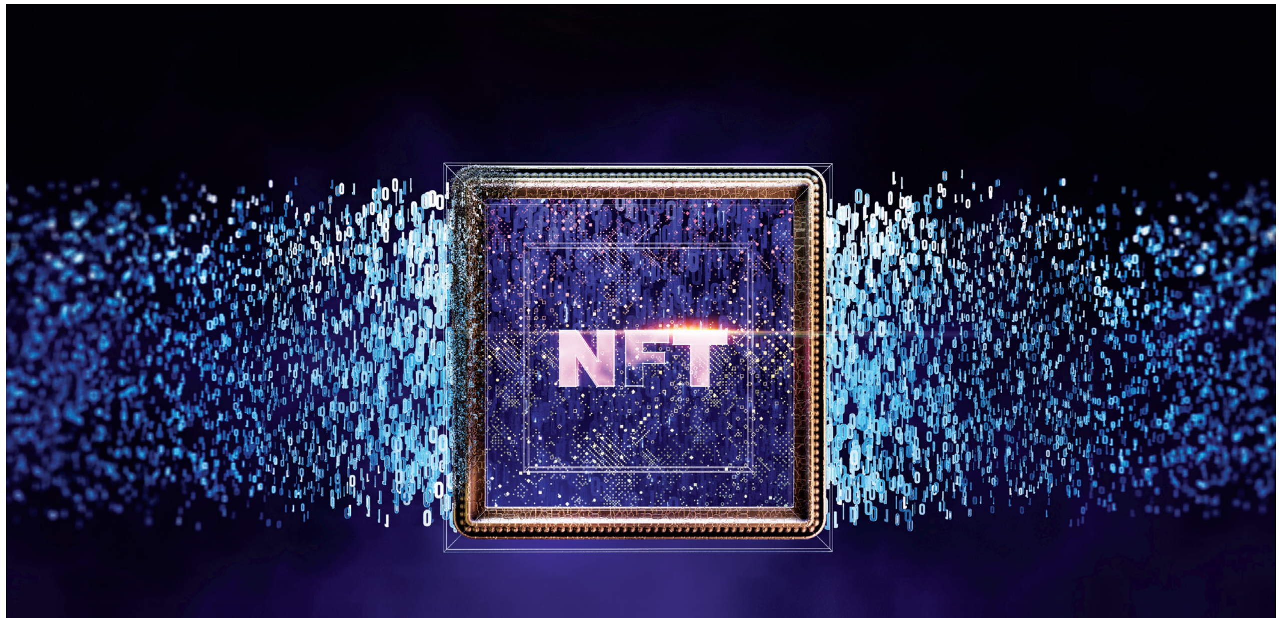

NFTs and Their Copyright Implications

By Jin-Gu Moon, Partner, Metaverse+NFT Team at Shin & Kim LLC

1. What is an **NFT**?

Non-fungible tokens (NFTs) continue to be one of the most zealously discussed topics in the crypto space in 2022. Whereas cryptocurrencies such as Bitcoin are interchangeable or “fungible”, NFTs hold their unique identify and value. It is this uniqueness that drives the notion of digital scarcity making NFTs one of the largest new hypes in the blockchain realm.

NFTs are built on blockchain technology. However, contrary to popular understanding that a creation of an NFT of a digital asset requires the “on-chain” recordation of the digital asset (i.e., the digital asset is recorded onto the blockchain), the actual content of the NFT, such as a piece of a digital art, is not typically stored on the blockchain but on the web due to the size of the relevant digital art and gas fees incurred for “minting” an NFT. Instead, an NFT will typically have a weblink recorded on blockchain pointing to the NFT’s storage location.

The NFTs also contain other information and attributes pertaining to the digital asset called “metadata.” OpenSea is a well-known NFT marketplace where NFTs can be created and traded. In creating an NFT on OpenSea, the creator can enter information particular to the digital asset, such as the year of creation, dimensions, edition quantity, any collaboration details, etc. Such information constitutes “metadata”.

The NFT creation process is called “minting.” During the minting process, the weblink information, other metadata, minting person, minting date and time, etc. are recorded in the NFT. Once the minting process is completed and the NFT starts trading, key details of the relevant transactions (e.g., seller, buyer, transaction date, price, etc.) are also recorded on the blockchain, making such NFT related information highly reliable as it cannot be tampered, manipulated or forged. This is how NFTs can qualify as certificates of authenticity of a digital work.

2. Why **NFTs**?

Let us consider the painting sector, an industry with a sharp growth of NFT utilization. Digital art forms exist, for instance, in JPG and other digital file formats which are very easily replicated. Such characteristic of digital arts makes it almost impossible to identify the original work, causing them to be freely available and thus unattractive assets as collectables in the traditional online environment. Introduction of NFTs have added the ingredient of scarcity to digital artworks, helping artists create financial value for their work and collectors view them as genuine financial investment assets.

For collectors, if they are aware of the existence of the original version of an artwork, they are likely to desire the “authentic” piece. For instance, the painting of the Mona Lisa hung on the Louvre Museum attracts people from all over the globe to travel to see the original piece, despite there being hundreds of replicas, pictures or prints that are much more easily accessible. This is due to the original Mona Lisa being in a physical form of painting which one can touch and hold. In contrast, viewers have been able to appreciate and admire digital artworks irrespective of their authenticity. In this respect, the benefit of owning an NFT digital art lies not so much on the enhanced ability to appreciate the physical form of the artwork, but the ability to verify the ownership over the original piece. This leads to the conclusion that unlike physical artworks, NFT artworks hold their value as “assets” more so than an “object of aesthetic appreciation.”

3. **NFT** Minting

The intention of this newsletter is not to outline an all-encompassing review of NFTs and each type of intellectual property, but to touch upon NFTs and relevant copyright implications. To understand such implications, it is helpful to understand how an NFT is created or is ‘minted’. ‘Minting’ an NFT is the act of converting digital files into crypto collections or digital assets into NFTs by creation of a code on a blockchain network which includes a unique ID to the digital asset. Whilst "minting" comprises recordation of information (weblink, metadata, etc.) on the NFT and thus is not primarily an artwork copying task, registration of the NFT on the relevant exchange (e.g., OpenSea) inevitably requires the digital asset's replication onto the network, meaning only the copyright holders of the underlying digital assets are in principle entitled to "mint" NFTs.

What if someone creates an NFT of a photographed image of an existing artwork? Will there be a new line of counterfeit issues for copyright holders? Will it heighten the burden of copyright holders to employ heavier screening standards on NFT exchanges or platforms? Despite the surging popularity of NFTs, the answers to such questions have yet to fully unfold. In fact, cases are beginning to emerge in Korea, such as the Whanki Foundation claim, in which it brought a lawsuit against a company which created and auctioned NFTs of artworks of Whanki Kim, Sugeun Park, Joongseop Lee for infringements of the artists' copyrights.

4. **NFT** Exhibitions

Like any other physical artwork, if a collector purchases an NFT, the collector would only hold the ownership and the copyright would remain with the original creator of the underlying artwork under applicable copyright laws. Accordingly, to upload NFTs to social media such as Instagram or to use it as a profile image on a messenger such as KakaoTalk or Whatsapp, one would ordinarily need to also purchase the right from, or otherwise obtain consent of, the copyright holder to, copy or transmit the image to such social media or messenger platform.

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Jin-Gu Moon is a partner in the IP Practice Group at Shin & Kim. His main practice areas include litigation and advisory services in IP, media, entertainment, and sports. Mr. Moon has handled various copyright cases such as disputes over royalty for musical works and over retransmission of terrestrial broadcasts and is providing litigation and advisory services on various copyrighted works including movies, dramas, musicals, animations, novels, webtoons, photos, games and computer programs. Mr. Moon also has extensive experience with legal cases in the fields of media, entertainment, and sports. He has managed litigation and advisory cases on exclusive management contracts, appearance contracts and advertisement model contracts.