08/03/21

July 28, 2021

Valuation of NFTs: Factors to Consider and an Alternative to Destroying the Original Work ;

WRITTEN BY:

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; <https://www.jdsupra.com/legalnews/valuation-of-nfts-factors-to-consider-5956190/>

**Seven Important Traits**

Attempting to value NFTs is a speculative and challenging practice, in part because they are still relatively new and there are few comparable assets.1 The newsletter Bankless gives seven traits to consider when determining an NFT’s value:

**First** is chain security.2 It is important to the buyer that the underlying blockchain stays secure.3 The reigning NFT network, Ethereum, which is presently the most secure smart contract platform that exists, can contribute to the NFT’s value over time.4

**Second,** one must ask if the NFT is “on-chain” or “off-chain,” referring to the NFT metadata.5 “On-chain means direct incorporation of the metadata into the smart contract which represents the tokens,” whereas “off-chain representation means hosting the metadata separately” due to storage limitations of the Ethereum blockchain.6 On-chain metadata makes an NFT more valuable, in part because the metadata is incorporated into the token, allowing the NFT to last forever (or as long as Ethereum exists),7 and in part because on-chain tokens have to meet certain Ethereum standards, giving them a liquidity premium and making trading easier.8 When determining whether the NFT is on-chain or off-chain, the key question is where the NFT is hosted.9

**A third,** but less significant, consideration is the NFT’s age.10 Since NFTs are so new, an NFT created before 2020 may be considered a “digital artifact” that possesses greater value.11

**Fourth,** the creator and community must be taken into consideration.12 “For example, the broader marketability and recognition of a celebrity artist will affect the value of their NFT over that of another, unknown artist.”13 Certain NFT creators in the sports industry have realized this and partnered with notable artists to produce digital-first, one-of-a-kind content.14 These NFTs are attractive to buyers as exclusive and distinct from the types of physical objects available to buy.

**Fifth,** one must consider the scarcity of the NFT.15 Certain NFT platforms like SuperRare only support unique, single-edition digital artworks.16 Some marketplaces also break their NFT offerings down by scarcity, for example, NBA’s Top Shot puts its NFTs in “common,” “rare,” “legendary,” and “ultimate” tiers.17 Those listed in a higher tier possess a significantly greater value than their counterparts in the “common” tier.18 Authenticity goes hand-in-hand with scarcity—for example, if the “Louvre created one and only one NFT for the Mona Lisa, then the Louvre’s NFT will have more value” than one created by anyone else.19 However, verifying the authenticity of a seller on the internet can be a challenge.20

**A sixth** and similar consideration is the release pace, or in other words, how many of these NFTs has the creator minted overall?21 “A project that offers unlimited mints of an NFT at 0.01 is generally not as enticing as buying an NFT from an artist who’s committed to minting only 25 NFTs ever.”22

The **seventh** consideration is richness, which relates to additional features of an NFT such as audio.23 An audio component can add value as it could (1) feature a known artist, or (2) create an addictive loop for the viewers.24 Similarly, some creators have begun offering a tangible asset in conjunction with the NFT. This occurred recently when the Golden State Warriors auctioned off NFTs of their previous championship rings and included a tangible benefit for the buyer, which could have been a VIP basketball game experience or an imitation physical version of the ring with custom name engraving.25 One of these NFTs sold for over $800,000.26 Similarly, the purchaser of an New Jersey Devils NFT Coin also received an opportunity to “watch a 2021-22 season game in the New Jersey Devils Alumni Suite with a Devils legend from one of the championship years.”27 This NFT sold for $3,000, whereas some of the digital-only NFTs on the site are selling for only $100.28

Current Trend of Destroying Original Work to Increase Value

An approach that some creators are using to increase value is destroying the original work, either upon agreement at the time of the NFT’s transfer to a buyer, or before the sale even occurs. Perhaps the most well-known (almost) destruction event was the planned auction of a Basquiat NFT in late April, when the auction sponsor DAYstrom initially shared that the sale would include “all related IP and copyright in perpetuity,” and that the highest bidder could choose to “deconstruct” the physical drawing if they wished.29 The auction did not end up happening, as Basquiat’s estate pulled the NFT from OpenSea and clarified that the estate will retain the drawing’s license and rights.30

Offers like the one above are appealing because they confer status on the NFT as the “only remaining form,” creating an exclusive digital asset that buyers might pay more for.31 But it is important for buyers to remember that destruction does not lessen the other challenges of NFT ownership—namely that once an NFT is minted on the internet, anyone can view, download, share, and copy the image that is the subject of the NFT.32

Another destruction event involved a group who sold a Banksy print as an NFT after burning the original print.33 One member of the group gave the rationale behind the act: “By removing the physical piece from existence and only having the NFT, we can ensure that the NFT, due to the smart contract ability of the blockchain, will ensure that no one can alter the piece and it is the true piece that exists in the world. By doing this, the value of the physical piece will then be moved onto the NFT.”34

Similarly, Origin Protocol recently auctioned off the “Charlie Bit My Finger” video as an NFT, which was once the most-viewed video on YouTube.35 Origin stated that it planned to remove the original video from YouTube so that the content could be “memorialized on the blockchain.”36 YouTube has yet to take the clip down, but the video now has “Waiting on NFT decision” added to the title.37

Contractual Restriction Alternative to Destruction

Instead of destroying the original work or giving the buyer the option to destroy it, the creator can always make an NFT of the physical object and leave the object intact. One space in which this occurs is the art world; for example, art historian Ben Lewis created an NFT of Salvator Mundi by Leonardo da Vinci, with some slight modifications, without destroying da Vinci’s original work.38 It appears that the NFT is still listed on OpenSea and has not yet been sold. Similarly, as mentioned above, the Golden State Warriors became the first professional team to launch an NFT collection, which included the Warriors’ six NBA Championship Rings digitally reproduced as NFTs.39 The initial sales occurred in early May40 and did not involve destruction of the original championship rings.

After the creator mints the NFT without destroying the original, to make the offer for sale more appealing, the creator could add an offer to contractually restrict display of the original. Adding an offer to transfer the copyright of the NFT to the buyer could entice potential buyers even more, as this would provide additional assurance that the creator would not license the original work out to anyone else. The buyer would then have potential breach of contract and copyright infringement claims against the creator if the creator were to publicly display or use the work. There is some evidence that contractual restrictions on the original work are already being employed in various cases. For instance, according to Paul Slocum of the digital art gallery And/Or, the terms of service drafted by marketplace platforms often prevent their associated works from being shown in a museum.41

A well-drafted contract containing restrictions on display of the original work will likely increase the value of an NFT, similar to if the original work had been destroyed. However, as mentioned above, neither destruction of the original nor contractual restrictions on its display will prevent other people on the internet from viewing, downloading, sharing, and copying the image that is the subject of the NFT, as this is the nature of NFTs.

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