

IM 450-01 Issues in IM: *Blockchain, Cryptocurrency, NFTs*

Spring 2022

Class 20—April 5

NFTs

**What new problems might be created by
solving the original problem?**

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NFTs further complicate complex legal issues

- “The 'Dune' NFT Copyright Fiasco Is the Least of Crypto's Legal Worries”
- <https://www.wired.com/story/nft-cryptocurrency-art-regulation-law>
- “Because NFTs are just encrypted units of data stored on a digital ledger, usually the Ethereum blockchain, they do not themselves contain any visual content. They are rather tokens that merely refer to works of digital art by linking to them. Purchasers of NFTs typically acquire neither a physical object nor the copyright to a digital one. To own an NFT is to own a signifier without a referent.”
 - Embedding terms in NFTs, via contracts and executables, CAN solidify rights management and lead to increased protection of creator-rights and royalties.
 - BUT, the ability to lock in CLAIMS of rights doesn't validate those claims. The claims might be incorrect and the terms might be invalid.
 - Little about block-chain-based rights management oversees legality/ethics/morality.

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“Who can sell a Wonder Woman NFT? The artist or DC Comics?”

- <https://www.latimes.com/entertainment-arts/story/2021-04-14/nfts-intellectual-property-marvel-dc-comics-who-gets-to-make-millions>
 - **“As the initial thrill of this spring’s NFT craze recedes, the new technology has started exposing age-old tensions between rank-and-file creatives and powerful entertainment corporations over who gets to prosper from a new market. In the comic book industry, that’s not been a fight that many artists win.”**
 - DC comics moved to enforce their rights and stop the artists from minting NFTs
 - “DC and Marvel have made billions and dominated the comics world by protecting their rights to characters like Batman and Wolverine”
 - “NFT projects have made substantial revenues without permission or consideration for studio IP,”
 - Some Marvel and DC artist contracts appear to strictly limit even those rights, according to recent agreements reviewed by The Times. One contract said the original “physical” (not digital) art remained the property of Marvel, “but shall be returned to Talent as a courtesy” and allowed to be sold according to Marvel’s art-return policy, “as determined from time to time by Marvel.” Translation: Marvel makes the rules.
 - DC’s legal rights, asserted in one artist’s contract, appeared to be even more sweeping. While paper original sales are allowed, the artist otherwise assigns ownership of the comic art to DC “and all other rights to exploit the Work in all media now known or hereafter devised, throughout the universe, in perpetuity.”

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- **“Buyers also face risks. . . . Rarible barred the buyer’s ability to view or sell the art he now owns on the blockchain, a decentralized digital network that tracks ownership. The buyer simply logged in one day and could no longer see his purchase in his crypto wallet through the Rarible website, though it is still visible through other crypto exchanges.”**
- **“People are buying Wonder Woman fan art because they love Wonder Woman. That’s DC Comics’ dream,” he said. But when it comes to NFTs, “they haven’t gotten into the space yet, and the fans are getting in front of them. They’re trying to put the genie back in the bottle and build the ship while they’re on the ocean already.”**

Raisa Crespo, 31, bought one of Delbo’s animated drawings featuring Wonder Woman for \$2,999. It wasn’t one of the artist’s original pen-and-ink covers from the 1970s and ’80s — which have reached similar prices in traditional auctions — but brand-new digital art, one in a series of 129 identical digital prints.

She can’t display the digital art in her home, but “I definitely have downloaded it and I have shared it with friends who are big superhero buffs, and I tried to explain it to them to get them more interested.”

She also quickly put the piece back up for sale for more than \$14,000. It’s still for sale.

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- “Your NFT Playbook”
 - <https://www.consumerprivacyworld.com/2021/07/your-nft-playbook/>
- Though not exhaustive, a checklist of stakeholders might include the following, and certain parties may serve multiple roles, depending on the nature of the arrangement:
 - Creator of the underlying work, virtual item or event ticket
 - Creator/Minter of the NFT
 - Host of underlying work (e.g., hosting service)
 - Marketplace (public or private) and third-party platforms (gaming, social, AR)
 - Primary (and secondary) purchasers of the NFT
 - Agency (e.g., to aid in the promotional/marketing aspects if the NFT is promotional in nature)
 - Blockchain wallet (to effectuate the transfer)
 - KYC/AML provider (to address Know Your Customer/anti-money laundering obligations and risks; some blockchain wallets provide this)
 - Carbon offset organization (to address carbon offset due to the energy expended, which is often a part of NFT deals for PR and other purposes)

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- **“Your NFT Playbook”**

- <https://www.consumerprivacyworld.com/2021/07/your-nft-playbook/>

- **Additional Legal Issues to Consider**

- Third-party intellectual property rights
 - Securities and other regulations

- **“Converting Your Patent Portfolio to Patent NFTs? Best to ‘Wait and See’”**

- <https://www.ipwatchdog.com/2021/07/08/converting-patent-portfolio-patent-nfts-best-wait-see/id=135328/>

- blockchain does not track off-chain asset transfers, nor does it guarantee that the current holder obtained the asset without identity theft. Much like the laws protecting a bona fide purchaser for value, there may be little protection for acquiring rights recorded on blockchain through a private off-chain transaction.
 - blockchain technology provides no relief to owners that lose the private digital keys that prove their ownership of a blockchain-recorded asset
 - creating a resale market for non-exclusive licenses also ends the patent owner’s status as the exclusive provider of patent licenses.

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NFTs as Sleight-of-hand

- “Not art. Scam”
 - <https://www.salon.com/2022/02/16/nfts-arent-art--theyre-just-the-of-cryptos-latest-scam/>
- Or better put: simply a way to trick people into using cryptocurrency.
- Interview with Dan Olson about his two-hour video essay explaining why what looks like a scam (NFTs) is. https://www.youtube.com/watch?v=YQ_xWvX1n9g

“The biggest problem that's been plaguing crypto since 2009 has been a lack of things to use it on and a lack of respectability that comes out of that. It's like, "nah, it's not a currency. You don't use it to buy and sell stuff." Crypto has a long history of not being spendable. There's nothing that you can actually use it on.

So NFTs effectively get built as a thing to spend crypto on. The two end up being unextractable from one another. NFTs, they're literally built on top of cryptocurrency. They literally share the same technological foundation. NFTs were basically these goods being wheeled into existence in order to provide something crypto can be spent on.”

- For Olson/this perspective, looks very much like every other multi-level marketing scheme. Probably legal (usually) but, at best, sketchy as heck.
- Dominated by people who don't care about art (but some claim to).

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NFTs do NOT provide “asset security”

- **“Understanding Security Issues in the NFT Ecosystem”**
 - <https://arxiv.org/pdf/2111.08893.pdf>
- **As previously noted, NFTs are definitely NOT an answer to ANY security problems associated with creating, selling, displaying, or distributing art or objects.**
- **NFTs on the blockchain introduce more security issues than they solve, by far. Along with 16 pages of in-depth analysis illustrating a wide variety of INTERNAL security issues--points in the processes that are rife with unprotected security risks--the authors note that there are also numerous external security risks:**
 - ‘We . . . analyze this data to understand how . . . entities external to the blockchain are able to interfere with NFT markets, leading to serious consequences, and quantify the malicious trading behaviors carried out by users under the cloak of anonymity.’**

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Transition from problems to harms

- **“The Real Story Behind the 17th-Century ‘Tulip Mania’ Financial Crash”**
 - <https://www.history.com/news/tulip-mania-financial-crash-holland>
- ***Tulip Fever* (2017)**
 - <https://www.imdb.com/title/tt0491203/>
 - Another in a long-series of so-called “historical dramas” that cover over rather than illuminate history.
 - Unfortunately, they capture the public consciousness. We remember the movie and thereby don’t know the real story.
- **Bottom line: the craze and speculative investments did NOT ruin the economy and did not run a large number of citizens to madness, suicide, and ruin.**
 - The principle investors/speculators could afford their losses.
 - Virtually no one “Lost it all” though most made crappy investments.

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Transition from problems to harms

- **HOWEVER, we have to keep in mind that the NFT/Crypto crazes are NOT perfect analogs with tulip fever, because**
 - **NFT/Crypto targets common people to the benefit of rich investors**
 - **<https://www.salon.com/2022/02/16/nfts-arent-art--theyre-just-the-of-cryptos-latest-scam>**
 - **“These systems [pyramid sales schemes] . . . blur the lines between the victim and the victimizer, because in order to succeed, particularly the further down the line you are, the more aggressive you need to become. You need to become a victimizer yourself in order to get your head back above water. Sympathy ends up being tricky and fraught. The best way of maintaining sympathy is in remembering that fraught relationship there. That this is a system that is set up to turn victims into victimizers.”**

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Q&A/comments?**