

# Buying or selling NFTs – things to consider

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When Beeple sold his artwork 'Everydays- the first 5000 Days' as a NFT for \$69 million, creatives and investors around the world wanted in on the action.

If you want to 'mint' and sell your own NFT or are thinking about buying a NFT, here are some things to consider.

## What is a NFT?

A non-fungible token (NFT) is:

- a unique non interchangeable digital token (each token is coded in such a way that it contains unique data);
- traded via the blockchain (a growing digital ledger that permanently records transactions); and
- used to determine authenticity and ownership (NFTs are coded to contain exhaustive, publicly verifiable metadata and data about transaction history used to determine 'ownership'),

of an item (e.g. an [artwork](#), a [musical work](#) or a [tweet](#)).

## I'm selling a NFT

By making or 'minting' a NFT, the token created is permanently tied to a digital or physical object (e.g. a piece of art) already in the world. If you are a NFT creator who is also the creator of the underlying asset then you have copyright and moral rights in the original work.

If you're not the creator of the underlying asset, you will need to make sure you have in place:

- copyright assignments or a perpetual licence from the creator(s) that contemplates this activity; and
- moral rights waivers from the creator(s).

It's not clear if the NFT itself will be protected by copyright, but we don't think this is likely given most NFTs are simply links to underlying assets, not original literary, dramatic, musical or artistic works.

## I'm buying a NFT

Owning a NFT is not akin to owning the original work. Any IP rights a NFT buyer obtain will be wholly dependent on the sale contract but generally, IP rights aren't assigned and most grant buyers a non-exclusive licence to use digital version of work in a non-commercial manner.

Without having IP rights in the underlying asset, the original work can be reproduced by other people, on different platforms, further commercialised by the artist and even made the subject of other NFTs.

## Could you lose a NFT?

NFTs are pretty awesome but they come with some real risks:

- as an NFT is a link to an original work stored on a NFT sale platform (e.g. OpenSea, Nifty etc), the underlying asset isn't secured on the blockchain. If the NFT sale platform breaks, is destroyed or goes under, you might lose your asset (the NFT link will go nowhere);
- if you don't have IP rights in the underlying asset, alternative NFTs based on the same asset can be created which may substantially devalue your NFT; and
- if the creator of your NFT doesn't have rights in the underlying work the NFT sale platform may take down content subject to an IP infringement claim.

There are other potential legal issues, none of which have yet been tested by the courts including questions related to consumer law, sanctions, tax and securities.

Questions? Give us a call.



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