

What to Know about NFT License Agreements

By Gregory J. Battersby

NFTs, otherwise known as “Non-Fungible Tokens,” are perhaps today’s hottest new licensable property. They are digital assets that represent real-world objects such as art, music, games, and videos. NFTs are bought and sold online and are typically encoded with the same type of software as cryptos and are commonly sold using cryptocurrency. They are stored on a blockchain which is essentially a digital ledger of transactions that is duplicated and distributed across a computer network. There can only be one owner at a time and they can be transferred using transfer tokens.

First introduced in 2014, NFTs became particularly popular over the last couple of years as parties came to realize that they are a great vehicle for buying and selling digital artwork. As of this writing....and things are changing virtually daily, the most expensive NFTs that was Michael Winkelman’s (a/k/a Beeple), EVERYDAYS—THE FIRST 5000 DAYS, which sold for \$69M.

NFTs are unique, i.e., either one of a kind or part of a limited production run, and they contain unique identifying embedded codes or digital signatures. They are “minted” from virtually any digital image and generally fall into the following categories: traditional digital art, game-specific NFTs, crypto-collectibles, music NFTs, virtual real estate, branded collectibles, video, GIFs, etc. Since they are unique, that makes them valuable as a collector item.

So, how does relate to licensing? The major difference between traditional licensing and the licensing of an NFT is that instead of licensing physical goods, the licensor is licensing digital goods. One of the major advantages offered by licensing digital goods is that the licensor’s ability to collect a royalty doesn’t end when the licensee sells the physical product to the retailer. With digital goods, the licensor can collect royalties every time those products are sold....and resold. Thus, the royalty stream and ultimate compensation for the licensor are potentially extended for years or even decades.

The NBA has certainly figured out a way in its Top Shot product which is a blockchain-based, trading card system with NBA highlights and digital artwork. The NBA licensed its reels to Dapper Labs, which digitized the footage and created a limited amount to create scarcity. Some NFTs feature highlights in different angles and digital artwork. One is currently listed for \$240K. All told, Dapper Labs reported that it had generated over \$230M in gross sales through February of 2021.

License agreements for the use of different forms of intellectual property for NFTs are quite similar to the types of license agreements that we have all become accustomed to in the industry for years—there’s an identification of the property involved, a specific grant of rights to a licensee for a particular use, e.g., for NFTs, provisions concerning term, territory, approval rights, insurance, indemnification, termination, etc. Where NFT agreements are different from traditional merchandising license agreements are the consideration provisions. How much the licensee will pay for the right and in what form? Typically, a royalty is paid and there are guarantees and advances but will payments be made in dollars or bitcoin? It is also quite common for a licensor to receive compensation every time the NFT is sold and resold.

The owner of the intellectual property can spell out exactly what the licensee can do with the property, particularly how often a particular NFT might be sold. Since the property owner will derive a

royalty from the sale of the NFT, it's in the licensor's best interest to permit a rather wide distribution of such products although this may limit the uniqueness, and therefore the value, of the NFT.

Stay tuned, because the industry is only now beginning to get its arms around this exciting new form of licensed products. Today it has shown to be a successful product for collectibles. Where it will go from here, however, is limited only by the imagination of a creative licensing professional's mind.