

ROLLING IN THE DEEP: NFT'S INTERFACING IN THE METAVERSE AND INTELLECTUAL PROPERTY

UDITA KANWAR AND SOURAV DAN*

Abstract

NFT has been the buzz word in 2021-22, even though it traces its origin to 2014 when a digital artist created the first NFT to develop an alternative marketplace for commercialization of artworks. The article traces the origin of NFT, it's meteoric rise across industry sectors and its interaction with metaverse. Touching briefly upon the background, the article delves into the interaction of NFT and metaverse with established principles of various intellectual property laws and how it challenges those principles or tries to expand on the scope of such laws and how the dispute scenario is being affected in the process. In this analysis the article constantly imports real life instances to ease the readers in understanding the nuances.

I. LET'S GET STARTED: WHAT IS THIS NFT ANYWAY?

In 2021, Collins Dictionary declared “NFT”- the abbreviation for ‘Non-Fungible Token’, as the word of the year.¹ Whilst the first purported NFT was created/minted in 2014 by a New York based digital artist- Kevin McCoy² with a view of creating an alternative platform/market for artists to commercialize their artworks, it was only in and around 2021 that the global phenomenon of NFT “minting” caught up with the masses.

Before we dive deeper into the NFT phenomenon that has taken the world by a storm, it would be worthwhile to understand what an ‘NFT’ is. The word “fungible” has been defined by Merriam Webster dictionary to mean “being something (such as money or a commodity of such a nature that one part or quantity may be replaced by another equal part or quantity in paying a debt or settling an account”.³ Accordingly, it can be inferred that a product may be termed as “non-fungible” if there is no standard value associated with the product and therefore such products are not easily used for a barter/settling a debt. For example, the paintings “The Starry Night” by Vincent Van Gogh and “Mona Lisa” by Leonardo Da Vinci are both celebrated artworks; however, the commercial value associated with the two paintings may not always be the same and

* The authors are experienced lawyers working with the Intellectual Property team of a Tier-1 Indian law firm. Views expressed in the article are personal.

¹ David Shariatmadari, *Get your crypto at the ready: NFTs are big in 2021*, COLLINS: LANGUAGE LOVERS BLOG (Nov. 24, 2021), <https://www.collinsdictionary.com/woty>.

² *The first NFT ever created, 'Quantum', goes under the hammer*, THE ECONOMIC TIMES (Jun. 5, 2022), <https://economictimes.indiatimes.com/magazines/panache/the-first-nft-ever-created-quantum-goes-under-the-hammer/articleshow/83253657.cms>.

³ “Fungible”, MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/fungible>.

will vary according to the audience. This leaves us with the understanding that the value of “non-fungible” items is variable i.e., it may appreciate or depreciate as per the purchasing public’s opinion. Pushing the envelope further, “non-fungible tokens” refer to tokens that are linked to digital works (could be art, music or any digital content) in the block-chain, which can be purchased by individuals online upon payment of the value that is associated with this token at that point in time. NFTs are supported by blockchain technology, Ethereum being one of the first blockchains to support the sale of NFTs. As discussed, NFTs function on the “block chain technology”, now blockchain is a distributed ledger technology which stores the details of different transactions in separate blocks in a distributed manner such that there is no central computer/source that regulates the transactions, the data is spread across the network. The parties to the transaction have to approve its validity and once the data is approved it forms a permanent part of the ledger and cannot be tampered with at a later stage.⁴ Therefore, for art collectors in the digital space, NFTs are a safe and secure method of purchasing collectibles. NFTs can be purchased from various platforms (akin to e-commerce platforms for purchasing physical goods) such as OpenSea, Larvalabs (Cryptopunks), etc. Reportedly, the NFT market generated over 23 billion USD in trading volume in 2021.⁵ It is evident that NFTs have gained popularity among the members of the public when popular British art auction house, Christie, announced in October 2021 that its sales surpassed 100 million USD only by minting NFTs.⁶

Several reasons can be attributed to the increase in sales of NFTs, first of which would be an improved understanding of cryptocurrency purchases and transfers.⁷ Secondly, NFTs in particular, have provided artists with an additional platform to showcase and commercialize their artworks with ease.⁸ It is pertinent to note that smart contracts for purchase of artworks related NFTs can be modified to include a provision of royalty payable to the original artist each time the NFT is sold i.e. unlike the physical world wherein the owner of an artwork is compensated only once, in case of NFTs, in addition to receiving payment for the entire artwork when it is sold for the first

⁴ *Blockchain Explained: What is blockchain?*, EUROMONEY LEARNING, <https://www.euromoney.com/learning/blockchain-explained/what-is-blockchain>.

⁵ Thomas Abraham, *Explained: Why some NFT creations are destroying physical art assets, including a rare copy of Dune*, CNBCTV18 (Jan. 21, 2022), <https://www.cnbctv18.com/cryptocurrency/explained-why-some-nft-creations-are-destroying-physical-art-assets-including-a-rare-copy-of-dune-12200032.html>.

⁶ Varuni Khosla, *Christie's auction house surpasses \$100 million in NFT sales*, MINT (Oct. 2, 2021), <https://www.livemint.com/companies/news/christies-auction-house-surpasses-100-million-in-nft-sales-11633152356059.html>.

⁷ Mehab Quereshi, *Everyday Technology: What are NFTs? How are they different from cryptocurrency?*, THE INDIAN EXPRESS (Feb. 23, 2022), <https://indianexpress.com/article/explained/everyday-explainers/what-are-non-fungible-tokens-nft-7783662/>.

⁸ Mitchell Clark, *NFTs, explained*, THE VERGE (June 6, 2022), <https://www.theverge.com/22310188/nft-explainer-what-is-blockchain-crypto-art-faq>.

time, the artist may also be entitled to receiving a certain percentage of royalty each time the NFT is sold further, thereby proving to be beneficial to the artist. At this juncture it is important to understand that the purchaser of an NFT only owns the NFT and uses it (as per the terms of the agreement), but the ownership of the underlying copyright or any other intellectual property contained in the NFT may continue to be vested with the artist(s), depending on the underlying smart contract.

II. YESTERDAY IT WAS NFT AND NOW ITS METAVERSE – HOW DO THEY KNOW EACH OTHER?

Amidst the growing NFT rage, in or around October 2021, Facebook Inc. made an announcement that it will be rebranding the company name as “META” which was inspired from the concept of “Metaverse”.⁹ The term “Metaverse”, as often used by technology companies, is a reference to a universe that exists in a virtual or in an augmented reality environment.¹⁰ To put it simply, it is akin to the online game “Second Life” launched by Linden Labs, that had gained considerable popularity in or around 2003 because it allowed the users to choose their digital avatars and lead a fantasy life that was an alternative to their present life. Now imagine this game, but with more serious and real-life implications. Metaverse is intended to be created on the basis of a new form of internet known as “Web3”, a decentralized form of the internet relying heavily on the blockchain technology.¹¹ The Metaverse is projected as a world wherein people/industries will interact in the virtual/augmented world in a manner which is similar to our existing lives. It is expected that the NFTs minted may have use and further value in the Metaverse given that NFTs are indeed digital possessions. This exciting possibility on further commercialization has inspired various brands to re-align their corporate strategies so as to further create value and market base in the Metaverse. Needless to say, popular brands like Nike, Louis Vuitton, Adidas, Lamborghini, Mahindra & Mahindra have entered the NFT markets and have started generating digitized products, in a limited quantity, available for sale.¹² This has now resulted in a close inter-linking between NFTs and Metaverse, which closely brushes with the settled intellectual property jurisprudence.

⁹ Shruti Dhapola, *Explained: Why Facebook is starting its metaverse journey by rebranding itself as Meta*, THE INDIAN EXPRESS (Oct. 29, 2021), <https://indianexpress.com/article/explained/facebook-meta-rebranding-name-explained-7596771/>.

¹⁰ Eric Ravenscraft, *What Is the Metaverse, Exactly?*, WIRED (Apr. 5, 2022), <https://www.wired.com/story/what-is-the-metaverse/>.

¹¹ *Web 2 v. Web 3*, ETHEREUM.ORG, <https://ethereum.org/en/developers/docs/web2-vs-web3/> (last visited Apr. 22, 2022).

¹² Josh Gerben, *Metaverse Trademarks: A Guide to Notable Filings*, GERBEN LAW FIRM’S TRADEMARK BLOG (Mar. 16, 2022), <https://www.gerbenlaw.com/blog/metaverse-trademarks-a-guide-to-notable-filings/>.

III. HOW DO NFTs AND THE METAVERSE MINGLE WITH THE ESTABLISHED STANDARDS?

A. Winds of Change-Recent Trade Mark Filings for Goods/Services in the Metaverse

Among the various companies that have pivoted towards expanding their business activities in the Metaverse, Nike appears to be a pioneer. In or around November 2021, it was widely reported by the media that Nike has filed new trademark applications before the United States Patents and Trademarks Office [“USPTO”] with a range of goods/services specifically targeting the Metaverse.¹³

Nike is renowned for its quality athletic apparels and footwear, therefore, in line with the nature of “goods” in the Metaverse, one of the trademark applications filed by the company in class 9 before the USPTO, is for “Downloadable virtual goods, namely, computer programs featuring footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys, and accessories for use online and in online virtual worlds.”¹⁴ In a more traditional sense, as per the NICE classification for goods and services, the goods “apparels and footwear” would be classified under class 25 whereas, “toys” would be classified under class 28 of the NICE classification however, the existing NICE classification system does not identify/classify goods that are meant for sale exclusively in the virtual world. This small but significant lacunae sparked a debate among IP specialists regarding the need to rehaul the existing NICE classification to either introduce a special class of goods that will exclusively identify goods sold in the virtual medium; or to expand the scope of the existing classes of goods, to include goods that are sold in the tangible as well as intangible format. However, as on the date of writing, proprietors have a limited option of seeking protection of their trademark (that may be used in Metaverse) within the scope of Class 9 of the NICE classification by specifying the type of “downloadable virtual goods” for which the trademark is sought to be protected. The clamor for re-classification of the NICE classification has gained importance on account of rising disputes pertaining to sale of “virtual goods” via NFT.

B. Brewing Storm- Confusion in the Origin of Goods: Hermes & Nike Saga

Recently, Hermes International S.A. [“Hermes”], a luxury fashion brand found itself embroiled in controversy when it filed a trademark and a trade dress infringement suit against a digital artist - Mason Rothschild for selling NFTs of “fur covered tote bags” under the trademark

¹³ Jessica Golden, *Nike is quietly preparing for the metaverse*, CNBC (Nov. 2, 2021), <https://www.cnbc.com/2021/11/02/nike-is-quietly-preparing-for-the-metaverse-.html>.

¹⁴ Cindy Tan, *Nike Prepares for Next Moves in the Metaverse with Latest Trademark Filings*, NFT GATORS (Feb. 22, 2022), <https://www.nftgators.com/nike-prepares-for-next-moves-in-the-metaverse-with-latest-trademark-filings/>.

“METABIRKINS”.¹⁵ The two primary issues for Hermes were - one, the mark “METABIRKINS” is a variation of Hermes’ registered trade mark “BIRKINS” with just the generic word “META” added to it; and second, the design of the tote bag is similar to Hermes’ registered trade dress for its bags.¹⁶ Accordingly, Hermes has relied on its trade mark registrations for the mark “BIRKINS” in various classes, including class 18 (relevant for handbags) and also a trade dress registration for its handbags. However, the trademark “BIRKINS” in class 18 is registered only in respect of physical handbags and not the digital handbags which, in fact, appear to be the goods sold by the digital artist.

Hermes has also claimed that such unauthorized use of its trademark “BIRKINS” by the digital artist leads to dilution of goodwill and reputation associated with the trademark “BIRKINS” and the goods sold thereunder. The digital artist, in his motion to dismiss the suit, has argued that as per the existing laws of the United States of America, he was merely exercising his artistic expression by creating the NFTs under the trademark “METABIRKINS”. It was also contended that the Hermes’ trademark “BIRKINS” was used for physical goods whereas, his use of the METABIRKINS was not misleading since it had on its website claimed that it only represents the artwork of the digital artist.¹⁷

This case is pending adjudication; however, it has cautioned brand owners to seek necessary protection for their trademarks even in respect of the necessary digital goods to avoid a similar situation. Furthermore, in suits pertaining to infringement of trademarks, one of the common tests to identify infringement is “likelihood of confusion” that may exist between the rival goods i.e. the rival goods are so similar to each other and since they are operating in the same channel of trade, it is likely to confuse the potential customers about the origin of goods and they may mistake the counterfeit good as goods originating from the original brand owner. In the Hermes case, while it may be argued that the image of the METABIRKINS NFTs is similar to or derived from Hermes’ handbags, it is also true that purchasers of a Hermes handbag and the METABIRKINS NFTs will be completely different, and their requirements will be different altogether and may not be confused with one another. This understanding gets convoluted when one considers that in the Metaverse, people may be using the METABIRKINS NFTs to represent handbags thereby affecting Hermes’ potential market in the Metaverse.

¹⁵ Robert Williams, *Hermès Sues NFT Creator Over ‘MetaBirkin’ Sales*, THE BUSINESS OF FASHION (Jan. 17, 2022), <https://www.businessoffashion.com/news/luxury/hermes-sues-nft-creator-over-metabirkin-sales>.

¹⁶ *Id.*

¹⁷ *Hermès International, et al. v. Mason Rothschild - Memo of Law*, THE FASHION LAW (Dec. 1, 2020), <https://www.thefashionlaw.com/hermes-international-et-al-v-mason-rothschild-memo-of-law>.

The uncertainty regarding the relevance and use of brands in the Metaverse has resulted in brands being cautious about their digital representation in any form. For instance, in December 2021, Nike Inc acquired RTFKT, a company engaged in the business of minting NFT collectibles in the gaming space;¹⁸ this was another step undertaken by Nike to claim its place in the Metaverse, however, in or around January/February 2022 Nike saw the rise of an unexpected competition from StockX LLC, an online reseller of shoes. It came to Nike's notice that StockX launched a few limited-edition Vault NFTs, i.e., digital tokens that represent the actual physical product's ownership, that were linked with Nike's shoes. Therefore, Nike filed a suit for infringement of its trademarks by StockX, alleging that StockX 's act of selling the Vault NFTs containing the "NIKE" registered trademarks amount to an act of infringement of Nike's trademarks.¹⁹ It has also been alleged that StockX has deliberately launched the Vault NFTs with a view to confuse the consumers about its association with Nike and to benefit from such confusion.²⁰ In its response, StockX has contended that it is not selling standalone NFTs of Nike shoes, in fact, it is selling the digital tokens representing the physical Nike shoes that the purchaser will own. StockX has compared this situation to sale and purchase of goods via any e-commerce platform i.e., the original goods have been purchased by StockX from Nike and now StockX is simply re-selling them via NFTs to members of public. This is often referred to as doctrine of first sale wherein the owner of a work does not have the right to further control the way the goods are / can be re-sold in the marketplace. Whilst in a physical marketplace, the doctrine of first sale is easily applicable, it becomes quite tricky in a completely virtual space. At this juncture, it is important to consider that in 2020, the CJEU ruled that the doctrine of first sale does not apply in case of e-books²¹ given that digital version of books do not deteriorate unlike the physical ones. Drawing an analogy from this understanding of the CJEU, it may also be argued that in case of NFTs even if a physical product has been purchased, sale of its NFT may not be permissible and may amount to an act of copyright infringement. However, in the case filed against StockX, the complication arises from the fact that the NFTs do not include the sale of the digital image of the Nike shoes but in fact, the sale of original physical Nike shoes. Subsequently, in May of this year Nike has amended its petition to add counterfeiting claims stating that counterfeit products are available on StockX based on Nike's trap purchase of 4 pairs of sneakers.²² This case is pending adjudication and will

¹⁸ *NIKE Inc. Acquires RTFKT*, NIKE NEWS (Dec. 13, 2021), <https://news.nike.com/news/nike-acquires-rtfkt>.

¹⁹ Nike Inc v. StockX LLC, No. 1:22-cv-00983 (S.D.N.Y. Mar. 2, 2022).

²⁰ Adi Robertson, *Nike is testing NFT trademark law by suing a sneaker reseller*, THE VERGE (Feb. 10, 2022), <https://www.theverge.com/2022/2/10/22925252/nike-stockx-shoe-lawsuit-vault-nft-trademark-infringement>.

²¹ Case C-263/18, *Nederlands Uitgeversverbond v Tom Kabinet 2019* ECJ ECLI:EU:C:2019:11.

²² Victoria Song, *StockX hits back at Nike in legal battle over NFTs and counterfeit sneakers*, THE VERGE (June 6, 2022), <https://www.theverge.com/2022/6/6/23156515/nike-stockx-nfts-counterfeit-sneakers-lawsuit>.

play a key role in laying down the difference in application of trademark law/doctrines in relation to the sale of physical goods and digital goods.

Interestingly, trademarks are not the only form of intellectual property that are facing a challenge with the boom of NFTs. Since NFTs essentially comprise “digital content” the possibilities of content that may be made available as NFTs are limitless. Therefore, it was no surprise when personalities from the entertainment industries also started minting NFTs. In February 2021, Linkin Park’s vocalist Mike Shinoda, released a new single “Happy Endings” as 10 NFTs and the first NFT was sold within 40 seconds of its release online.²³ In the smart contract for the NFT sale of the aforementioned song, it was expressly stated that the purchaser shall “have no right to license, commercially exploit, reproduce, distribute, prepare derivative works, publicly perform, or publicly display the NFT or the music or the artwork therein”²⁴ thereby rendering it akin to a limited-edition CD of the song.

C. Conflict Regarding the Ownership of NFT in Images of Screenplay: The Quentin Tarantino Pulpy Affair

This excitement regarding sale of NFTs pertaining to entertainment industry also inspired popular director Quentin Tarantino to announce the launch of NFTs comprising images of the screenplay of the iconic film “Pulp Fiction” along with additional information from him regarding the final making of the film. This announcement was immediately followed by Miramax, the producer of the film, filing a suit for copyright infringement against the sale of the said NFTs.²⁵ Miramax has claimed that as the producer of the film they have the rights in the cinematograph work a.k.a. the film and all the underlying work therein including the screenplay of the film. Tarantino has claimed that he has retained certain rights pertaining to the film “Pulp Fiction” such as the rights for interactive games, live performances, and other ancillary media.²⁶ However, Miramax has contested that these rights claimed by Tarantino do not include the right to sell NFTs for the images of the film’s screenplay. This case is important from the point of precedent that it may set i.e., whether the rights reserved by Tarantino in his contract with the producer under the heading of “ancillary media” can be extended to cover NFTs? and secondly, whether the scope of underlying works also includes “images of hand-written screenplay”? This case is a timely reminder for creative individuals to re-visit their licensing/assignment agreements that were executed prior in time to

²³ *Happy Endings*, LINKINPEDIA, http://linkinpedia.com/index.php?title=Happy_Endings (last visited Apr. 30, 2022).

²⁴ *Press*, WARNER RECORDS, <https://press.warnerrecords.com/wp-content/uploads/2021/03/Mike-Shinoda-Press-Doc.pdf> (last visited Apr. 30, 2022).

²⁵ Adi Robertson, *Miramax sues Quentin Tarantino over Pulp Fiction NFTs*, THE VERGE (Nov. 17, 2021), <https://www.theverge.com/2021/11/17/22787216/miramax-pulp-fiction-quentin-tarantino-nft-lawsuit>.

²⁶ *Id.*

ensure that they have the necessary rights to mint NFTs pertaining to their works. It is also important to understand that since IP rights are territorial in nature, there are certain nuances that have to be looked at for assignment and licensing of these rights as per the laws of the territory from which the NFTs originate.

D. Indian Copyright Laws and Sale of NFTs

It will be relevant to note that, the (Indian) Copyright Act, 1957 has certain specific requirements/conditions that must be met for assignment or licensing of copyright in a work.²⁷ For instance, it is imperative that the term of the license/assignment is specified in the agreement failing which the term is statutorily presumed to be 5 years. Similarly, it is recommended that the territory for which the license/assignment is being granted should be specified, if not the territory is presumed to be limited to India. Also, Section 18 of the (Indian) Copyright Act, 1957 prohibits assignment in any medium or mode of exploitation which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work. Considering that “NFT” and “Metaverse” were not in existence or could not be in contemplation when many of the assignment agreements were executed, it could be argued that rights for minting of “NFT” were not expressly assigned to the assignee and was retained by the assignor. Another unique provision under the (Indian) Copyright Act, 1957 pertains to the reversion of rights to the initial owner of copyright if the work licensed/assigned is not commercialized within a period of one (1) year from the date of execution of such license/assignment agreement therefore, usually copyright agreements include waivers from the licensor/assignor regarding the non-reversion of rights. It is pertinent to reiterate that the aforementioned conditions are specific to Indian laws whereas, NFTs can be purchased by anyone across the globe.

While it is possible to draft copyright licensing and assignment agreements incorporating the unique conditions, the situation is not the same in case of smart contracts that are executed while selling NFTs. Modifying and adding new terms in standard smart contracts, that are created by the platform through which the NFT is sold, can be an expensive procedure and may not always be a plausible alternative furthermore, the members of general public may not be capable of defining and elaborating upon the rights being licensed/assigned via the smart contract(s), which may further lead to possible complexities/confusion regarding the term and territory of use of the NFT considering that there will be several purchasers of Indian NFTs from outside India. The Indian Copyright Act, 1957 also grants the owner of a copyright the right to enforce their “moral rights”

²⁷ The Copyright Act, 1957, § 18, No. 14, Acts of Parliament, 1957(India).

on their works even after the ownership in the work is assigned by the original owner.²⁸ This provision of enforcing “moral rights” may be useful for Indian copyright owners if and when their licensed or assigned works are used by a third-party in the Metaverse.

IV. BUT WHERE’S THE PARTY FOR THE LITIGATORS?

The most critical and important issue for the owners of intellectual property in NFTs is regarding the enforcement of their IP rights. As discussed in the earlier sections, NFTs are not limited by territories and an NFT originating from India can be bought by a person in San Francisco, USA only to be further sold to someone in Amsterdam, Netherlands and so on. Things often get complicated if any of the users/current purchasers of the NFT use the same beyond the scope of rights granted under the smart contract or in a manner disparaging to the creator of the NFT. In addition to this, similar to the real world, there are “copycats” in the virtual world too wherein certain individuals/entities upload works, without ownership or authorization, for sale as NFTs and these “copycats” could be residing in any part of the world, therefore, making the hunt for the perpetrator of rights similar to looking for a needle in a haystack.

The underlying block chain technology of NFTs maintain a ledger of the owner of the NFT and the transfers that may have taken place. In such cases, the creator of the NFT may wish to initiate appropriate legal action against misuse of NFT or creation of illegal/unauthorized NFTs, but due to its global nature, enforcement of IP rights by the actual owner of the NFT is a concern. Recently, a court in China has decided a first of its kind NFT related IP dispute. A copyright infringement suit was filed by Shenzhen-based company Qice, against Hangzhou-based company BigVerse that operates an NFT marketplace in China (“BigVerse”), for allowing one of its users to sell an unauthorized artwork as an NFT through its platform. BigVerse contended that it was an intermediary and could not be held liable for the actions of one of its users. However, the court ruled that BigVerse was responsible for not checking the source and ownership of the NFT that was being sold on its platform.²⁹ BigVerse was also ordered to pay compensation to the complainant, Qice and to stop the NFT from further circulation so as to prevent further infringement of copyright. This decision of the court in China reposes the intermediary with a greater responsibility of conducting due diligence on the NFTs that are being sold through its platform. It will be interesting to see if it will be feasible in the long run to hold the intermediaries accountable for any misdeeds of its users.

²⁸ The Copyright Act, 1957, § 57, No. 14, Acts of Parliament, 1957(India).

²⁹ Gang Hu, *Takeaways from the first NFT infringement case in China*, WTR (Apr. 28, 2022), <https://www.worldtrademarkreview.com/article/takeaways-the-first-nft-infringement-case-in-china>.

Another significant legal development in the space for enforcement of IP right in NFTs has been heralded by UK's High Court in the case of *Lavinia Deborah Osbourne v (1) Persons Unknown (2) Ozone Networks Inc*³⁰ trading as OpenSea wherein it was held that NFTs are "legal property" over which an order for freezing the sale of the same can be enforced. In this case Ms. Lavinia alleged that two of her NFTs comprising unique digital artworks were stolen from her digital wallet. She further claimed to have found the NFTs in other digital wallets and sought an order of injunction from the High Court against the sale/circulation of these NFTs. The High Court accordingly passed an order of "freezing" the NFT by way of an order of injunction i.e., the NFTs could not be sold further, and directed OpenSea to share the information of the accounts that held the NFTs.³¹

V. THE WAY AHEAD

A common observation from the decisions of the courts in China and United Kingdom is regarding the role of the intermediary assuming greater significance when it comes to sale of NFTs. One may argue that given the large volume/traffic of work being sold as NFTs everyday it may not be feasible for NFT marketplace platforms to conduct due diligence for each NFT sold on its platform however, there can be necessary checks or undertaking to not infringe any third-party IP, that such platforms can procure from their users as is currently being done by various e-commerce players in the marketplace.

While the situation pertaining to infringement of IP rights in NFTs may appear to be overwhelming, it is important to recall that almost a decade ago the legal fraternity faced a similar issue regarding enforcement of IP rights in domain name infringement cases which also had a global overreach. Therefore, it may not be out of place to consider a dispute resolution mechanism akin to the Uniform Domain Name Dispute Resolution Platform (UDRP) wherein individuals/entities from across the globe can seek to enforce their IP rights against a domain name squatter. However, for creating a dispute resolution body like the UDRP, regulation of the NFT marketplace will be required i.e., NFT marketplaces will have to be licensed/certified by a globally recognized body (similar to WIPO) failing which they cannot be engaged in the business of sale of NFTs/provide platform for sale of NFTs. Only if the NFT marketplace platforms are regularized by an international body, will they be obligated to disclose the details of account holders of NFTs that infringe/disparage rights of the actual owners of IP. Establishing an international

³⁰ *Lavinia Deborah Osbourne v (1) Persons Unknown (2) Ozone Networks Inc* [2022] EWHC 1021.

³¹ Riah Pryor, *NFTs recognised as 'legal property' in landmark case*, THE ART NEWSPAPER (Apr. 29, 2022), <https://www.theartnewspaper.com/2022/04/29/nfts-recognised-as-legal-property-in-landmark-case>.

forum of such nature will also result in governments of more countries opening up to the concept of NFTs and their sale/distribution etc. The skepticism surrounding NFTs can be addressed only if there are appropriate legal forums/organizations that have sound knowledge of the underlying technology and can address the concerns surrounding NFTs ably. Needless to say, the existing IP statutes will have to be amended /upgraded or expanded by way of judicial interpretation to encompass this technology.

It will not be out of place to say that NFTs have been a boon for artists and creators globally since it gives them an opportunity to showcase their talent/work to people all around the world. It has the potential of revolutionizing the arts and entertainment industry forever. It also remains to be seen whether the “NFT” actually becomes a significant commercializing mechanism or remains as a bubble waiting to burst when the mass euphoria dies down.