

Don't Write Off NFTs—They Will Be Around a Long Time

By Michael Kasdan

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Non-fungible tokens (NFTs) are seen by some as volatile and maybe even short-lived. Michael Kasdan, partner in the intellectual property group of Wiggin and Dana, looks at some risks tied to ownership and cryptocurrency, but explains why NFTs are here to stay.

Some commentators are writing off non-fungible tokens (NFTs) as a passing fad, mere over-priced profile pictures for the crypto nouveau riche set whose long-term value and relevance are risky and unpredictable. There are certainly risks to navigate when entering this nascent space. But NFTs will be important and will be with us for a very long time.

Digital cryptocurrencies like Bitcoin and Ethereum were the first commercial application of blockchain technology. NFTs represent ownership interest in digital assets, also based on the decentralized ledger technology, blockchain, are a second major large-scale commercial application for blockchain.

NFTs allow anything digital to be “tokenized,” i.e., represented in a digital record that is stored on the blockchain. This can include any digital file of any sort, including image files, music or audio files, video files, and more.

What Are the Rules?

When a new NFT is “minted” (i.e., created) on a blockchain, the particular rules for that NFT and for transactions involving that NFT are recorded in software on a blockchain, which are referred to as “smart contracts.” These automatically enforced rules can include who may buy or sell the NFTs, how and to whom revenue streams are distributed to various parties’ digital wallets upon an initial sale or upon resale, and what commercial or intellectual property rights, if any, are conveyed with the NFT.

The rules encoded in the smart contract for a given NFT are extremely important to study and understand in evaluating the value of that NFT. For example, these rules control what, if any, IP rights are transferred when a particular NFT is sold or purchased. In the art and collectibles space, IP rights to create derivative works or exclude others from using or accessing the IP are generally not included.

For example, a purchaser of an “NBA Top Shot Moment” video highlight collectible NFT of the Golden State Warriors’ Stephen Curry raining down a half-court three pointer does not have the right to create a documentary about three-point shooting using the footage, nor does that purchaser have the right to stop others from viewing that shot on the NBA’s YouTube! Channel.

By contrast, an “IP-NFT” offered by an entity in the research science space may convey exclusive intellectual property rights to the purchaser.

Digital Art, Collectibles and 'Ownership'

Digital art and digital collectibles are a large and high-profile asset class, and the extremely high dollar value of NFT sales of art like Beeple's "Everydays: The First 5000 Days" composite digital artwork (which sold for \$69 million at a Christies auction), collectibles like NBA Top Shot digital basketball "card" highlight videos (\$1 billion in sales since launching about two years ago), and cultural or historical markers like Jack Dorsey's first Tweet (which originally sold for \$2.9 million, but has proven difficult to resell for anything close to that) have generated a lot of attention.

Admittedly, the scarcity of "digital art" is hard to wrap one's brain around, because digital things, by their nature can and are often copied perfectly. (Think about finding an image you like on the internet, and right-clicking and saving it for yourself).

But it's worth noting a few things on this point. First, ownership of "an original," even when an essentially perfect copy is available—as may be the case with digital assets—can be meaningful. For example, with today's digital printers, we could digitally print out a perfect replica of the Mona Lisa, but I daresay no one would value it the same as the Mona Lisa that hangs in the Louvre.

Second, the value and valuation of art in the real world is highly subjective and often shockingly high. Perhaps it should be no surprise that the same is true for digital art.

In thinking about NFTs, however, it is important to think bigger than digital art and collectibles. As some [commentators have noted](#), NFTs can be compared with computer files, in the sense that their types and use cases are extremely varied.

Now, NFTs can encompass an incredibly broad and varied range of "digital stuff," including in-virtual-space or in-game assets in the metaverse (where it is clothing, weapons, other possessions and accessories, skills for your avatars or virtual real estate, buildings, or vehicles) to mechanisms for more efficiently tracking real world items, like real estate, car title, insurance claims.

And the most fundamental reason folks are excited about NFTs is because they provide a viable mechanism to monetize digital assets (which have always been very hard to monetize).

Web3, the next generation of the internet based on blockchain, holds great promise to deliver decentralization of power away from large gatekeepers, more individual control of our data and our wallets, and greater democratization of market access for the little people—the artists, makers, and creators.

In our hyper-capitalist big business reality, it is to some extent inevitable that some of those same big players and power structures will be refashioned in this new frontier. But hopefully, some of the promise can be realized. It is culturally critical for more vibrant artistic and technical innovation.

Cryptocurrency

Finally, a word about cryptocurrency. NFTs and cryptocurrency are based on the same underlying decentralized ledger technology (blockchain) and are linked together in that crypto can be used to buy NFTs, but they are very different.

Cryptocurrencies like Bitcoin, Ethereum, and scores of other less well-known tokens are extremely volatile and are—at this point—unregulated and highly risky investments.

[Right now, NFTs are tied to cryptocurrency, but it does not always have to be that way. Mastercard has announced that it will enable the purchase of NFTs using credit cards, not cryptocurrency. Don't make](#) the mistake of disregarding the potential of NFTs because you doubt the long term or present-day viability of crypto.

Writing off Web3 and NFTs just because they are a newly developing space going through the growing pains, shakeouts, and volatility—traits that often accompany emerging technologies in periods of innovation and technological growth—would, in my opinion, be a big mistake.