



Non-Fungible Tokens

When Collecting Meets Crypto, Legal Challenges Abound

May 6, 2021



Basic Primer on NFTs

What is an NFT?

Crypto-asset that is not mutually interchangeable.
Uses blockchain technology to validate ownership over a digital asset.

How do these differ from cryptocurrencies?

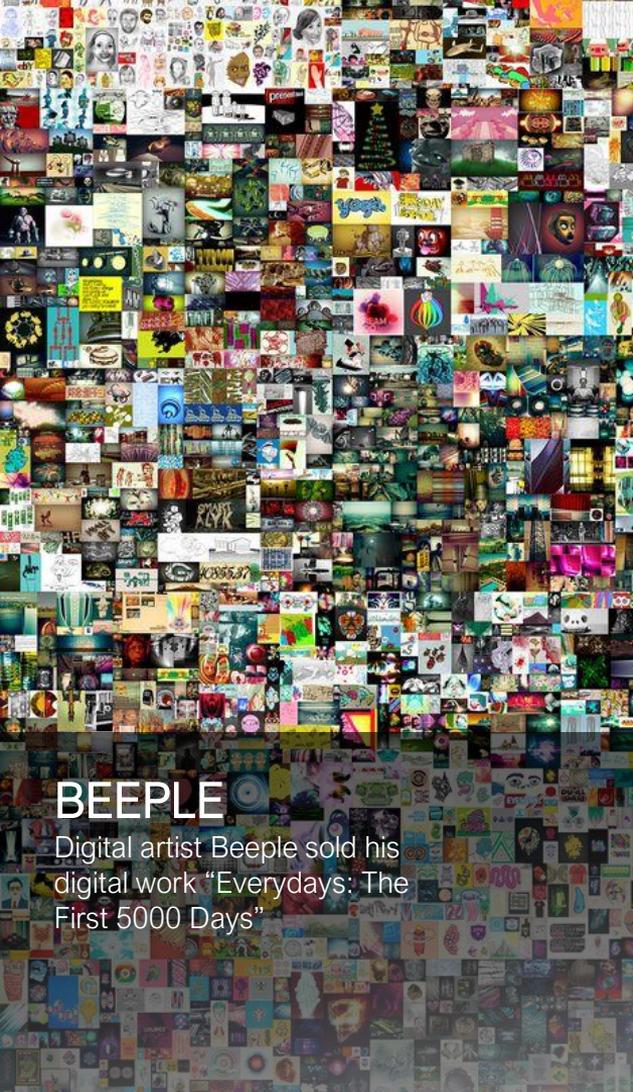
Unlike cryptocurrencies, NFTs cannot be traded or exchanged at equivalency.

What uses are there for NFTs?

How can I make, buy, or sell NFTs?

Major platforms and marketplaces which allow creation and purchase of NFTs.

NFTs also use what are called “smart contracts,” which is a piece of software code that executes a contract if specified criteria are met.



BEEPLE

Digital artist Beeple sold his digital work "Everydays: The First 5000 Days"



KINGS OF LEON

Kings of Leon sold NFTs of their newest album



GOLDEN STATE WARRIORS

NBA franchise the Golden State Warriors first to auction NFT memorabilia



Donald J. Trump ✓
@realDonaldTrump

WITCH HUNT!

7:49am · 27 Feb 2018 · Twitter



Legal Issues: Intellectual Property

Copyright

What rights does a buyer receive?

What about subsequent buyers?

Potential for false chains of ownership

Can someone create an NFT for a digital asset they do not own?

Moral Rights

Are NFTs subject to protections under the Visual Artists Rights Act?

Trademark Rights

Publicity Rights

Legal Issues: Securities

Are NFTs securities?

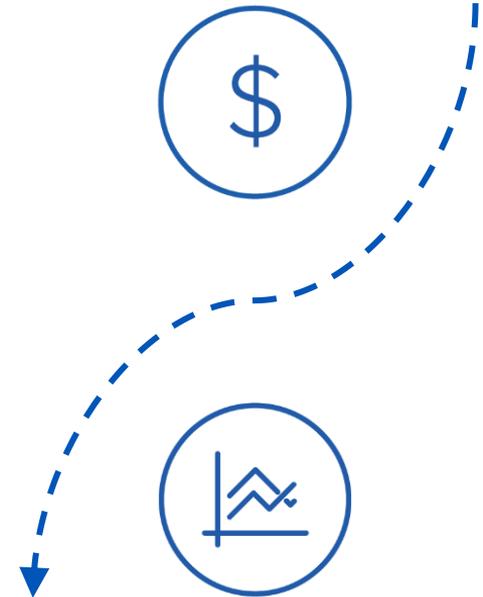
Securities include certain categories of instruments commonly understood to be securities in addition to “investment contracts” as defined under the so-called “Howey Test: – which is generally analyzed as an investment of money in a common enterprise and with an expectation of profits “solely” from the efforts of the promoter or a third party.

SEC has been scrutinizing Initial Coin Offerings and digital assets for years. What about NFTs?

What would classification as a security entail?

Securities Act, Exchange Act, Investment Advisers Act, Investment Company Act and state securities laws.

Possible civil and criminal litigation.



Legal Issues: AML / Sanctions

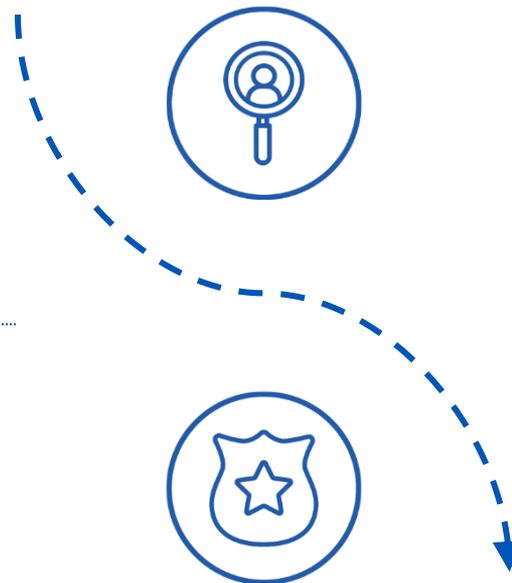
Are there AML or Sanctions Concerns with NFTs?

OFAC sanctions will undoubtedly apply to NFT transfers. AML is a little less clear.

What does FinCEN's treatment of cryptocurrency activities mean for NFTs?

Anti-Money Laundering Act of 2020

Amended definition of "financial institutions" to include antiquities market.



Other Legal Issues

Taxes

NFTs are likely to be treated as taxable property and could face capital gains consequences.

Counterfeiting

Difficult to identify red flags for fake goods online, especially in this space.

Consumer Protection

Push in significant legislation to target consumer safety in online platform.

The CFPB, in 2014, also started accepting complaints for virtual currency productions, which suggests the CFPB could be interested in fake NFTs as well.

Cyberattacks and Cybersecurity

Most companies today purchase cybersecurity insurance, if only to address day-to-day ransomware events.

Questions?

NFT Raffle!

And the winner is...



O'Melveny

*NFTs: WHEN COLLECTING MEETS CRYPTO,
LEGAL CHALLENGES AROUND*

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