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## NFTs and Metaverse: Examining the Opportunities and Roadblocks for IP Lawyers in a Globalized World

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### Abstract

Non-Fungible Tokens (NFTs) have gained significant popularity as a means of ownership and authentication within the metaverse, a virtual reality space where users interact with each other using avatars. In fact, it has been considered to be the legal tender of the metaverse. As the Metaverse and NFTs continue to revolutionize various industries, their impact on Intellectual Property (IP) rights has raised critical concern especially regarding its effect on IP lawyers. It is against this backdrop that this paper delves into the intersection of NFTs and the metaverse by examining the implications, prospects and challenges faced by IP lawyers in an increasingly digitalized world. It also aims to provide valuable insights into the evolving landscape of IP law in relation to NFTs and the metaverse.

**Keywords:** *NFTs, Metaverse, IP lawyers, Digitalized world*

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### 1. Introduction

The whirlwind of the 21<sup>st</sup> century has brought a paradigm shift in the technological outlook of the world. The sudden transformation has taken the world by the storm that even the mainstream media which should be at the forefront of awareness is yet to convey the magnitude and implications of this transformation to all sectors of the society especially the legal sector. Terms such as 'NFTs' and 'metaverse' has gained notoriety. In fact, they have become a sine qua non to be deemed intellectually worthy. Thus, individuals and companies has begun restructuring themselves to adapt to the evolving trend.

In March 2021, a group of NFTs by Beeple sold for over \$69 mn setting precedent for the most expensive pieces of digital art sold. In March 2021, Twitter's former CEO, Jack Dorsey sold an NFT version of his first-ever tweet for more than \$2.9 mn.

Nigeria is not left behind as some of its creatives has already begun to take advantage of the NFT wave. Jason Osinachi sold two NFTs for \$16,227 and \$23,633 respectively. The renowned rapper, M.I Abaga, revealed that his next album would be an NFT. Even more recently is Folarin "Falz" Falana who had launched his own exclusive NFTs collection on March 31, 2022.

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Although the concept of NFTs may remain an obscure domain to a few, others have been able to take advantage of it to make sales and mega-purchases. This has led to the popular NFT hype fast spreading across the globe.

## 2. NFTs and Metaverse: Synopsis and Conceptual Analysis

NFTs (which means Non Fungible Token) are cryptographic assets on a blockchain, a system conceived by Satoshi Nakamoto with unique identification codes and metadata that distinguishes each asset from another<sup>1</sup>. NFTs shift the crypto paradigm by making each token unique and irreplaceable, thereby making it impossible for one non-fungible token to be replicated or traded at equivalency. They are also extensible, meaning that one NFT can be combined with another to produce a third unique NFT<sup>2</sup>.

The first NFT named "Quantum" was created in May 2014, however, the most famous NFTs is the 'Cryptokitties', a digital representation of cats which racked up a fan base that spent \$20 million worth of ether to purchase, feed, and nurture them.

NFTs, as a smart contract exists on a blockchain which allows creators to ascribe different values and functionalities to a smart contract through the use of Application Program Interfaces ("APIs"). The functionalities added to the smart contract are what makes it an NFT. Such functionality gives creators the ability to include whatever they want to add to the digital asset and then store it on the blockchain to be minted. Although artwork dominate the NFTs space, however, almost anything can be minted as an NFTs. When a digital file is minted, a certificate of ownership and originality is generated via cryptocurrency and issued as an NFTs to any individual who purchases it.

In 2021, NFTs shot into the limelight, grossing a trade volume of over \$40 million. On September 7, 2021, El Salvador broke precedents by making the bold move of elevating cryptocurrency to the level of fiat money. Two days after, Ukraine accepted crypto currency as digital assets. This is only a surface of the current crypto-tectonic move. For an industry that once occupied a tiny sliver of attention within the blockchain world, it's clear that NFTs are here to stay despite earlier critiques of their ephemeral nature

What is the Metaverse?

The term Metaverse was first used in Neil Stevenson's 1992 novel, *Snow Crash* to be mean a virtual place where humans as programmable avatars interact with each other and software agent in a three-dimensional virtual space that uses the metaphor of the real world<sup>3</sup>.

Metaverse as a virtual place is a blend of multiple components of technology counting, virtual reality, and augmented reality and video wherein the people exist in the bounds of a digital universe. Simply put, it is an embodied internet with a personalized avatar that enables people to meet in the virtual space<sup>4</sup>. Mark Zuckerberg has expressed it as a virtual environment in which people can attend virtual concerts, purchase and try on digital clothing and play games.<sup>5</sup>

In 2021 alone, more than \$10 bn have been spent by meta for the development of metaverse technologies. Zepeto, Asia's biggest Metaverse platform, has acquired almost a quarter of a billion users in the 3 years since it launched<sup>6</sup>. Recent market analysis has revealed that by year 2024, the metaverse market demand would be approximately \$800 bn.

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<sup>1</sup> *The Economic Times*, What is an NFT? How does it Work? June 3, 2022. <https://m.economictimes.com> accessed on May 10, 2022

<sup>2</sup> Investopedia. Rakesh Sharma. Non-Fungible Token (NFT) Definition. February 26, 2022. <https://www.investopedia.com>. Accessed on May 27, 2022.

<sup>3</sup> Wikipedia, History of Metaverse. <https://www.wikipedia.com>. Accessed on May 27, 2022.

<sup>4</sup> Premium Nigeria (2022), *All you need to know about the Metaverse, April 7*. <https://www.premiumtimesng.com>. Accessed on May 27, 2022.

<sup>5</sup> Kyle Chayka (2022). *Facebook wants us to live in the Metaverse. August 5, 2022*. <https://www.newyorker.com>. Accessed on May 27, 2022.

<sup>6</sup> *BBC News*. Mariko Oi. (2021). *Is this the World's Largest Virtual Fashion Show. December 23, 2021*. Retrieved from May 20, 2022 from <https://www.bbc.com>

### 3. NFTs and Metaverse: The Intersection

The value of Metaverse NFTs is expected to increase exponentially in the following years as more companies build their brands within the Metaverse. According to a report published by NonFungible, metaverse NFTs make up approximately 3% of the global NFT market value—a staggering \$513 mn<sup>7</sup>.

NFTs have an important place in the metaverse as they both operate on the same principle which is the deconcentration of financial ownership and the creation of sustainable and permanent ownership of virtual assets. As the legal tender of the metaverse economy, blockchains and cryptocurrencies shall transform as an essential fraction of the metaverse. A blockchain permit the transactions to be cryptographically safe.

A great example of NFTs Metaverse is Decentraland, which is a 3D gaming world that allows players to buy virtual land and then build real estate. Each plot of land is subsequently represented by a unique NFT token, which can then be sold on the open market. Nike has also dipped its toes into the metaverse through 'Nikeland', a virtual collection of Nike shoes, clothes and accessories to dress up avatars in.

### 4. Prospects of IP Lawyers

#### 4.1. Virtual Real Estate

Real estate is a lucrative industry to work in in the physical world, and the same applies to the metaverse. Recently, virtual lands has evoked the same utility as physical lands. In February 2022, Gucci marked its first foray into the metaverse when it bought virtual land in The Sandbox. PARSIQ, a blockchain company, has created a platform where landowners in the Metaverse can earn rental income from their digital assets. The protocol mimics the behavior of physical land by ensuring both the landowner and the renter's obligations are negotiated, governed, and enforced by a series of smart contracts.<sup>8</sup> This new prospect shall make IP lawyers understand smart contracts in relation to virtual real estate and possible ways of execution and enforcement. They conduct due diligence on ownership and authenticity of the real estate and ensure that the terms and conditions adequately protect the intellectual property rights of their clients.

#### 4.2. Virtual Events

Brands has began to explore how they can leverage advanced technologies to reimagine the boundaries of virtual worlds across multiple platforms. Companies believe that by creating events that incorporate art and fashion within a corporate environment, they can offer their fans unique experiences that will keep them in their ecosystem longer and extend the lifetime value of their customers.<sup>9</sup> In April 2022, Snoop Dogg, a famous West Coast rapper hosted an exclusive concert in The Sandbox's metaverse.

There is need for creators to protect their intellectual property rights in the metaverse. They will have to consult with IP lawyers to explore new ways of validating and authenticating smart contract to protect their brand and commercial interests. The lawyers shall enable them identify potential infringement and comply with IP laws.

#### 4.3. Creation of Avenue

The potential of NFTs Metaverse to generate and sustain revenue streams is particularly attractive, most notably in the context of art and other collectibles where brand strength drives value. NFT creators may, for example, set up an NFT to create an automated ongoing payment of royalties or commission on any resale of the tokens. Payment could be automated via a smart contract within the NFT, with the creator able to track resales since they will be logged on the blockchain where the NFT is held.

IP lawyer can assist artists, content creators, and brands in drafting licensing agreements and negotiating royalty terms for the use of their intellectual property. They play a crucial role in reviewing smart contracts to ensure proper attribution, usage rights and revenue sharing arrangements in NFTs Metaverse.

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<sup>7</sup> Constantin Kogan. (2022). *Increased Adoption of Metaverse NFTs will Power the Next NFT Growth Cycle*. Retrieved on May 27, 2022 from <https://www.bitcoininsider.org>

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

## 5. Challenges Faced by IP Lawyers

### 5.1. Scope of Trademark

Another challenge that IP lawyers face is NFTs creations by third parties displaying other companies' trademark. The issue arose in relation to the "Baby Birkin" NFT, an animation of a baby growing inside the famous Birkin bag which was sold in an auction house without the fashion house having any affiliation with nor being awarded any royalty for the sale of such NFT. The fashion house filed a suit claiming trademark infringement and dilution for using famous "Birkin" trademark without its permission.

However, the company registered the "Birkin" trademark for leather goods and handbags but not for digital artworks, so the creator of the NFT could argue that the NFT is not covered by its trademark rights. This case raises important questions for IP lawyers as to the scope of trademark rights in the NFTs metaverse.

### 5.2. Scope of Copyright

Laws governing IP in most countries provides that for a work to be copyrightable, it must owe its origin to a human being. In Nigeria, Section 2(1) Copyright Act, 1998 provides that copyright is only conferred on a 'qualified person'. The Act made no mention of computer-generated work. However, from the aforementioned section, it can be deduced that only humans are capable of owning copyright over a work.<sup>10</sup> The metaverse is a space where humans interact as avatars. This poses the crucial question as to whether virtual creations by avatars in the Metaverse are copyrightable.

### 5.3. Ownership of IP Rights

At first glance, the sale of an NFTs may seem equivalent to an assignment of copyright. However, the buyer only buys the singular copy of the work paid for. The certificate which merely act as evidence of purchase grants the buyer a right to display the asset not the underlying ownership rights. Therefore, the copyright is retained by the creator. Since, lawyers are not usually involved from the onset of the transactions, parties are often unaware of the extent of their rights. This leads to colossal mistakes and alleged misrepresentation of the rights on an offer. However, the creator of the work may agree to transfer his IP rights in the NFTs as part of the sale. In this case, he shall have to include it in the contract.

Whichever the case, the IP lawyer is sent a voyage of discovery to determine the original creator or rightful owner of the NFTs and the scope of IP rights transferred.

### 5.4. Speculation

The NFTs Metaverse is a market driven by hype and speculation. What an NFT represents, how much is expected to be generated from its sale and even whether it is capable of fractional ownership is largely driven by the commercial rationale for issuing the NFT. Its value depends on how much a person is willing to pay for it. Thus, lawyers are relegated to market speculators, a role their course of study has left them totally unprepared for.

### 5.5. IP Theft and Infringement

The NFTs Metaverse evolution has also caused high level of IP theft and infringement. SuperRare, an NFT platform warns that artists should never mint a work containing copyrightable elements of another creator's work unless they are authorized by the copyright owner or a valid fair use defense applies. However, even with the warnings, it is hard for artists to trace individuals who have minted their work because the address is anonymous since the transaction is on a blockchain. The work is commercialized to yield economic returns yet, as a result of the anonymity of blockchain transactions and the cross-border nature of NFT transactions, IP theft has remained a hard nut for the IP lawyers to crack as enforcing IP rights would require expertise in digital forensics.

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<sup>10</sup> Oluwafunmilayo Mayowa. (2020). *Nigeria: Who Owns the Copyright in an AI invention*. January 8, 2020. <https://www.mondaq.com>, accessed on May 27, 2022.

## 6. Conclusion

The height of the 21<sup>st</sup> century evolution lies in the NFTs Metaverse intersection. It has opened up new prospects and also thrust professionals the onerous duty to understand the impact of this novel area in relation to their field. To effectively ensure the IP protection of digital assets in the virtual space, it is pertinent for IP lawyers to embrace the prospects and address the challenges by understanding the evolving regulatory and legal framework. Thus, an IP lawyer is charged with the responsibility of expanding his horizon to adapt to evolving trends so as build a strong clientele base.

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