

BROOKLYN ARTS COUNCIL  
THRIVE SERIES

# NFTs, Metaverse and web3 for Art

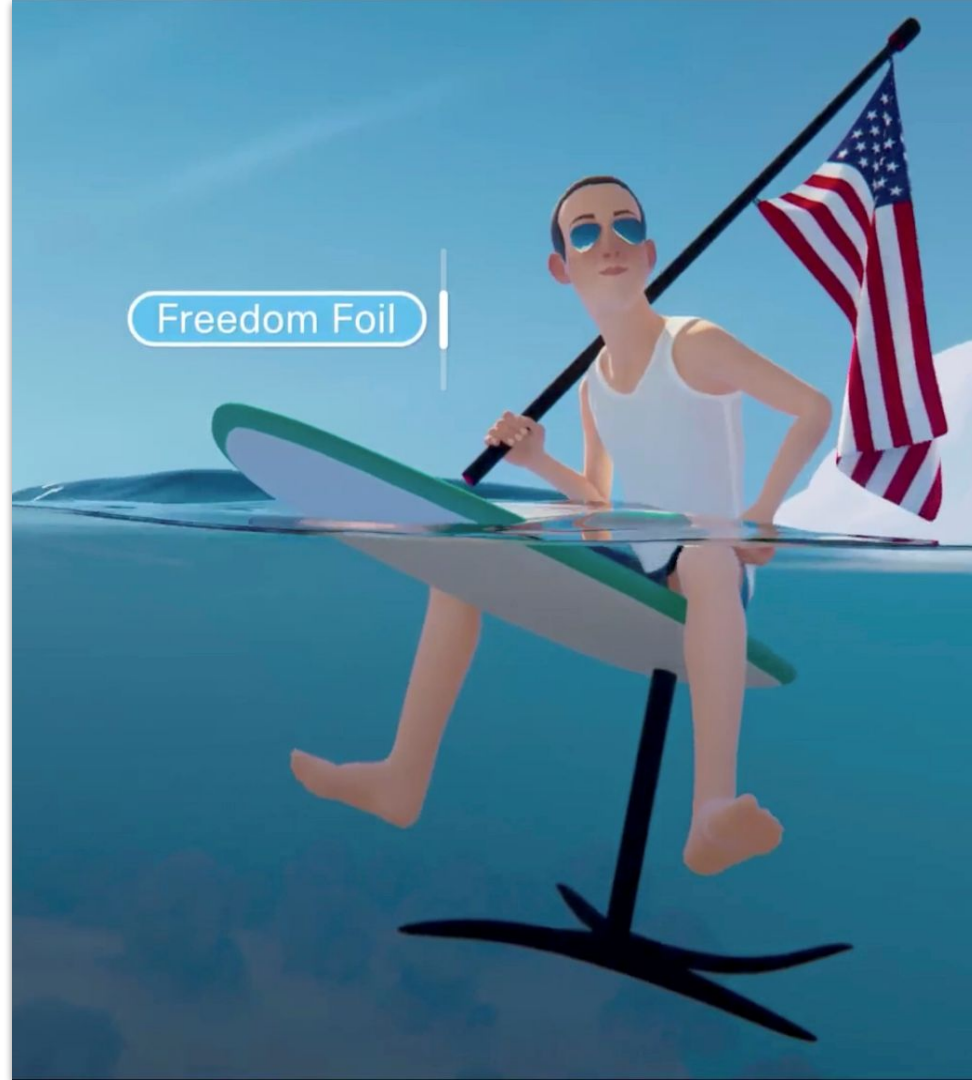
Louise Carron  
Associate, Klaris Law PLLC

Aug.-Sept. 2022

The following information is for educational purposes only and does not constitute legal advice, nor does it create an attorney-client relationship.

# Diving Into The Metaverse

*Click on images to open further resources*



AI

web3

DAO

IPFS

NFTs

ERC-721

AR

Scarcity

Metaverse enthusiasts believe that our digital identities will eventually become just as meaningful as our offline selves, and that we'll spend our money accordingly. Instead of putting art on the walls of our homes, they predict, we'll put NFTs in our virtual Zoom backgrounds. Instead of buying new clothes, we'll splurge on premium skins for our V.R. avatars.

ERC-1155

VR

ETH

Fungibility

dApps

Decentraland

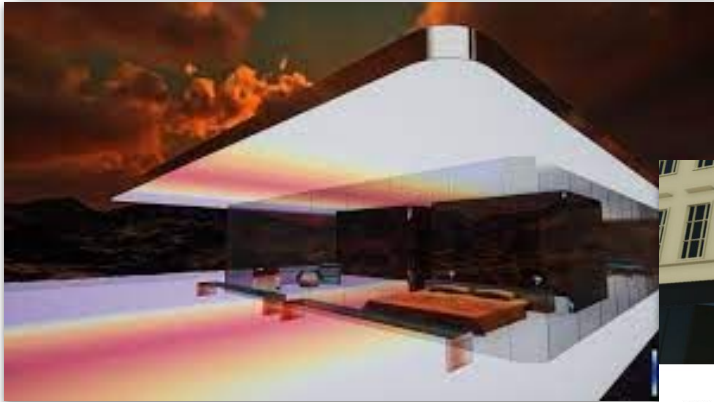
Cryptoart

# Art takes the Metaverse by storm

EVENT

POSTED APRIL 10 2009 23:29

## DSL Cyber MoCA - a museum of contemporary art in Second Life



Krista Kim @Krista\_Kim

**new  
art  
city**



Virtual Art Space

[About](#)  
[Contact](#)  
[Features & Documentation](#)  
[Sign Up](#)  
[Log In →](#)

## New Art City is a virtual gallery & exhibition toolkit for digital art.

THE CRYPTO TIMES News ▾ Articles ▾ How To Advertise With Us

METAVVERSE NEWS

## The Sandbox & TIME bring "TIME Square" to the Metaverse

The visual spirit and energy of New York City's iconic urban locale will inspire TIME Square metaverse.

BY RENUKA TAHELyani PUBLISHED ON - JUNE 22, 2022 18:17 UPDATED ON - JUNE 22, 2022 18:21 © 2 MINUTE READ



JUN 4, 2021 ANNOUNCEMENTS

## Sotheby's opens a virtual gallery in Decentraland

The world's oldest auction house drops a digital replica of its London Galleries in the Voltaire Art District.

# Blockchain Basics



Cryptograffiti Nakamoto

## Transaction

- A transaction is initiated between parties
- The transaction is sent to all nodes in the network

## Verification

- Each node verifies details of the transaction using cryptographic methods
- A block of verified transaction is assembled and checked by the network

## Security

- When consensus is reached, the block is added to the chain and becomes immutable, non-reversible
- The block is kept on every node

## Transparency

- Once approved, the transaction is secured, recorded, transparent

## Trust

- Fostered by automation

# Tokens 101

## Payment token:

- Major cryptocurrencies (e.g. Bitcoin)
- Fully interchangeable
- Value based on supply and demand
- Finite supply in circulation

## Utility token:

- Gives its holder access to blockchain-based products or services
- E.g. Ether to pay for smart contracts to be executed on the Ethereum blockchain

## Security token:

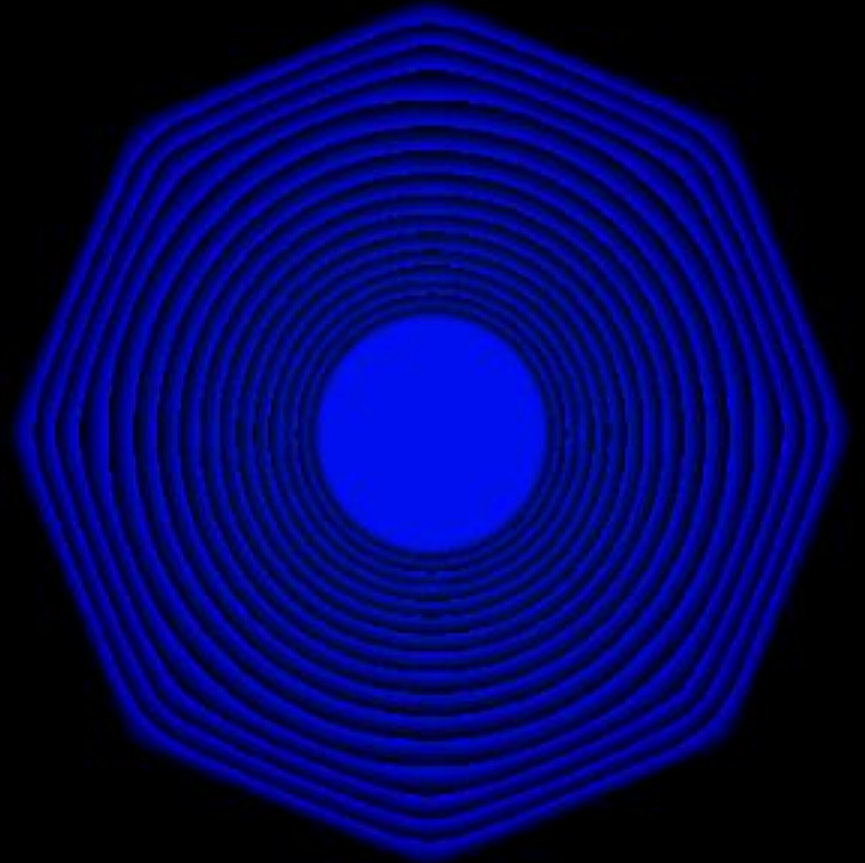
- Asset traded like stocks: investment in a common blockchain-based enterprise with an expectation of profits
- Regulated by the SEC
- Gives its holders voting rights in the ecosystem, like a shareholder

## Non-fungible token:

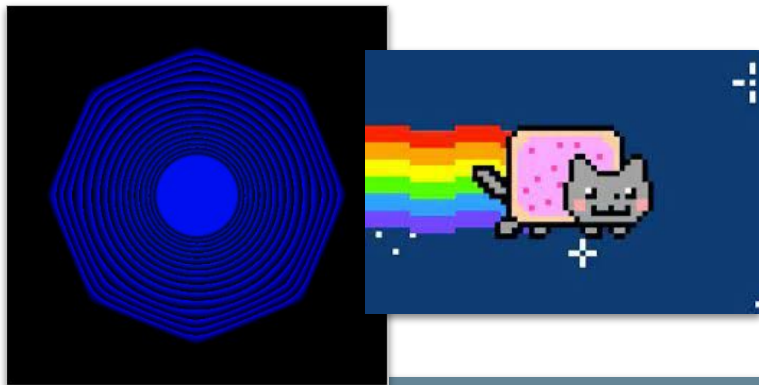
- Digital representation of a unique asset
- Cannot be duplicated or altered: proof of ownership, identity, authenticity
- Can be bought with cryptocurrencies
- Value depends on scarcity
- Most commonly use Ethereum's ERC-721 smart contract standard



# NFTs: A Primer

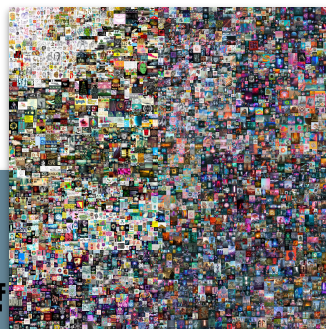


# Setting the art scene



THE SHIFT

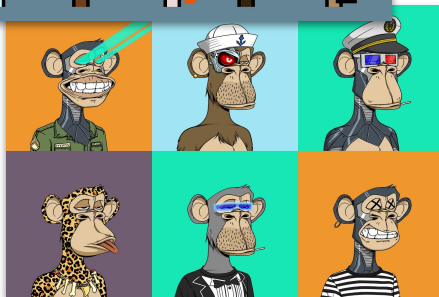
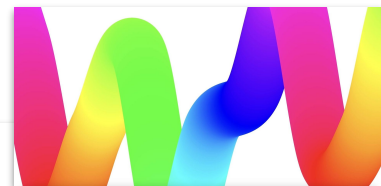
*I Joined a Penguin NFT Club  
Because Apparently That's What  
We Do Now*



CRITIC'S NOTEBOOK

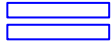
One Year After Beeple, the  
NFT Has Changed Artists.  
Has It Changed Art?

Hardly at all.



# NFTs: What Is All The Fuss About?

Non Fungible Token



Unique digital token



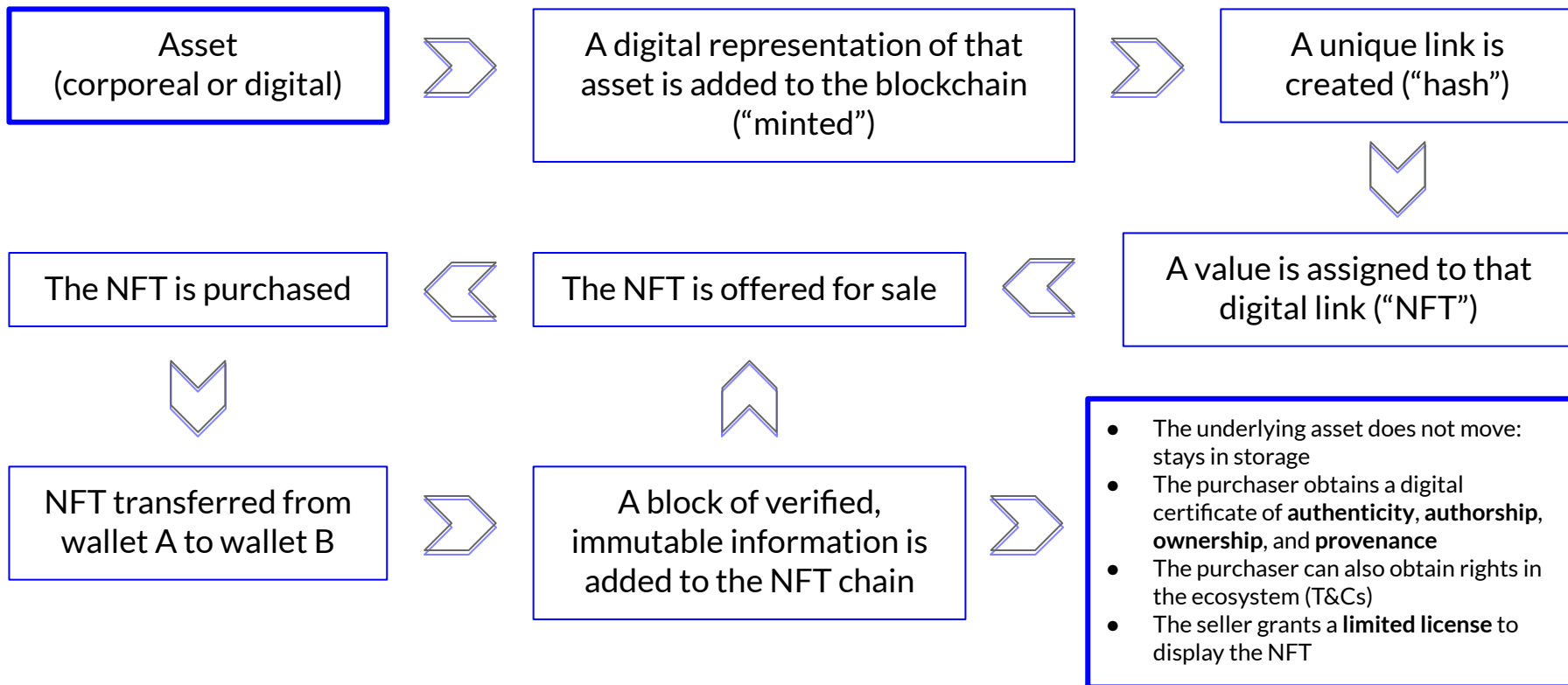
Traded on a blockchain network



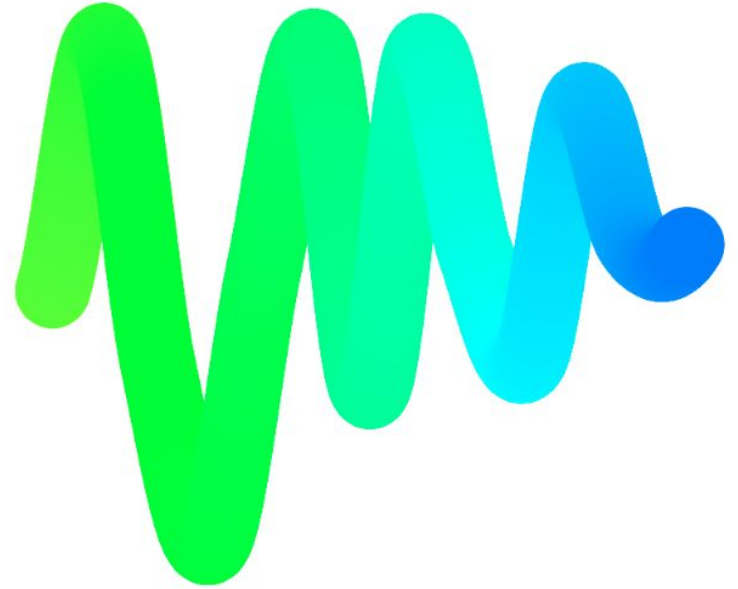
Linked to an asset

- Volatile value based on number of tokens in circulation
- Scarce, sometimes collectible item
- Additional perks: VIP events, exclusive content...
- Community of collectors/enthusiasts (e.g. Discord)
- Baked-in royalty scheme

# NFTs: Behind the Scenes



# What About Art



# Cool art by female-identifying artists



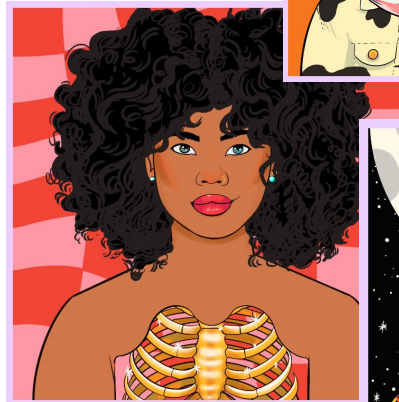
Jen Stark @jenstark



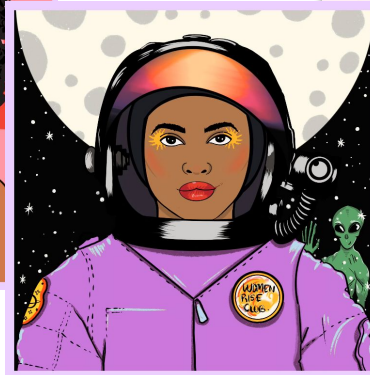
Nadieh Bremer *Patchwork Kingdom*  
@NadiehBremer



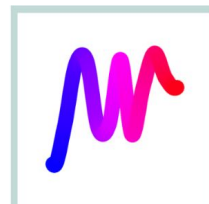
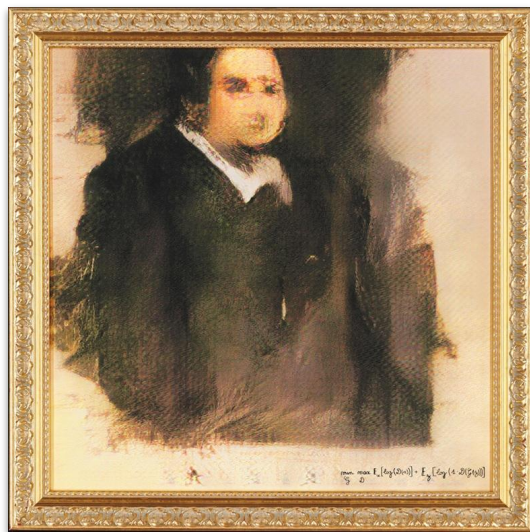
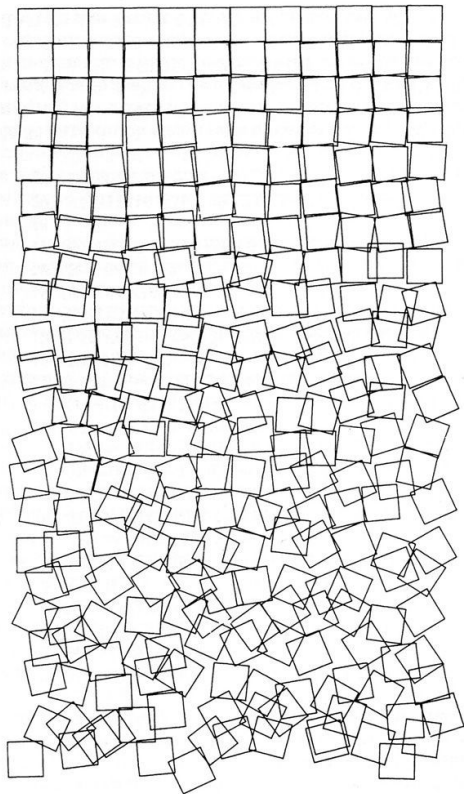
Amber Vittoria  
@amber\_vittoria



Maliha Abidi *Women Rise*  
@WomenRiseNFT



# Generative Art



[Squiggle #47](#)  
The letter W Squiggle



[Squiggle #1724](#)  
The WW Squigle



[Squiggle #6786](#)  
The Snake?



[Squiggle #8047](#)  
Another Snake!



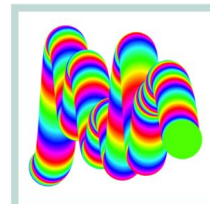
[Squiggle #2237](#)  
The Snail



[Squiggle #5525](#)  
The Loch Ness Monster



[Squiggle #450](#)  
Type: **Normal** (63.35%)  
Spectrum: **Perfect Spectrum**



[Squiggle #4697](#)  
Type: **Bold** (4.58%)  
Spectrum: **HyperRainbow**



[Squiggle #616](#)  
Type: **Fuzzy** (10.69%)  
Spectrum: **Normal**

# NFT Platforms

voice beta Search Create Sign up Log in

**NFTs for everyone. Create and earn together.**

Mint on an environmentally-friendly platform. Easy credit card payments and zero gas fees.

Get started

Discover creators

**Featured NFTs**

Be inspired by your fellow creators

Untitled3D #4  
created by @nicholassmita

Rarible Search Collection, item or user Explore My profile Following Activity How it works Community Create Sign in

**CYBER HALLOWEEN**  
EXCLUSIVE LIMITED EDITION

gumpino & friends Mboa Art vintagemozart

Watcher lindadounia GusGus

Search Foundation... Connect Wallet

@nossapha

**α·Phα 3D Μαγευ·P**

Current Bid **1.50 ETH**  
\$6,506.19

Auction ending in **12 52 19**  
Hours Minutes Seconds

View artwork

N X

Curated Drops Verified Drops **NEW** Marketplace Activity Log In Sign Up

**ALETHEA AI PRESENTS NOAH'S ARK**

Noah's Ark is an Intelligent Metaverse that aims to preserve and evolve the culture and collective intelligence of the human species.

**CREATE**  
Begin your journey on Noah's Ark by creating an Intelligent NFT (INFT).

**TRAIN**  
Train your INFT so that it can upgrade its intelligence to contribute to the Ark's AI Engine.

**EARN**  
Offer your AI services and participate in Intelligence Mating with your INFT. Earn ALL Tokens as Rewards.

FERAL FILE About Browse Close-Ups EN USD/ETH Sign In

26 OCTOBER 2021

**Polyrhythmia**

Solo show by  
Jan St. Werner

Enter Exhibition

Jan St Werner  
Polyrhythmia

SuperRare

**Collect digital art**

Buy and sell NFTs from the world's top artists

START COLLECTING

• AUCTION IN PROGRESS



# Platforms Models

Open access	Invitation-only (curated)
Non-custodial	Custodial
Auction format	Marketplace
Seller's fees	Buyer's fees
Ethereum (ERC 721)	Other blockchains (e.g. Tezos, Solana)
IPFS	Centralized
Fixed royalties	Flexible royalties
Creator-friendly	Collector-friendly

# Adapting Art World Models

**Artists not going to the studio anymore  
but uploading their NFTs to the platform  
to get rich overnight**



@theartgorgeous

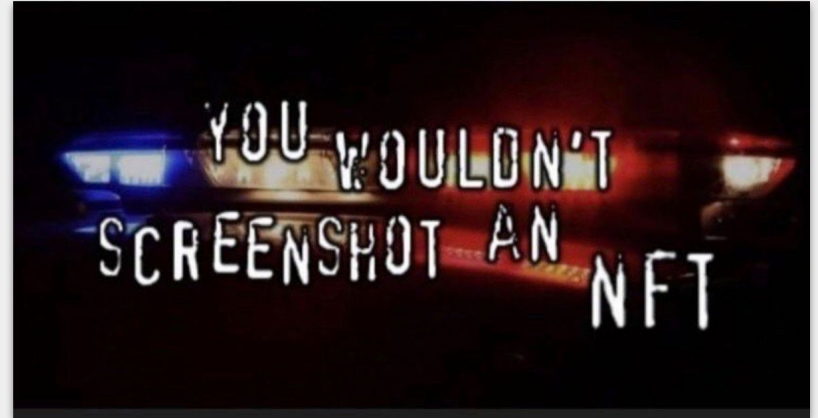
# Benefits of NFTs for the Art World

- Putting digital art on the forefront of the art market and in the visor of galleries and art dealers: increasing level of support
- Major auction houses see the potential to develop a presence in the primary market and work with living artists and have created their own payment infrastructure to accept cryptocurrencies
- Avenues for cross-collaboration between audio-visual artists, brands and technologists
- Unlimited avenues for community building
- Museums and other non-profits can turn to NFTs associated with works in their archives to fundraise , instead of relying on private donors
- Establishing provenance for digital and physical artworks

# Shortcomings

- Environmental impact of mining ETH – use alternative blockchains (e.g. Tezos)
- Developing legal framework
- Diversity and access – increase scholarships for computer science education, funding for digital and crypto artists
- Rampant risks of copyright infringement – register © with the Copyright Office
- Interoperability issues

# Legal Issues In the NFT Space



# Ownership

NFT ≠ underlying asset

Selling an NFT

=

granting a license to display & resell the NFT

Buying an NFT

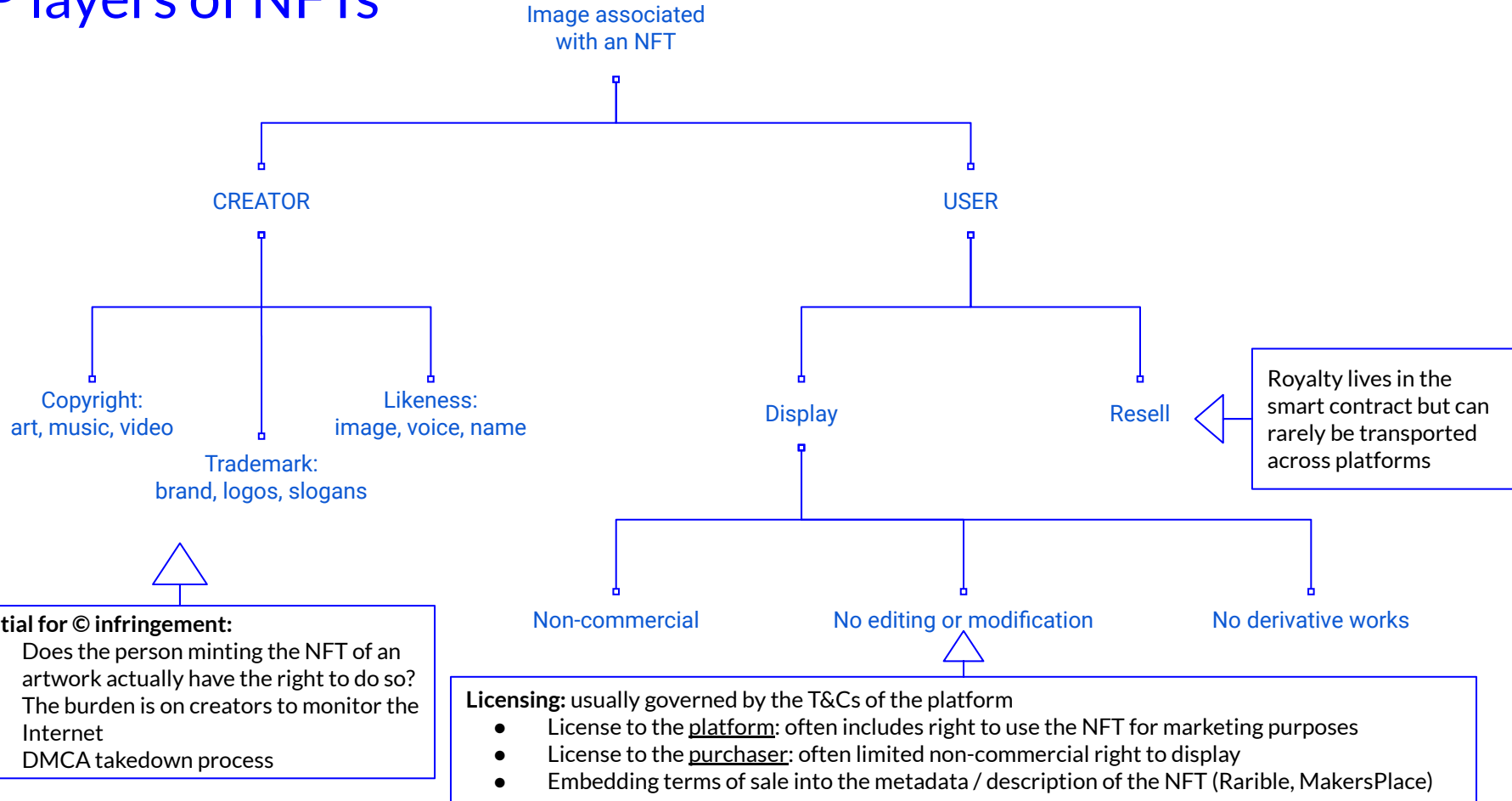
=

acquiring a blockchain-based certificate of ownership

+

right to display and resell the NFT

# IP layers of NFTs



# NFT licenses



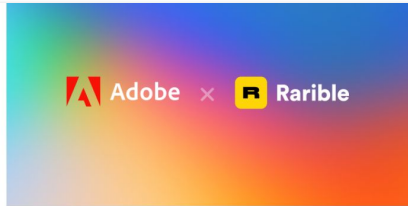
- Grant another person **certain privileges or rights** to use the intellectual property in a manner specified in the agreement, e.g. 2 years, worldwide, non-commercial.
- Embed/link the terms in the smart contract or metadata of the NFT:
  - Bespoke licenses
  - [Creative Commons License](#) (e.g. CC0)
  - [NFT License 2.0](#): open-source resource aiming to standardize NFT licenses across the space
  - Right to make commercial use (e.g. Bored Ape Yacht Club)



# Recurring Legal Issues in NFTs

- Banking law and Anti-Money Laundering
- Securities law when selling fractions of NFTs
- Tax law
- Gambling / Sweepstakes law

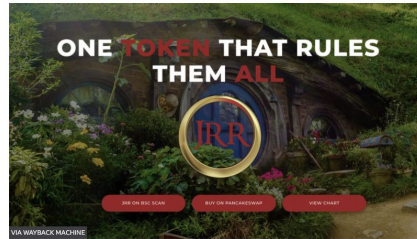
# In The News



**Rarible Partners With Adobe to Support Content Attribution for NFTs**

## Tolkien estate blocks JRR Token crypto-currency

© 24 November



Webistes selling and promoting the crypto-currency featured rings and hobbit holes



## Hermès suing American artist over NFTs inspired by its Birkin bags

French luxury brand says Mason Rothschild's furry MetaBirkins digital tokens 'rip off' its trademark



Coco Chanel, 1924

Frida Kahlo, 1938

Serena Williams, 2003

TIME **Pieces**

## LONG NECKIE WOMEN OF THE YEAR

By Nyla Hayes

Long Neckie Women, a collection by 12-year-old digital artist and our  
Residence, Nyla Hayes, is based on TIME's [Women of the Year](#) f



SERIAL #: 97096366

FILING DATE: OCT. 27, 2021

OWNER: NIKE, INC

IC 009: Downloadable virtual goods, namely, computer programs featuring footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys and accessories for use online and in online virtual worlds

IC 035: Retail store services featuring virtual goods, namely, footwear, clothing, headwear, eyewear sports bags, backpacks, sports equipment, art, toys and accessories for use online; on-line retail store services featuring virtual merchandise, namely, footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys and accessories

IC 041: Entertainment services, namely, providing on-line, non-downloadable virtual footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys and accessories for use in virtual environments

# TARANTINO NFT



## Miramax Sues Quentin Tarantino Over Planned 'Pulp Fiction' NFTs

The director announced this month that he was selling nonfungible tokens based on the screenplay for his 1994 movie. Miramax asserted in court documents it still has "broad rights" to the film.

# Drafting a “Smart” NFT Contract

```
pragma solidity ^0.4.20;

/// @title ERC-721 Non-Fungible Token Standard
/// @dev See https://eips.ethereum.org/EIPS/eip-721
/// Note: the ERC-165 identifier for this interface is 0x80ac58cd.
interface ERC721 /* is ERC165 */ {
    /// @dev This emits when ownership of any NFT changes by any mechanism.
    /// This event emits when NFTs are created (`from` == 0) and destroyed
    /// (`to` == 0). Exception: during contract creation, any number of NFTs
    /// may be created and assigned without emitting Transfer. At the time of
    /// any transfer, the approved address for that NFT (if any) is reset to none.
    event Transfer(address indexed _from, address indexed _to, uint256 indexed _tokenId);

    /// @dev This emits when the approved address for an NFT is changed or
    /// reaffirmed. The zero address indicates there is no approved address.
    /// When a Transfer event emits, this also indicates that the approved
    /// address for that NFT (if any) is reset to none.
    event Approval(address indexed _owner, address indexed _approved, uint256 indexed _tokenId);

    /// @dev This emits when an operator is enabled or disabled for an owner.
    /// The operator can manage all NFTs of the owner.
    event ApprovalForAll(address indexed _owner, address indexed _operator, bool _approved);

    /// @notice Count all NFTs assigned to an owner
    /// @dev NFTs assigned to the zero address are considered invalid, and this
    /// function throws for queries about the zero address.
    /// @param _owner An address for whom to query the balance
    /// @return The number of NFTs owned by `_owner`, possibly zero
    function balanceOf(address _owner) external view returns (uint256);
```

ERC-721  
Written with Solidity

# Smart Contracts

- **“Smart”**: code with a series of “if, then” conditions that cause certain actions
- **“Contract”**: allows to move value between parties (transactional in nature)
- **“Smart” + “Contract”**:
  - Lines of self-executed code
  - Stored on blockchain
  - Controls assets and its own enforcement – no termination
  - For example: automated royalty payment each time the asset changes hands

# Smart Contract: Not So Smart, Not A Contract

**Contract = offer + acceptance + consideration**

- Roadblocks:
  - Enforceability in a court of law is not automatic
  - Modification of the agreement
  - Not a one-size fits all:
    - Destruction of the underlying asset
    - Rights of reproduction and derivative works
    - Right of approval on exhibition of the work
    - Mutual approval of changes or amendment of the contract
    - Duration of the contract
    - Attorney's fees
- Solution: existence of a “real” contract embedded/linked inside of the smart contract (off-chain)

# NFT Creator Contract

- **Hypothetical:** a brand approaches you to create an artwork that they will turn into an NFT and sell to customers, giving them exclusive access to events in the metaverse.
- **Collaboration:**
  - How many **versions or artworks** is the company asking you to produce?
  - How many **NFTs** will be created using the artwork? Can the company create more NFTs without your approval?
  - Who is responsible for **minting** the NFTs?
- **Money:**
  - How much is the company **paying** you for your work?
  - How much is your **royalty** and how will it be calculated?
- **Rights:** Who owns the **rights** in the artwork to be associated with the NFT?
  - Is this a **work-for-hire**, i.e. the company owns 100% of the rights, or is it a **license**, i.e. you grant the company certain rights and retain the rest?
  - Can **you use the artwork** in another context, e.g. in your portfolio, on your social media, in your own NFT?
  - Can **the company use the artwork** in another context without your approval, e.g. in merchandise?
  - How will you be **credited** and where?

## Further readings

- [ABCs of NFTs, Art and Law](#)
- [Jason Bailey's Artnome Blog](#)
- [Five Things Artists Should Know \(and Do\) Before Getting Into NFTs](#)
- [Are Smart Contracts Real Contracts](#)
- [How CC0 Can Help or Hurt NFT Projects](#)
- [Center for Art Law resources on art and copyright](#)



# THANK YOU!

**Louise Carron** is an Associate at [Klaris Law](#) where she takes part in the firm's production legal practice and advises clients across creative industries on transactional matters, copyright and fair use, first amendment, web3, NFTs and the metaverse, in addition to prepublication review of podcasts, scripted documentaries and unscripted shows, news articles and manuscripts. Prior to joining Klaris, Louise spent three years as the Executive Director of the Center for Art Law, where she ran daily operations, taught workshops on legal basics for artists, and mentored interns. Louise regularly hosts guest lectures for law schools, art schools and non-profits, participates in panels and podcasts and writes on copyright-related issues. A French native, Louise has a double Bachelor's in French Law and Common Law and a Master's in Comparative Business Law from the Université Paris Nanterre and received an LL.M from the Benjamin N. Cardozo School of Law (NY) with a concentration in Fashion, Art, Media and Entertainment Law. Louise is admitted to practice law in New York and lives in Brooklyn with her plants.

Email: [louise.carron@klarislaw.com](mailto:louise.carron@klarislaw.com)