2023, China inaugurated a government-backed “China Digital Asset Trading Platform” in some regions – essentially a state-sanctioned NFT exchange for cultural assets (with state-owned enterprises involved). This indicates the government may allow **trading of NFTs on highly controlled, official platforms** in the future, likely with strict rules (perhaps after the 180-day holding, an NFT could be resold once through that platform, etc.). So pending is whether China will allow a *limited secondary market* under supervision, or continue the near-zero trading stance.

**Outlook:** China will likely maintain a tight leash on NFTs. The implications are that **NFTs in China cannot legally be speculative assets** – they must remain as collectibles with use value (e.g. a piece of digital art to enjoy, or perhaps a ticket or certificate). If NFTs were to be used to raise money from the public (like an NFT securitization or an NFT-based crowdfunding for a game), it would likely be shut down or never approved. In the long run, China might integrate NFTs into its vision of a regulated digital economy: for instance, using NFTs for things like certificate of authenticity for products, or digital representations of real-world assets (with government oversight). But even those use-cases would be carefully watched to prevent them from becoming tradeable securities. A positive outlook is that by avoiding speculative crazes, China’s approach protects consumers from the volatile boom-bust of NFT markets. The downside is a far less vibrant market for Chinese NFT creators – they can’t easily tap into speculative demand or global liquidity. Some Chinese artists have even turned to **minting NFTs overseas** (on Ethereum, etc.) to sell to international buyers, since the local market is restrictive. Legally, that’s a gray area for Chinese citizens due to the crypto ban.

Another implication is on **jurisdictional arbitrage**: foreign NFT projects cannot legally target Chinese consumers with the usual NFT model. If they do, they risk running afoul of Chinese law. So most international NFT platforms geoblock China or simply don’t offer services in RMB. Conversely, China’s “digital collectibles” largely stay within its own walled gardens, often using private blockchains (like Ant Group’s AntChain or others). There’s talk that China might introduce **state-blockchain issued NFTs** (e.g., through its cultural heritage agencies) where people can buy digital collectibles of historical artifacts – again, more like buying a souvenir than investing. To sum up, **China’s regulatory approach effectively ensures NFTs are *not* treated as securities at all** – any NFT resembling a security is forbidden. The country’s strict stance underscores its priority: preventing financial instability and speculative mania, even at the cost of stifling innovation in the NFT space. Internationally, this could influence other strict regimes (some other Asian countries look to China’s model of permitting “NFTs” only if speculation is curbed). But for now, China’s NFT ecosystem remains a unique, tightly controlled environment segregated from the global NFT market.

**India: NFTs in an Unregulated Gray Zone**

**Current State:** India’s relationship with crypto-assets has been cautious and evolving. As of 2025, **India does not have any law or regulation that explicitly and directly addresses NFTs**[bridgecounsels.com](https://bridgecounsels.com/nfts-copyright-and-the-indian-art-community-is-the-buzz-still-legally-backed/#:~:text=,Landscape%3A%20Where%20We%20Stand). NFTs exist in a legal gray area where they are not banned but also not separately defined by law. The Indian government and regulators have focused more broadly on **“Virtual Digital Assets” (VDAs)**, a category introduced in 2022 primarily for taxation purposes. VDAs essentially include cryptocurrencies, tokens, and likely NFTs (the definition is any information or code representing value, which would cover NFTs). Under India’s Income Tax Act (post-2022 amendments), **NFTs are treated as VDAs**, meaning transactions involving them are legal but subject to certain conditions and high taxes[coindcx.com](https://coindcx.com/blog/cryptocurrency/crypto-legal-status-in-india/#:~:text=Legal%20Status%20of%20Crypto%20in,India)[coindcx.com](https://coindcx.com/blog/cryptocurrency/crypto-legal-status-in-india/#:~:text=%2A%2030,set%20off%20against%20other%20income). Specifically, India imposed a flat **30% tax on any gains from the sale of crypto assets (including NFTs), plus a 1% Tax Deducted at Source (TDS) on each transaction**[coindcx.com](https://coindcx.com/blog/cryptocurrency/crypto-legal-status-in-india/#:~:text=Tax%20Structure%3A). This tax regime, while onerous, implicitly legitimized the holding and trading of NFTs – it acknowledged people will buy/sell them and the government wants its share. It’s important to note that while trading is allowed, **cryptos and NFTs are not recognized as legal tender** in India (you can’t use Bitcoin or an NFT to pay for something in shops, for example)[coindcx.com](https://coindcx.com/blog/cryptocurrency/crypto-legal-status-in-india/#:~:text=As%20of%202025%2C%20cryptos%20are,as%20a%20form%20of%20currency). They are viewed as assets, like stocks or commodities, but as of now, they are *unregulated assets* in the sense that no securities or commodities law specifically covers their issuance or trading practices.

From a securities law perspective, India’s definition of “securities” in laws like the Securities Contracts (Regulation) Act or SEBI’s regulations doesn’t explicitly include NFTs. If an NFT were structured to represent a share in a company or some derivative, it might get captured by existing securities laws, but typical NFTs (art, collectibles) do not fall under those definitions. **SEBI (Securities and Exchange Board of India)** has not yet taken public action or issued guidance on NFTs. They have, however, shown interest in crypto generally, especially if crypto-assets behave like securities or investment schemes (SEBI would likely claim jurisdiction over security tokens or collective investment schemes involving tokens). So far, most official statements in India about NFTs have been that they are part of the broader crypto asset class which is **unregulated** – meaning no regulatory body (RBI, SEBI, etc.) explicitly oversees them at this point. This is why, for example, the **Advertising Standards Council of India (ASCI)** stepped in to fill the gap by issuing guidelines for crypto and NFT advertisements. Since early 2022, all ads for crypto products or NFTs in India must include a prominent disclaimer: *“Crypto products and NFTs are unregulated and can be highly risky. There may be no regulatory recourse for any loss from such transactions.”*[practiceguides.chambers.com](https://practiceguides.chambers.com/practice-guides/blockchain-2025/india/trends-and-developments/O21415#:~:text=assets%20carry%20the%20following%20disclaimer%3A). Advertisers are also forbidden from using words like “currency” or “securities” in ads for NFTs/crypto, to not mislead consumers into thinking they are officially regulated financial products[practiceguides.chambers.com](https://practiceguides.chambers.com/practice-guides/blockchain-2025/india/trends-and-developments/O21415#:~:text=7,these%20terms%20with%20regulated%20products). This highlights that in the Indian government’s view, **NFTs currently have no legal status as securities or currency – they are simply unregulated risky assets**.

Another relevant aspect is that India has brought **anti-money laundering (AML) rules** to the crypto sector. In March 2023, the government expanded the **Prevention of Money Laundering Act (PMLA)** to cover **virtual asset service providers (VASPs)**, which would include crypto exchanges and potentially NFT marketplaces[globallegalinsights.com](https://www.globallegalinsights.com/practice-areas/blockchain-cryptocurrency-laws-and-regulations/india/#:~:text=The%20Ministry%20of%20Finance%20,i)[globallegalinsights.com](https://www.globallegalinsights.com/practice-areas/blockchain-cryptocurrency-laws-and-regulations/india/#:~:text=India%E2%80%99s%20approach%20to%20virtual%20assets,i). This means any platform facilitating NFT trades might be required to register as a reporting entity, do KYC checks, maintain records, and report suspicious transactions[globallegalinsights.com](https://www.globallegalinsights.com/practice-areas/blockchain-cryptocurrency-laws-and-regulations/india/#:~:text=The%20PMLA%20VASP%20Notification%20sought,remain%20in%20its%20application%20to)[practiceguides.chambers.com](https://practiceguides.chambers.com/practice-guides/blockchain-2025/india/trends-and-developments/O21415#:~:text=%23%20%204.1.4%20Anti,Terrorism%20Financing%20%28AML%2FCTF%29%20Requirements). Indeed, any major Indian crypto exchange that also offers NFT trading would likely fall under this AML regime. So while NFTs themselves aren’t regulated as securities, the platforms might be subject to compliance requirements to mitigate illicit use.

**In summary**, India’s current approach treats NFTs as **digital assets subject to taxation and AML oversight but not as securities or financial instruments with specific regulations**. There have been no notable prosecutions or legal cases in India classifying an NFT as a security to date. If, say, an Indian company tried to issue NFTs with profit rights, it might catch regulator attention, but more likely under anti-fraud or collective investment scheme laws rather than securities issuance (unless it was effectively equity).

**Pending Developments:** The regulatory climate in India is in flux. The government has repeatedly indicated it is working on a **comprehensive cryptocurrency law** – drafts have been floated since 2019, with various approaches from an outright ban (earlier stance) to a regulatory regime. In 2023, during India’s G20 presidency, the government shifted to a view favoring international coordination, seeking an aligned global framework for crypto regulation rather than acting alone. This means we might see some movement after global bodies (IMF, FSB) provide guidelines. When India does legislate on crypto, **NFTs could be included** either explicitly or implicitly. For instance, if they define crypto assets broadly (as they did for tax purposes), that law could cover NFTs for registration or licensing requirements. SEBI could be given authority over certain token offerings. There’s speculation that India may regulate crypto in categories – e.g., treat payment tokens differently from utility tokens, etc. In such a scheme, NFTs used purely for art or collectibles might be carved out or minimally regulated, whereas NFTs that have investment characteristics might be brought under oversight.

Also pending is how Indian courts would treat NFTs if a dispute arose. For example, if someone sued claiming an NFT project in India was a disguised investment scheme, would the courts apply something like Howey test or Indian securities tests? Indian law doesn’t have an exact Howey equivalent, but it has concepts of “collective investment schemes” regulated by SEBI (which are broad and could technically cover some crypto/NFT schemes if investors pool money expecting profits managed by someone). We haven’t seen a test case yet. Indian jurisprudence might look at substance too – if an NFT were clearly a share or a debenture by another name, courts could bring it under securities law definitions.

The Indian government’s recent stance has also been to emphasize **investor protection and financial stability**. They implemented strict crypto taxes likely to dissuade active trading (which indeed dampened trading volumes in India). For NFTs, there’s talk that these taxes and potential future regulations have cooled what was a small but growing NFT scene in 2021-22. Many Indian NFT startups or artists operate via international marketplaces to avoid local uncertainties. We anticipate that in any upcoming crypto regulatory framework, NFTs won’t be the primary focus (the focus will be on currencies and stablecoins), but they won’t be forgotten. Possibly NFTs could be handled through secondary legislation or guidelines by whichever agency is assigned to crypto oversight in the new law.

**Outlook:** In the near term, India’s NFT market operates in a somewhat uncertain, unregulated space, albeit under the shadow of heavy taxes. The **implication** for participants is to be cautious: since there’s no clear law, if something goes wrong (like fraud or collapse of an NFT scheme), there’s limited legal recourse or protections – as the ad disclaimer says, “no regulatory recourse for any loss”[practiceguides.chambers.com](https://practiceguides.chambers.com/practice-guides/blockchain-2025/india/trends-and-developments/O21415#:~:text=assets%20carry%20the%20following%20disclaimer%3A). For the government, the high tax regime effectively curtails rampant speculation (because traders lose a large chunk of profits to tax and can’t offset losses). If a comprehensive crypto law is enacted, we expect:

* **Explicit legality (or illegality):** The government might formally legalize holding and trading of NFTs under a licensing regime, or in the worst case (though unlikely now) ban certain uses. Given the current trajectory, legalization with regulation seems more plausible.
* **Registration of NFT platforms:** Much like how exchanges must register with the FIU (for AML) now, they may also need a license from a financial regulator to operate, ensuring consumer protections, security of assets, etc.
* **Distinguishing types of NFTs:** Perhaps utility NFTs (like game items, art) will remain largely unregulated, whereas investment-type NFTs (if, say, an NFT represents securities or a revenue share) will be brought under SEBI’s purview. SEBI has hinted that they can regulate “crypto-based securities”[coindcx.com](https://coindcx.com/blog/cryptocurrency/crypto-legal-status-in-india/#:~:text=Prevention%20of%20Money%20Laundering%20Act,based%20securities%20in%20the%20future) if those emerge – an NFT that is basically a share would qualify.
* **Continued taxation:** It’s likely India will maintain or even increase taxation on NFT profits to both generate revenue and discourage speculative bubbles.

For now, Indian NFT creators and buyers face less regulatory risk than those in the U.S. (no one is going to accuse them of securities law violations *at the moment*), but they face more business risk because the market is smaller and any day regulations could change the game. The lack of clarity can also be a deterrent for large companies to issue NFTs in India – some Indian companies have done NFT drops (for branding), but they often structure them carefully or give them for free to avoid any suggestion of selling a security.

In conclusion, **India’s current approach to NFTs is “wait and see” – unregulated, taxed, and approached with caution.** There is recognition of NFTs as part of the digital asset ecosystem (hence included in tax definitions), but the legal status is not fully defined. The outlook is that as global consensus emerges and domestic concerns (like ensuring NFTs aren’t used for illicit activities or investor scams) grow, India will introduce more concrete rules. Stakeholders should keep an eye on the upcoming legislative developments. Until then, engaging in NFT ventures in India means navigating under general laws (contract law, IP law for the content, consumer protection law if selling to public, etc.) without a bespoke regulatory framework. It’s a gray zone, but one that is likely temporary as India modernizes its crypto policy in the coming years.

**Implications and Future Outlook**

Across jurisdictions, the treatment of NFTs vis-à-vis securities law reveals a common principle: **the legal classification depends on the NFT’s functional attributes, not just its name**. In jurisdictions like the U.S., this means applying the **Howey Test** on a fact-specific basis – some NFTs will be deemed securities, others not, leading to case-by-case enforcement and a need for clear compliance diligence by NFT issuers. In more proactive regulatory regimes like the EU’s, we see attempts to draw boundaries (unique art vs. large-scale token issuance) in law, which may offer more certainty but still require interpretation as new NFT use cases emerge.

For innovators and businesses, the implications are as follows:

* When launching NFT projects, particularly for **gaming assets or new platforms**, one must consider the **“securities-like” features** carefully. Promising financial returns or designing NFTs whose value hinges on your ongoing efforts can trigger securities laws in several major markets. This might necessitate either compliance (registering offerings, limiting to accredited investors, etc.) or structuring the project to avoid those features (e.g., emphasizing immediate utility, capping speculative elements, decentralizing control).
* The **global regulatory trend is toward more oversight** of the crypto/NFT space generally. The “wild west” days where NFTs were completely outside regulation are dwindling[mondaq.com](https://www.mondaq.com/unitedstates/fin-tech/1175900/nfts-wild-west-days-are-numbered-as-global-regulation-looms#:~:text=NFTs%27%20%27Wild%20West%27%20Days%20Are,regulate%20virtual%20assets%2C%20streamline). We can expect more jurisdictions to clarify their stance. For example, countries in Asia or the Middle East may issue NFT guidelines; already, places like **Singapore** and **Hong Kong** have indicated that if an NFT has characteristics of a capital markets product (security, unit in a collective investment scheme, etc.), it will be regulated as such under existing law. **Japan** has amended laws to regulate crypto tokens and could address NFTs (especially those tied to financial returns) under its Payment Services Act or Financial Instruments and Exchange Act.
* Enforcement is likely to ramp up where fraud or clear investment schemes using NFTs occur. We might see coordinated international enforcement for things like NFT rug pulls or pyramid schemes. On the flip side, legitimate projects will likely lobby for clearer safe harbors – for instance, an artist community might want assurance that selling limited art NFTs won’t inadvertently trip securities rules, or game companies might seek a sandbox to experiment with NFT economies legally.
* **Investor protection vs. innovation:** Regulators face a balancing act. They acknowledge the innovative potential of NFTs (for digital ownership, monetizing content, etc.), but they are also wary of speculation harming consumers (many NFT buyers in 2021-22 suffered losses from volatile prices). The future regulatory outlook involves creating frameworks that protect against the worst abuses (fraudulent offerings, money laundering through high-value NFT trades, etc.) without crushing the creative and commercial uses of NFTs (like in gaming, art, and authentication). We see this in the EU’s measured approach and even in the U.S. dissenting voices that not every NFT should be seen through the investment lens.

In the **gaming industry** specifically, NFTs hold promise for true ownership of in-game assets and player-driven economies. But the idea of players “investing” in game items flips the traditional understanding of game purchases. It introduces securities law considerations that game developers never had to worry about before. Going forward, game companies might:

* Avoid explicitly marketing NFTs as investments or using language like “profit, ROI, moon, etc.” in relation to game item sales.
* Perhaps limit secondary trading or at least not facilitate it directly (maybe leaving it to third-party platforms) to reduce the appearance of a common enterprise.
* Consider **geofencing** certain features: e.g., U.S. players might get a different version of the game without NFT sale features, to steer clear of U.S. jurisdiction issues, while offering them elsewhere (though this comes with its own business challenges).
* Work with regulators to develop norms – for instance, a possibility is a self-regulatory code for blockchain games that ensures a level of transparency and warnings to players, which might preempt stricter regulation.

**Conclusion:** The question “Is an NFT a security?” does not have a one-size-fits-all answer. As we’ve elaborated, it depends on *how* the NFT is used and *where*. Using the Howey Test, if an NFT is basically a vehicle for investment in someone else’s venture, authorities will likely treat it as a security – the label “NFT” won’t provide immunity. We gave examples of such scenarios (and indeed enforcement has begun on them in the U.S.). Conversely, if an NFT is more akin to a **digital collectible or a functional item**, purchased for its own sake, it’s usually not deemed a security – owning it is like owning a piece of property or art. Jurisdictions around the world are converging on this substance-based approach: even without explicit NFT laws, they apply existing principles (e.g., **FATF’s advice of substance over form**[**fintechcircle.com**](https://fintechcircle.com/insights/nft-markets-since-crypto-winter-regulatory-landscape-across-jurisdictions/#:~:text=,an%20NFT%20is%20determined)).

* In the **U.S.**, expect ongoing tension and perhaps eventual court rulings that set precedent on NFTs as securities, unless Congress steps in with legislation (which, in the short term, seems unlikely).
* In the **EU**, by 2025 we will see MiCA in action and possibly new rules specifically for NFTs, aiming to strike a balance between innovation and risk mitigation.
* **China** will continue a strict, non-investment approach, which likely keeps its NFT market safe from financial mania but isolated and under government’s thumb.
* **India** and other countries still forming policy will be influenced by these global trends and the outcomes at G20 and other international forums. They may leapfrog by implementing clear regulations once they see what works elsewhere.

For participants in the NFT space – creators, platforms, and investors – the key takeaway is to **stay informed and compliant with the evolving laws**. The implications of getting it wrong can be serious: regulators can impose fines, demand refunds to investors, or even pursue criminal charges for fraud or illegal securities offering in egregious cases. But done right, NFTs can continue to thrive in realms like gaming, art, and commerce without being pigeonholed as securities. The technology is new, and laws are catching up; the coming years will define how NFTs are integrated into the legal financial system. The outlook is one of maturation: from a speculative novelty towards a more regulated (but hopefully still vibrant and creative) digital asset ecosystem, where the rules of the road are clearer for everyone involved.

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