

Research on Legal Risks and Preventive Paths of Non-Homogenized Token Art Transactions

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Abstract: *With the continuous development of the network world, NFT artwork is known by more people in China, and it is getting hotter and hotter, and many people want to enter this market and try to create or invest, however, NFT artwork as a new field, there are a lot of immaturity, and the legal regulation is not perfect, and a lot of people don't understand its principle, and the price of NFT artwork is also fluctuating constantly, and its own art value is not recognized by everyone. Not everyone agrees with it, and it is currently facing a variety of legal risks. This article introduces the jurisprudential basis of NFT artworks from the perspective of tracing the principle, analyzes its principle, nature and prospect, and finally combines the existing problems in the field of NFT artworks to give the preventive path, which is of certain reference value for the establishment of a highly efficient, stable and diversified NFT artworks market.*

Keywords: *Non-Homogenized Token Art Transactions; Preventive Paths; Legal Risks*

1. Introduction

With the continuous development of the network world, NFT artwork is known by more people in China, and it is getting hotter and hotter, and many people want to enter this market and try to create or invest. However, NFT artwork as a new field, there are a lot of immaturity, and the legal regulation is not perfect, and a lot of people don't understand its principle, and the price of NFT artwork is also fluctuating constantly, and its own art value is not recognized by everyone. Not everyone agrees with it, and it is currently facing a variety of legal risks.

2. Analysis of the Juridical Basis of Non-Homogenized Token Artwork

2.1. The concept of non-homogenized token artwork

Understanding the principle of non-fungible token artwork first of all, we need to know what non-fungible token NFT (Non-fungible Token) is, which can be understood as a piece of code or a piece of data on the blockchain. In the blockchain, we are more familiar with the passes in the early days, such as Bitcoin and Ether, they have the following characteristics: the first is that they are detachable. The second is that they can be replaced, freely exchanged and circulated among each other, which is referred to as Fungible Tokens (replaceable passes). On the other hand, NFT is Non-Fungible Tokens, which has uniqueness, each of which is irreplaceable and unique. And NFT is not detachable and can only be traded as a whole.

The emergence of NFT realizes the assetization of virtual goods. It can map virtual goods, make virtual goods become the entity of transaction, make virtual supplies assetized, and also can map any data content through the link on the chain, so that NFT can become the asset entity of data content, so as to realize the value flow of data content.

2.2. Characteristics of non-homogenized token artwork

2.2.1. Uniqueness

In life, although our 100 yuan note and other people's 100 yuan note is not the same note, but the two value is the same, and is interchangeable circulation exchange. In the eyes of the public these two 100 yuan does not have any difference. As for NFT, there are no two same NFTs, and different NFTs have different values. Each NFT is a unique digital mark on the blockchain, NFT identifiers are unique, unique,

and cannot be interchanged between two.^[1] Through this identification, non-homogenous assets can be mapped into the blockchain to complete the exchange of value on a globalised trading platform. For example, digital works have natural uniqueness, and NFTs can be generated through direct mapping.

2.2.2. Ease of establishing rights

The uniqueness of the NFT makes the ownership of each NFT clear, each NFT can only belong to one person. In simple terms, it is equivalent to a permanent tracking device that proves the ownership of a digital document, kind of like microchipping your pet, no matter where the pet runs, it's easy to prove it's yours with the NFT. The NFT is an encrypted token that connects a piece of digital assets, in the metaverse, to guarantee their ownership.

2.2.3. Separable ownership

Although NFT artworks are inseparable, by using the Fractional protocol, NFT owners can tokenize part of their NFT ownership. That is, to split the ownership of a complete NFT into multiple ERC20 tokens held by different users.^[2] One of the more popular ones is the pixel avatar. There was a time when all the major celebrities switched to pixel avatars, and this came from an entire painting, a painting that had 10,000 icons in it, none of which were the same, and each of which was made into NFTs, which were snapped up as soon as they hit the market. For NFT owners, dividing the whole product into multiple copies of the product allows them to test the market's reaction first to get a rough idea of where the price is going. Moreover, by dividing the product into several parts and lowering the price, there may be more buyers. And for the users to buy a whole word compared with buying a part of it, it also reduces the investment risk.

2.3. Prospects for the application of non-homogenized token artworks

With the explosion of NFT, the price is also getting higher and higher. In foreign countries, the development of NFT art auction has been more mature, not only the auction company launched NFT art auction service, there are also auction houses to provide similar services. China is also constantly exploring and developing this, and there are more and more brands of digital collectibles that are traded on NFT. At this stage, China's legal regulation on NFT is not perfect, the risk is also very big, if it is a private transaction can not be protected by the law. NFT has two sides, the development prospect is good at the same time also accompanied by the risk of pitfalls. NFT art content quality varies, its value is different in the eyes of everyone, some works may be able to sell at sky-high prices, while some may be no one asked for the works. Nowadays, many famous brands have launched their own brand of NFT artefacts, like Gucci has released exclusive virtual sneakers. The artwork uses AI technology to even project the sneakers onto their own bodies, and Gucci's virtual sneakers were quickly snapped up due to the brand's popularity and people's pursuit of something new. However, if the product is produced by ordinary people, due to the lack of fame and lack of publicity, no one asked for it is the norm.

NFT products are certainly risky, but they can go a long way towards protecting originality if they are put to good use. With the development of the Internet, self-media is also gradually emerging, many creators will upload their own original content, pictures in the self-media platform, and these creations are very easy to be copied and plagiarized by others, and the creators found and then go to report the failure of the report because of the lack of evidence. However, the use of NFT technology can make the work unique and unrepeatable, easier to confirm the rights, and better protect the original.

2.4. Defining the nature of non-homogenized token artwork

2.4.1. Differences between non-homogenized token artwork and non-homogenized tokens

Homogenized tokens, or FTs (Fungible Token), are interchangeable. For example, there is essentially no difference between \$100 in your hand and one \$100 in my hand, which is homogenized coin. The non-homogenized token, NFT, is a unique, non-detachable token, which is equivalent to a digital code for each NFT, and there will not be two identical codes, so there will not be two identical NFTs. In the early days, NFTs were designed for digital art collectors, and they have a certain collector and commemorative value. The reason why NFT artworks can be circulated and sold is because of their uniqueness and their own value, and whether they can be resold quickly often depends on the fame and collection value of the artworks. However, some speculative merchants have found out the benefits of it, and have used various publicity techniques to encourage investors to buy NTF's "peripheral tokens". These peripheral tokens fall into two main categories, crypto coins issued by NFT technology platforms or exchanges (e.g., XTZ); and crypto coins dominated by gaming NFT (e.g., ALICE), and in either case,

the risk of investing is very high. There are no reasonable backing factors for this type of crypto coins. Against non-homogenised tokens, the author's circulation is highly unlikely.

2.4.2. The difference between non-homogenised token artwork and securities

A security is a legal document used to prove a particular interest of the holder of a coupon and has the same characteristics as an NFT to prove ownership. So can NFTs be considered securities? The current attitude of the U.S. Securities and Exchange Commission (SEC) will not recognise all NFTs as securities. An NFT being purchased is a collector's item, then there is no further connection between the buyer and seller in the transaction. Despite being sold through the blockchain, these types of non-homogenised tokens are essentially unique commodities in the marketplace, which is no different from selling a traditional painting. Since the value is irrelevant to other investors and there is no pro rata share of the investment, it fails to satisfy generalisability. And the promoter's efforts will not sway the future selling price of the NFT in the market, in which case the NFT cannot be considered a security. However, some NFTs that meet certain conditions may be considered as securities. If the NFT corresponds to a one-of-a-kind digital artwork, collectible, or game of chance that can actually serve as a certificate of authenticity on the blockchain, then such an NFT is likely to be protected. In other words, if the purpose of the NFT is to associate virtual attributes with the objects to which it actually points and to influence the value of the NFT through the value of those virtual attributes and the objects themselves, then this type of NFT is generally safe. However, if the intangible asset offered to the public is realised through a promise of liquidity and the issuer provides other services to enhance the value of the intangible asset. In other words, if the intangible asset would be considered a security under the Howey Test, the intangible asset could essentially be considered an investment, but only covered by a layer of virtual attributes that would still be considered a security.

From a legal point of view, an NFT may be an object, it may be a debt, and it may equally be recognised as a security. In fact, this depends on the specific circumstances, i.e., the specific role it plays in the offering and the flow of transactions. Therefore, we believe that NFT, as an alternative investment vehicle, has certain property attributes. As a digital asset, there is no uniform standard as to whether it should be legally defined as a property right, a debt, or an intellectual property right, and it can only be analysed according to the specific market situation.

3. Dilemmas facing non-homogenized token artwork

3.1. The legal nature of non-homogenized token artwork is unclear

NFT is more and more known and accepted by the public, and scholars have not reached a unified conclusion on the legal nature of NFT digital artworks, which is mixed with various doctrines, such as "right in rem", "claim" and "encrypted digital certificate". Scholars have not reached a unified conclusion on the legal nature of NFT digital artworks. First of all, it should be clear that a digital collection is first of all a virtual property; at the same time, it is also related to the intellectual property rights of the creator. Therefore, the transaction process will result in the transfer of at least two rights, one being the change of the property right of the digital collection as virtual property, and the other being the transfer or licence of the intellectual property right of the digital collection as a "work of authorship". For the right holders of the works, what kind of rights they can enjoy on the basis of NFT artworks is still a big controversy. Article 266 of the Civil Code states that a private person has the right of ownership over his/her lawful income, house, household goods, production tools, raw materials and other immovable and movable property. Article 267 stipulates that the lawful property of private individuals is protected by law, and any organization or individual is prohibited from appropriating, looting or destroying it. According to the definition of "ownership" in the Property Rights Section of the Civil Code, NFT artefacts do not belong to movable or immovable property, nor do they belong to movable property that requires physical delivery, nor do they belong to immovable property that is registered in accordance with the provisions of the law and undergoes the effect of ownership changes. And the owner can't actually possess the digital collection, because it exists in the blockchain, there is no "delivery-transfer" process of the real thing, and the right of the civil subject to the digital collection is not the ownership in the legal sense. However, some scholars believe that "blockchain digital assets" should be included in the category of property rights, because with the technical means of Ether, it can let the world see that it is the "owner" through the private key and public key. No one can manipulate their digital collections in any way, and they can also licence and resell them for profit. This is similar to a "work of art" transaction, where the right holder can exercise in rem ownership of the digital collection. The legal nature of digitised works, such as NFT artworks, is not yet clearly defined.

3.2. Intellectual Property Infringement Risks of Non-Homogenized Token Art Transactions

Nowadays, under the Internet, people can easily plagiarise other people's works and copy other people's creative achievements, and the intellectual property rights of all kinds of works are infringed upon from time to time under the legal regulation of the creators' rights and interests. As for NFT artworks, which are not yet well regulated by law, many people who are familiar with NFT, or even familiar with the use of the Internet, can make unauthorised NFT artworks and upload them to the platform. Although the NFT artwork has uniqueness, but the current stage of the law may not be able to ensure uniqueness, can only prevent the difficulty of copying, and can not fully protect the rights of the owner of the work. For example, if a NFT artwork is copied directly by a casting agent, a pure white border or micro-adjustment is added, and a new NFT is made, as well as a mirror reversal and other ways of copying the original artwork and casting it into a new NFT, these behaviours belong to the copying of plagiarism if they are put on the traditional artwork. What is the definition of NFT artwork? The main difficulty in solving this problem lies in whether NFT artwork can be recognised as a work protected by copyright, the core of constituting a work under the Copyright Law is to have originality; NFT artwork, as a unique creation, is created by the creator according to his/her own thoughts, and should have originality, thus constituting a work under the Copyright Law. Therefore, a simple copy of another person's work that does not possess originality should not be recognised as a protected work. Since the NFT artwork is considered to be protected by the Copyright Law, the transfer of ownership of the original work of art after the transaction of NFT artwork does not change the attribution of the copyright of the work. This rule should also be followed in the case of NFT artwork transactions, which means that obtaining ownership of an NFT artwork does not mean obtaining copyright. The original creator is the owner of the copyright and retains the exclusive right to reproduce, distribute, modify, publicly perform, and publicly display the artwork (unless specifically granted to another person). However, when the buyer feels that the rights to the NFT artwork he has purchased are not what he expected, and when faced with a loss, the question arises as to what legal liability he may be able to pursue against the seller.

There are often other problems with copyright ownership. A caster can cast another artist's painting as an NFT artwork without the authorisation of the original creator, or even without the creator's knowledge. The NFT itself cannot determine the legality of the source of the rights prior to casting. An NFT artwork does not need to prove that it is original to be uploaded to the platform, and it is difficult for the platform to verify whether it is original or not, which makes it easy for the original creator's rights to be infringed upon.

3.3. Financialization Risks of Non-Homogenized Token Art Transactions

NFT being as new as it is, the market's perception of NFT is still immature, and there is no recognised standard of measurement and mature pricing mechanism for the value of NFT digital works. The value represented therein is very subjective and fluctuates greatly, determined mainly by the scarcity and fame of the work and the seller's recognition of the work. This is when a group of speculative ones raise prices to inflated levels, making investment risky. Moreover, the lack of transparency in the NFT art market makes it difficult to determine the true value of each work, and its trading model is not limited by time and space, making it more frequent and more likely to lead to speculation. Such a trading model can be easily exploited by speculators to engage in grey industry and illegal activities such as speculation, pyramid schemes, ICOs in disguise, money laundering and cross-border asset transfers. At present, trading NFT artworks are settled in virtual currency, and often with the help of foreign NFT trading platform websites for intelligent signing and transferring the rights and interests of the works, which makes NFT digital artworks face asset speculation in the process of trading and may even be reduced to money laundering tools.^[3] Second, the NFT digital art market has serious information asymmetry and price opaqueness, which makes it easy for artwork price premiums to occur. While many NFT transactions currently have a high degree of similarity to auction houses or art dealers, NFT trading platforms are susceptible to money laundering due to the characteristics of traditional art transactions, i.e., "buyer secrecy, regulatory uncertainty, opaque pricing, and high-value transactions". It is easy for buyers and sellers to use the platform for money laundering, and it is entirely possible for both parties to a transaction to commit a joint offence through the NFT platform. In this regard, our country needs an ideal programme that is both open and regulated.

3.4. Inadequate regulation of non-homogenized token art trading platforms

As NFT art is still a relatively new concept, there are no perfect legal constraints. For the sake of

profit and without legal constraints, some trading platforms may manipulate market prices or conduct false transactions, thus harming the interests of investors. Secondly, in NFT trading, the identities of both buyers and sellers are hidden, which makes it difficult to trace the infringement after it occurs, as the anonymity of the wallet makes it impossible to know the buyer's real information. The lack of a unified standard for NFT application makes it impossible to guarantee the consistency of artwork data both on and off the chain, which creates two problems: firstly, as more and more NFT transaction service platforms appear, each platform cannot guarantee the uniqueness of the NFT content and copyright they provide. Second, there is no guarantee that users will upload NFTs to only one platform. For example, if two platforms say they have the same NFT artwork, how can they determine which platform it belongs to? How do the two platforms determine the ownership of the artwork? This is already an unavoidable problem for the emerging NFT industry, and platforms are too simple and hasty in certifying NFT artworks.

4. Risk Prevention Path for Non-Homogenized Token Art Transactions

4.1. Clarify the legal nature of non-homogenized token artwork

To explore the protection path of NFT artworks, it is first necessary to clarify the legal nature of NFT artworks. On the one hand, NFTs are essentially cryptocurrencies, merely cloaked in art and combined with NFTs to make them units of data on a blockchain digital ledger with a certain transaction value. Essentially virtual property, in which case they may be subject to legal requirements associated with virtual assets, such as financial regulatory statutes such as anti-money laundering and anti-terrorist financing. Secondly NFT artworks can be considered as digitized artworks and should be recognized as works protected by copyright laws, copyright laws, etc. The last is that although the transfer of delivery cannot actually be completed after the transaction, it can be traded and but the holder can have exclusive dominion over it, which can be regarded as a kind of commodity or object and be included in the protection of property rights. In general, this paper believes that NFT should be protected by the right of property, and the right of NFT holders to the virtual property of NFT is the right of ownership, and the NFT artwork meets the requirement of "work", which can be recognized as a work protected by intellectual property law.

4.2. Building a Legal Regulatory Framework for Non-Homogenized Token Artworks

In terms of legal norms of intellectual property, the protective norms for NFT artwork focus on copyright law. At present, there is no legal regulation on the copyright of NFT digital artworks in China, and in practice, the infringement of NFT artworks is mostly reflected in the right of distribution, reproduction and information network dissemination. Obviously many people don't realize this problem and think that they can disseminate or copy and distribute the purchased NFT artworks to the public, which in fact may infringe the rights of the original author. Just as the purchaser of a painting can only acquire the ownership of the material carrier, the purchaser of an NFT acquires only the ownership of the NFT itself, not the copyright of the book. According to the rules of the Copyright Law, when the original or a copy of a work is transferred as an object, the ownership is transferred, but the ownership of the copyright of the work does not change (unless explicitly agreed in the contract between the parties).^[4] The holder of the NFT artwork only enjoys its ownership, and in the course of the transaction of the NFT, the transaction of the NFT does not ipso facto extend to the transfer or license of the copyright right of the digital work it reflects. Without the permission of the original copyright holder, unauthorized reproduction of another person's work casting NFT constitutes infringement. The buyer also infringes the right of information network communication by purchasing and distributing it to the public.^[5] Therefore, NFT artworks should be included in the scope of protection, the definition of works should be expanded, a classification system for NFT artworks should be established, and the rights and limitations of the original right holders should be determined according to the different attributes of NFT artworks. Secondly, the relevant laws and regulations should be amended to clarify the responsibilities of the corresponding trading platforms and establish a strict entry system for trading platforms, so that the platforms can improve their ability to identify and prevent copyright risks. Once again, the interpretation of some laws and regulations should be expanded. For example, the "digitalisation" in Article 10 of the Copyright Law should be expanded to include cryptocurrencies. Finally, analogous interpretations in favour of the perpetrator should be advocated in order to maximise the protection of digital works and the rights of the original creator.

4.3. De-financialization of non-homogenized token artworks

The relevant legal system should be improved as soon as possible, and the system should be soundly safeguarded to ensure that the financial risk of NFT is controlled within a reasonable range. Uniform valuation standards should be established, prices should be as open and transparent as possible, and there should be a favourable trading environment to prevent excessive fluctuations in the value of the NFT market. For NFT art transactions, legal tender should be stipulated, and it should be made clear that the circulation and transactions of NFT artworks can only be valued and settled in legal tender, and the use of virtual or foreign currencies is strictly prohibited. This will cut off all links between NFT and virtual currencies at the root, thus reducing the financial risks that may arise from the virtual monetisation of NFT.^[6]

4.4. Implementing risk control responsibilities for non-homogenized token art platforms

NFT trading platforms provide convenience for users, everyone can upload casted NFT works on them, and they can be traded and circulated. However, at the same time, due to the lack of legal regulation, many platforms turn a blind eye to infringement, and there is no verification of whether the works uploaded by users are original or cast into NFT with other people's works. There is also no verification of whether the NFT artwork uploaded by the user is only on the platform, which also raises the risk of copyright infringement from the side. Therefore, some measures should be formulated centred on the platform, the first of which is to improve the qualification of the platform. For example, platforms can be licensed and those that fail to meet the stipulated requirements should be withdrawn. Secondly, the platform should establish a system designed to detect plagiarism. If there are duplicates of NFT artworks on the platform, measures should be taken to stop the infringing behaviour. It is also necessary to leave a complaint channel for users to prevent misjudgment. Finally, determine the subject and target of regulation. Break the administrative barriers between departments, improve the regulatory authority and functions of the relevant departments, clarify the regulatory standards, and define the regulatory objects, including trading platforms, artists, traders, collectors, artworks, etc., to achieve the institutional mechanism of cooperation and co-construction and co-management of various departments.

At the same time, the platform also provides a platform for the development of users, so that each user is qualified to become an artist, on top of the platform makes NFT art can be circulated, reducing the risk of investment, so in the strict control of the platform at the same time to encourage the platform to comply with the development. Under the guidance of national policy, artwork should be traded within the platform, not offline or between private individuals. Setting multiple thresholds to avoid speculation and so on embraces compliance and legality as well as pay practical attention to the property safety of users.

5. Conclusion

In the context of the meta-universe, NFT plays a very important role in the development of digital copyright protection. The use of NFT is very important for the development of the digital art market, and has an important impact on copyright law. The development of NFT requires not only legal protection, but also technical support. People want to have a good trading environment and want to buy unique and valuable NFT artworks that only they can own. Therefore, it is important to improve the dual governance system of code autonomy centered on smart contracts and legal governance centered on laws, and to protect the trading of NFT artworks with the dual protection of "technology and law". It is governed first by legal rules, then by code rules, and finally by a combination of the two. Only when ownership is confirmed on a legally recognized basis and regulation is perfected can the essential sustainable development of non-homogenized tokens be realized.

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References

[1] Liu Shuangzhou, Guo Zhiwei.(2021).On the impact of non-homogeneous Tokens on the copyright

Management and Protection of Digital art. Chinese Art,(4),29-32.

[2] Simon F. Dyson, William J. Buchanan, Liam Bell. (2020).Scenario-based creation and digital investigation of ethereum ERC20 tokens. *Forensic Science International: Digital Investigation, (32):,1-23.*

[3] *Intellectual Property Issues in Digital Collections Trading Artwork Works Legal Risks (sohu.com).*

[4] Song Fangbin, Gan Feng.(2022).The Risks of NFT Artworks and the Dualistic Protection Model. *Nanjing Social Science,(8):153-154.*

[5] Deng Jian-peng, Li Jia-ning.(2022).The right certificate of digital artwork: the source of value, the right dilemma and the solution of NFT. *Exploration and Controversy, (06),87-95+178.*

[6] Yang Dong, Liang Weiliang,(2022).On Meta-Universe Value Units: Functions, Risks, and Regulation of NFTs. *Learning and Exploration, (10),68-79+191.*