

Risk of Copyright Infringement in NFTs

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Abstract - The article highlights the definition and benefits received with the use of NFT. The article also highlights the increasing risk of copyright infringement. The author, through this article, has requested to take appropriate measures to mitigate the risk of copyright infringement.

INTRODUCTION

In recent times, superstar Amitabh Bachchan made news for receiving USD 9,66,000 (Rs. 7.18 crore) from an auction organized by Beyond Life club. The auctioning of the NFT version of 'Madhushala' turned out to be a great success. Apart from it, Harivansh Rai Bachchan's poem was recorded in mega star's voice, rare vintage posters NFT featuring seven autographed posters, and 'BigB Punks and NFT Arts' collection were also auctioned and sold respectively.

The full form of NFT is a Non-fungible token. It is of its kind assets which are stored digitally. These digital assets are protected by blockchain technology Ethereum. The said blockchain converts the tangible literary or artistic work, i.e., music, paintings, and pictures, into intangible form by transforming them into a digital format, like JPG, MP3, and GIF. The Ethereum blockchain reserves each and every token individually ends up creating a certificate in a digital format that has definite information about the owner. NFT has been proven to be beneficial for the artist because it has created a novel source of generating income. Traditionally, when an artist sells a tangible art piece, he can receive income only after his art piece is sold for the first time. The buyer may subsequently resell the art piece, which may enhance the amount if the creator is renowned. However, the artist cannot claim any share in the resale, in spite of being the creator and holding the copyright of the art piece. If an artist by any chance manages to get a share from the amount received by resale of the art piece, then he will be liable for violating the "first sale doctrine" under U.S. Copyright Act. On the contrary, when an NFT version of art is sold through the medium of blockchain technology, the artist has the advantage of

receiving a guaranteed commission whenever the art piece is resold.

WILL NFT AMOUNT COPYRIGHT INFRINGEMENT

Section 14 of the Copyright Act exclusively gives the creator the rights of reproduction and adaptation. Once the art piece is sold to the buyer, the buyer will receive the copy of said work in a digital format; the token received will get added to the purchaser's digital wallet. If a person other than the owner, without taking due permission from the owner, mints it into an NFT, it will amount to infringement of copyright.

ASSIGNMENT OF OWNERSHIP

There is a distinction between owning an NFT and owning the rights arising out of the said NFT. It is up to the will of the artist to assign the copyright ownership completely or by imposing certain restrictions to the purchaser of NFT. The rights should be assigned in conformity with the provisions mentioned under section 19 of the Copyright Act, i.e., it should be in the form of a digital contract should be in written form, and the terms and conditions of the sale should exclusively provide the assignment. In the case of NFT, the purchaser has got the license to use the digital art. However, there is no transfer of copyright in the name of the purchaser.

JURISDICTION

It is pertinent to note that marketplaces wherein the NFTs are traded are situated outside India. Reserve Bank of India has no regulations regarding cryptocurrency and NFT. Provisions mentioned under FEMA can facilitate business transactions performed across the borders of two countries. NFT's and cryptocurrencies will be termed as intangible assets like any other intellectual property under the

provisions mentioned under FEMA. Tracing the location of the cryptocurrency is not that difficult because the courts, in their decisions, have laid down that these digital assets cannot be stored anywhere other than the secured block chain technology, which acts as a ledger.

LICENSING OF NFT

There should be an e-contract which should be mutually agreed between the parties then, and there only the parties can transfer the ownership of NFT. If the license is granted to the purchaser, then the purchaser can use that NFT subject to such limitation or restriction agreed by the purchaser through an e-contract. For instance, if the seller restricts the purchaser to generate a limited amount of NFTs so that they can maintain the rarity.

CONCLUSION

In the world, it is easy to procure and own NFT like any other asset. NFT are rare and one of their kind digital assets; there is a common view amongst the public that NFTs add on significant value. The artist belief that NFT can be a capital investment, like any other art form present in physical form. There is a need to develop an extended level master plan so that risk related to investment of crypto be mitigated.

Considering the legal scenario, it is undisputed that artists are expecting a great hike from NFT so that they can earn financial interest on their art which may lead to abuse of their copyright rights. The lack of checks and balances to see whether the person who has created the NFT is the actual owner who has the copyright of the NFT. The unanimity of the actual author increases the chances of duplicity. In order to maintain the rare nature of NFT there is a need to maintain a proper system which ensure that they remain to rare and scarce in nature.

REFERENCE

- [1] By CNBCTV18.com, Amitabh Bachchan's exclusive NFT collection auctioned for \$1 million, |Nov 05, 2021, 07:20 PM IST (Published)