



UNIVERSITY *of* NICOSIA

Session 2

# Copyright and Provenance in NFTs

META-511: Non-Fungible Tokens (NFTs) and the Metaverse

# We are here

1. What is an NFT?
- Week 2** → 2. Copyright and Provenance in NFTs
3. PFP NFTs
4. Art NFTs
5. Generative art
6. Key considerations in the NFT space
7. Gaming NFTs
8. What is a metaverse?
9. Trends in visualization technology
10. Financing models for NFTs and the metaverse
11. Off-chain objects and the broader environment
12. A vision for the future

# Session Objectives

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## Agenda

1. Intellectual Property
2. Trademarks
3. Copyright
4. Transfers of Copyrights
5. NFT Licenses
6. Conclusions and Further Reading

# This is an educational course only

- We will discuss various projects, individuals or NFTs in this course
- These projects, tokens or the individuals associated with them, are only referenced for educational purposes
- Nothing in this course should be taken as a recommendation to buy or sell an NFT or token or any other financial instrument or security
- More generally, cryptoassets are extraordinarily volatile investments. Please take care if you are buying cryptoassets
- The information provided during this session does not, and is not intended to, constitute legal advice.
- Instead, all information, content, and materials made available is intended for general educational purposes only.

# Special Guest Lecturer – Eliana Torres

- Eliana is an attorney in the Intellectual Property Group at Nixon Peabody LLP, where she is part of Nixon's Blockchain and Metaverse and IP Teams.
- Eliana focuses her practice on technology transactions, copyrights, and trademarks. After being introduced to blockchain, she became an avid collector of NFTs, where she witnessed the many issues involving IP. It was then that she decided to use her unique ability to translate complex IP issues into actionable solutions to empower innovators.
- Prior to joining Nixon, Eliana practiced as a Trademark Attorney for the United States and Patent and Trademark Office. Eliana has a JD from UIC School of Law and an LL.M in International Intellectual Property Law from Chicago-Kent College of Law.

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# 1. Intellectual Property

# There are three main categories of Intellectual Property rights

Intellectual property (IP) refers to creations of the mind, such as: inventions; literary and artistic works; designs; symbols, names, and images used in commerce

IP Right	Description
<b>Copyright</b>	Protects original works and subsists from the time the work is created in fixed, tangible medium and immediately becomes the property of the author who created the work. Only the author can rightfully claim copyright.
<b>Trademark</b>	Generally a word, phrase, symbol, or design, or a combination, that identifies and distinguishes the source of the goods of one party from those of others.
<b>Patent</b>	A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.

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## 2. Trademarks



## What are Trademarks?

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# Trademark

- An exclusive right to use the mark **in connection with goods or services**, including protection from infringement or dilution (others using or weakening the mark)
- Trademark protection exists in perpetuity, provided you choose to renew it
- Trademarks must be used in connection with specific goods or services - known as “Classes” - by the USPTO and other international or national equivalents

# What are Some Examples of Trademark Registrations?

## Large NFT projects often register their name as a Trademark

<b>FIDENZA</b>	
<b>Word Mark</b>	FIDENZA
<b>Goods and Services</b>	IC 042. US 100 101. G & S: Non-downloadable cryptographically unique and non-fungible digital assets, namely, non-fungible digital tokens used to establish ownership of an asset stored in the blockchain; digital art design; graphic art design; non-downloadable electronic data files, namely, non-fungible tokens featuring graphic content and digital media. FIRST USE: 20210611 FIRST USE IN COMMERCE: 20210611
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	97085608
<b>Filing Date</b>	October 21, 2021
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Owner</b>	(APPLICANT) Anticlass Studios LLC DBA <b>Tyler Hobbs</b> LIMITED LIABILITY COMPANY TEXAS P.O. Box 143351 Austin TEXAS 78714
<b>Attorney of Record</b>	Alyce Zawacki
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

Fidenza is registered as a trademark for use in Class 42 by Tyler Hobbs

<b>CryptoPunks</b>	
<b>Word Mark</b>	CRYPTOPUNKS
<b>Goods and Services</b>	IC 009. US 021 023 026 036 038. G & S: (Based on Intent to Use) Downloadable software for viewing crypto-collectibles, non-fungible tokens and other application tokens; downloadable software for use in electronically trading, storing, sending, receiving, accepting and transmitting crypto-collectibles, non-fungible tokens and other application tokens; downloadable software for use in electronically trading, storing, sending, receiving, accepting and transmitting digital currency, and managing digital currency payment and exchange transactions; downloadable software for processing transactions related to crypto-collectibles, non-fungible tokens and other application tokens; downloadable authentication software for communications with computers and computer networks; Downloadable image files containing artwork authenticated by non-fungible tokens (NFTs); downloadable music files authenticated by non-fungible tokens (NFTs); downloadable multimedia files containing audio and video relating to art authenticated by non-fungible tokens (NFTs); downloadable audio recordings featuring music authenticated by non-fungible tokens (NFTs); downloadable video recordings featuring artwork authenticated by non-fungible tokens (NFTs)  IC 025. US 022 039. G & S: (Based on Intent to Use) Apparel, namely, hats, t-shirts, and sweatshirts  IC 041. US 100 101 107. G & S: (Based on Intent to Use) Entertainment services in the nature of ongoing animated television programs featuring content related to tokens, digital assets, digital works, and digital collectibles; entertainment services in the nature of production of animated television programs; entertainment services in the nature of development, creation, production, distribution, and post-production of animated motion picture theatrical films; entertainment services, namely, providing online non-downloadable images, video recordings, and audio recordings featuring artwork that are authenticated by non-fungible tokens (NFTs)  IC 042. US 100 101. G & S: (Based on Use in Commerce) Providing online non-downloadable software for providing access to crypto-collectibles, non-fungible tokens and other application tokens; platform as a service (PAAS) featuring software platforms for providing access to crypto-collectibles, non-fungible tokens and other application tokens; platform as a service (PAAS) featuring software platforms for downloading software, data, and image files from the Internet; providing temporary use of online non-downloadable software for use in electronically trading, storing, sending, receiving, accepting and transmitting digital currency, crypto-collectibles, non-fungible tokens and other application tokens, and managing digital transactions; software as a service (SAAS) services and platform as a service (PAAS) featuring software for use in connection with providing a digital platform for navigating digital art, crypto-collectibles, non-fungible tokens and other application tokens, and non-fungible token marketplaces and auctions; Software as a service (SAAS) services and platform as a service (PAAS) featuring software for use in connection with providing information for digital art, crypto-collectibles, non-fungible tokens and other application tokens. FIRST USE: 20170609. FIRST USE IN COMMERCE: 20170609
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	90587519
<b>Filing Date</b>	March 18, 2021
<b>Current Basis</b>	1A;1B
<b>Original Filing Basis</b>	1A;1B
<b>Published for Opposition</b>	June 14, 2022
<b>Owner</b>	(APPLICANT) YUGA LABS, INC. CORPORATION DELAWARE 1430 S. DIXIE HWY STE. 105 1075 CORAL GABLES FLORIDA 33146

CryptoPunks are registered as a trademark for use in Class 9, 25, 41 and 42 by Yuga Labs

## When do I Need to Register my Trademark?

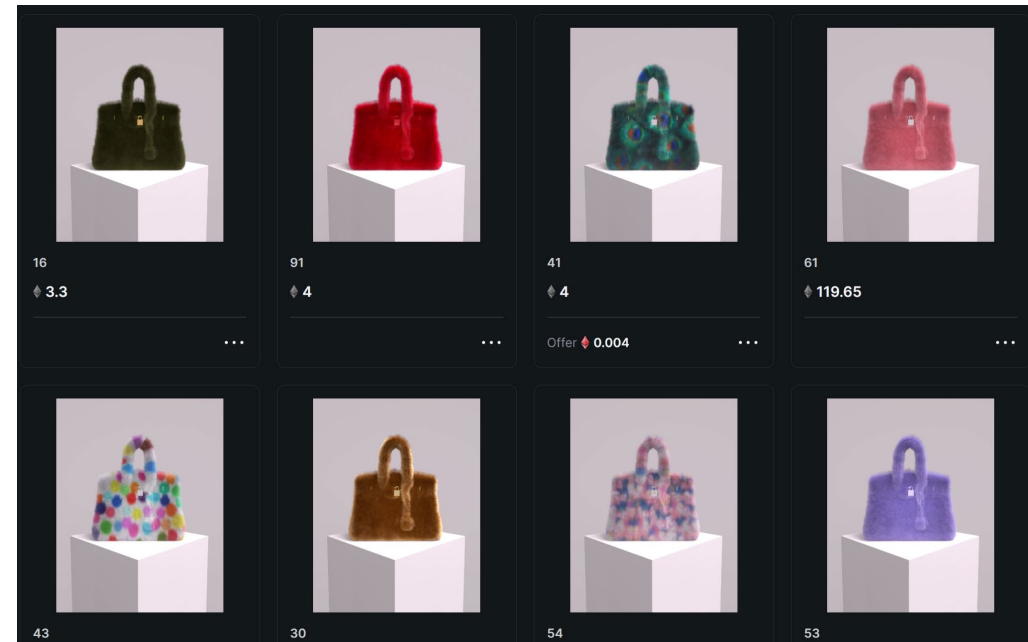
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# NFTs Trademark Protections

- You can obtain a trademark right without having to register it with the USPTO by using it in commerce so that consumers begin to identify with a product or service associated with that trademark
- Not having a registration limits your ability to enforce your trademark rights so it is typical that for economically meaningful trademarks are registered
- Trademark protection does not extend to “fair use.” There are two types of fair use relating to trademarks - classic fair use and nominative fair use
  - Classic fair use- when someone else’s trademark is used to describe goods or services. This type of use does not indicate the source of the goods or services but instead uses the registered mark to describe them- in other word reference to a competitor’s mark by a competitor in advertising and noncommercial use of the mark
  - Nominative fair use- Nominative fair use allows the use of a mark to name the owner’s goods and services if they could not otherwise be easily identified
  - Common fair use situations include: News reporting, commentary, product review, parody, comparative advertising, etc

# Trademark infringement cases

- Uses of marks that are the same or substantially similar, in connection with the same or highly related goods/services, would typically be considered to create a **likelihood of confusion** and could thus be considered an infringing use of a mark
- **Nike, Inc. v. Stockx LLC – Feb. 2021 (SDNY)**: Nike filed suit against StockX alleging trademark infringement, dilution, and unfair competition for offering NFTs in connection with images featuring Nike footwear and sold in connection with physical versions- currently in settlement discussions
- **Hermès International v. Mason Rothschild January 2021 (SDNY)**: Hermes filed suit against creator Mason Rothchild for trademark infringement, dilution, false designation, false description and representation, and dilution for offering Metabirkins NFTs in connection with images of furry versions of the famous Birkin bags- most recent, court refused Rothchild’s appeal and the lawsuit moves forward



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## 3. Copyright

# Copyright

- Copyright protection subsists in original **works of authorship** fixed in any tangible medium of expression
- A work copyrighted today would generally be protected for the life of the author plus seventy years.
- Copyright 106: Sets forth Exclusive Rights (known as a bundle of sticks) to be able to and to authorize:
  - Reproduce
  - Prepare derivative works
  - Distribute
  - Perform publicly
  - Display publicly
  - Transmit

# What is Protectable Under Copyright?

## Copyright

- Expressions meeting certain requirements:

Originality comes up:  
1. In copyright applications  
2. As a defense to infringement

- **Originality**- Independently created (minimal degree of creativity):
  - Author must be a “person”
  - Low standard: a standard of authorship, not novelty or creativity



- **Fixation** in tangible medium of expression having sufficient permanence

Independently created (minimal degree of creativity)

## What is Protectable Under Copyright?

# Copyright authorship

### Human Authorship requirement

- Definition of “author” is not in the Copyright Act; however, there is a clearly established “human creation” component
- The Supreme Court noted that human authorship is an essential element of copyright protection in 1884. See e.g. *Burrows-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884)
- U.S. Copyright Office Compendium (Third) §§ 306 and 313.2 clarify “a work must be created by a human being.”
- The Ninth Circuit rejected the idea that a monkey could register a copyright in a photograph (selfie) it captured with a camera. See *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018)



*Naruto v. Slater*,  
888 F.3d 418 (9th  
Cir. 2018)



# By default, the creator owns the copyright at the moment of fixation

- Ownership of a physical work is NOT the same thing as ownership of the copyright in that work
- Default legal treatment: the creator of a work owns it from the moment of fixation



SAVE ARTWORK

FOLLOW ARTIST

Fernando Botero

Henie-onstad Kunststenter, Hövikodden 6. mars - 13. april 1980, 1980

Exhibition poster

Prints & Graphic Art

99 x 68 cm

Condition

Estimate

Realized Price

-6% below mid-estimate

Auction Venue/Sale

Sale Date

Jan 30, 2020

# What is Protectable Under Copyright?

## Copyright authorship

### Human Authorship requirement

- US Copyright Office (Review Board) - Entrance to Paradise
- Dr. Stephen Thaler attempted to copyright a two-dimensional artwork created by artificial intelligence (“AI”)
- Thaler identified “Creative Machine” as the author and identified himself as the owner of the Creative Machine
- He described the artwork “was autonomously created by a computer algorithm running on a machine.”
- Copyright Office denied registration stating copyright only gives protection to "the fruits of intellectual labor" that “are founded in the creative powers of the [human] mind.”
- A copyrighted work "must be created by a human being" and doesn't extend to “works produced by a machine or mere mechanical process” that lack intervention or creative input from a human
- Thaler’s two points were not persuasive:
  - Human authorship requirement is unconstitutional
  - Copyright law allows non-human entities to be authors under the work-for-hire doctrine
- Copyright Office suggested it was Congress’s responsibility to resolve the issue



Stephen Thaler/Creativity  
Machine

There was no mention of the level of human intervention that is required to meet the standard

More information: <https://www.afslaw.com/perspectives/alerts/trouble-paradise-copyright-office-rejects-ai-authored-work-copyright#:~:text=The%20Review%20Board%20of%20the,intelligence%20without%20any%20creative%20input>

# What is Protectable NOT Protectable Under Copyright?

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## Not protectable

- Ideas, procedures, processes, systems, methods of operation, concepts, principles of discovery
  - “Ideas are as free as the air”
- Public domain- (Works pre-dating 1927)
- Titles and short phrases
- Facts (“Asserted Truths” Doctrine)
- Expressions Common to the Subject
- Fair use
- Reproduction by libraries and archives
- First sale doctrine
- Exemption of certain performances and displays
- Secondary transmissions

## What is Protectable NOT Protectable Under Copyright?

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### Doctrine of Fair Use

- §107 allows use of copyrighted work for criticism, comment, news reporting, teaching, scholarship, education, research.
- Fair Use is an Affirmative Defense.
- There is a four-part test for Fair Use
  - Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes
  - Nature of the copyrighted work
  - Amount and substantiality of the portion used in relation to the copyrighted work as a whole
  - Effect of the use upon the potential market for or value of the copyrighted work
- If Fair Use is disputed, the courts will make a case-by-case determination

# Copyright ownership in works for hire Section 201(b)

The creator does not own the copyright in two specific situations (known as “work for hire”):

- A work prepared by an employee in the scope of their employment
- A specially commissioned work that falls into one of nine categories, AND the parties agree in a writing signed by both of them that the work is a work made for hire:
  - A contribution to a collective work
  - Part of an audiovisual work
  - A translation
  - A supplementary work (e.g., a forward, map, or table)
  - A compilation
  - An instructional work
  - A test
  - Test answer material
  - An atlas

# Copyright ownership in joint works

- Section 101: “A ‘joint work’ is a work prepared by two or more authors with the **intention** that their contributions be **merged** into inseparable or interdependent parts of a unitary whole.”
- Each joint owner owns an undivided interest in the whole copyright:
  - Each joint owner can exploit the work on a **non-exclusive** basis without the permission of the other joint author(s),
  - as long as they account to the other joint author(s) for a proportional share of the profits,
  - and as long as they **don’t harm** the work

## Do I Need a Copyright Registration?

# Copyright registration

- Not having a registration does not affect the nature of your copyright but your ability to enforce your copyright is limited
- You can not file in Federal Court and stop someone from infringing on your copyright unless you have a registration (also limits your ability to get statutory damages or attorney fees)

**Type of Work:** Visual Material  
**Registration Number / Date:** VA0002306274 / 2022-06-08  
**Application Title:** Fidenza 56.  
**Title:** Fidenza 56.  
**Description:** Electronic file (eService)  
**Copyright Claimant:** Anticlassic Studio LLC, Transfer: By written agreement. Address: P.O. Box 143351, Austin, TX, 78714, United States.  
**Date of Creation:** 2021  
**Date of Publication:** 2021-07-16  
**Nation of First Publication:** United States  
**Authorship on Application:** Tyler Lee Hobbs; Citizenship: United States. Authorship: 2-D artwork.  
**Rights and Permissions:** Anticlassic Studio LLC, P.O. Box 143351, Austin, TX, 78714, United States, studio@tylerxhobbs.com  
**Names:** [Hobbs, Tyler Lee](#)  
[Anticlassic Studio LLC](#)

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## 4. Transfers of Copyright

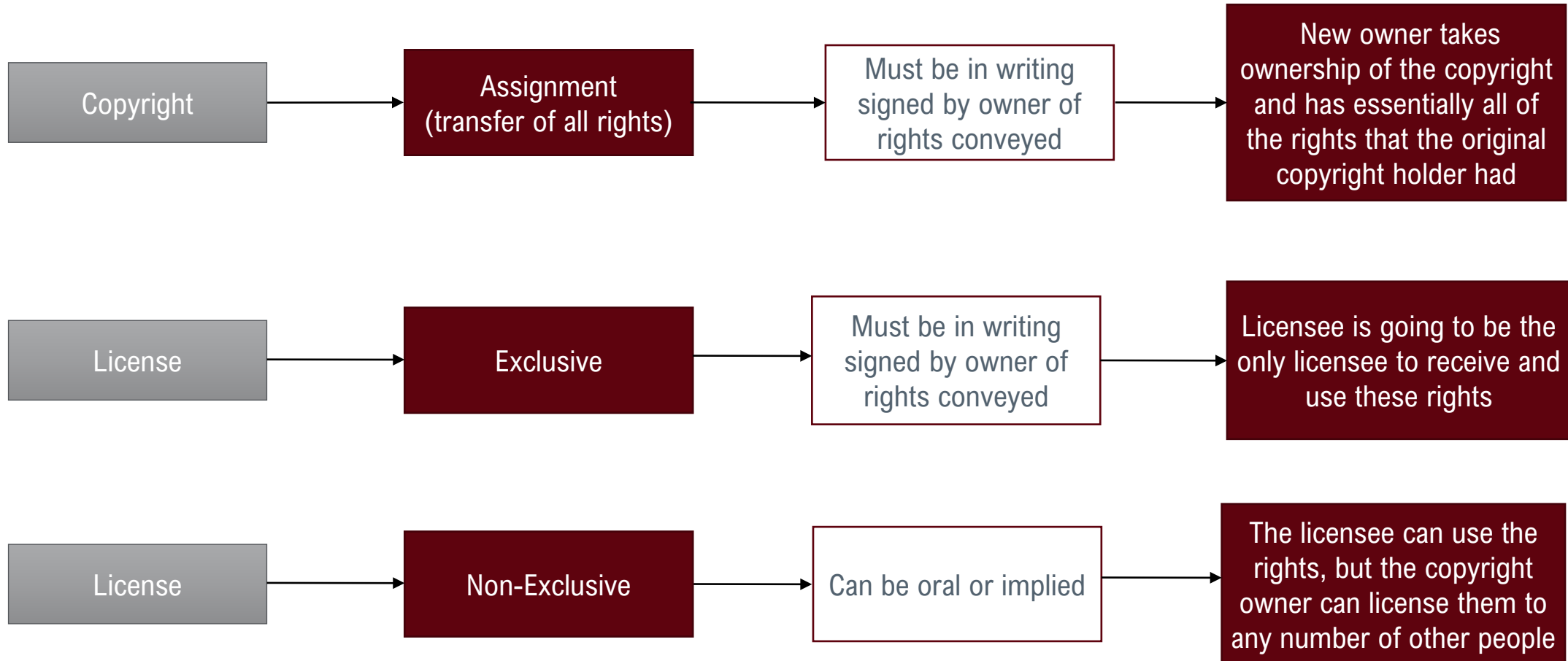


# Transfers

Section 101: Transfer = *“an assignment, mortgage, exclusive license, or any other conveyance ... of a copyright or any of the exclusive rights comprised in a copyright ... but not including a non-exclusive license.”*

# How Do I Transfer Copyrights to Others?

## Transfer of rights



### License termination

- Exclusive licenses terminate automatically at the earlier of:
  - 35 years from date of publication or
  - 40 years from the time of the grant
- Non-exclusive licenses:
  - Written licenses can have a variety of termination procedures
  - Implied non-exclusive license are terminable at will unless consideration is paid in which case they are irrevocable
- Exceptions exist for the following cases: transfers by will, works made for hire, grants under other federal laws, grants under foreign laws
- Derivative works: “A derivative work prepared under authority of the grant **before** its termination may **continue** to be utilized under the terms of the grant **after** its termination, but this privilege does **not** extend to the preparation **after** the termination of **other** derivative works based upon the copyrighted work covered by the terminated grant.”

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## 5. NFT Licenses

# Example: Copyrights in NFTs and Physical Art

### Copyrights in NFTs

NFTs = Token + License

- Purchaser **owns** the token, but typically only receives a **license** to the underlying digital asset referenced in the token metadata
- Copyright owner (issuer) generally retains rights in the underlying work

### Copyright in Physical Art

Physical Art = Physical Art + License

- Purchaser **owns** the physical painting, but typically only receives a **license** to the copyright
- Copyright creator (artist) generally retains rights in the underlying work

“The copyright is distinct from the property in the material object, and the sale or conveyance, by gift or otherwise, of the material object shall not in itself constitute a transfer of the copyright . . .”

## Right Click Save As-ing

### What if someone right click saves as the art

- A common ‘concern’ relating to NFTs is that, even though the token is secure, the art can be saved by anyone to their computer
- The strict legalistic answer is that whoever is “Right Click Saving” the art associated with an NFT is potentially violating the artist’s copyright
- Practically, most experienced NFT collectors consider it to be completely irrelevant:
  - “Right click save as” is a concept common to all media, including offchain media. All types of copyrighted art and media can be copied
  - By contrast to off-chain media, in the case of NFTs, the tokenholder has a strong mechanism to prove ownership and provenance of the actual art (the token)



Right-click and Save As guy - XCOPY

# Terms in Marketplace platforms

Generally, three types of marketplace platforms:

### Open Third-party marketplace:

- I.e., OpenSea, Rarible
- Non-custodial, no verification of the work uploaded

### Curated Third-party marketplace:

- I.e., SuperRare, Foundation, KnownOrigin, Nifty Gateway and MakersPlace
- Non-custodial, verification of the work uploaded and creators

### Proprietary Third-party marketplace:

- I.e., TopShot
- Typically only offers NFTs created by the marketplace operator and usually do not facilitate the sale or display of other NFTs

7.2 License Grant to Rarible. By Posting User Content to or via the Service, you grant Rarible a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid right and license (with the right to sublicense through multiple tiers) to host, store, transfer, display, perform, reproduce, modify for the purpose of formatting for display, create derivative works as authorized in these Terms, and distribute your User Content, in whole or in part, in any media formats and through any media channels now known or hereafter developed. All of the rights you grant in these Terms are provided on a through-to-the-audience basis, meaning the owners or operators of external services will not have any separate liability to you or any other third party for User Content Posted or otherwise used on external services via the Service.

7.3 License Grants to Other Users. By Posting User Content to or via the Service to other Users of the Service, you grant those Users a non-exclusive license to access and use that User Content as permitted by these Terms and the functionality of the Service.

Most current marketplaces grant a nonexclusive and nontransferable license to use, copy and display the creative works underlying the NFT for personal use.

## What Copyright License Do I Receive?

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### It depends

- Most marketplaces are silent on the customization of terms so we look to the terms and conditions of each project or imply a non-exclusive license
- Variety of licensing frameworks based on different strategies
- Scope of Use (examples):
  - Personal use (publicly display and sale)
  - Limited commercial rights, such as cap on royalties
  - Limited license rights, such as no changes to the underlying work
  - Full commercial rights, including the ability to create derivatives
  - CC0
- Terms of use tend to also mention (more examples)
  - Other rights being licensed: trademarks, rights of publicity
  - Termination and reason to terminate



## CryptoPunks license

- The CryptoPunks license, post the Yuga acquisition, presents an interesting licensing model – it is perhaps the most permissive PFP commercial license
- Allows for personal and commercial use of the punk itself, including for derivatives
- Does not allow for use of the component elements of the punks (e.g. hoodies, nerd glasses)
- Does not grant any rights in the Yuga cryptopunk trademarks
- Allows punk holders to register trademarks related to their punk
- Allows sub-licenses and derivatives made during the period that someone holds the punk to continue, but the right to grant additional sub-licenses or derivatives, post the sale of the punk, is terminated
- Prohibits hates speech, sanctions violations and related matters
- The full license is here: <https://licenseterms.cryptopunks.app/>



## Bored Ape Yacht Club license

- The original BAYC license is much simpler than the CryptoPunk license and can be seen to be attempting to transfer the copyright on-chain.
- The CryptoPunks license is an attempt to structure similar rights more in line with traditional IP license practices

### Bored Ape Yacht Club License

- i. You Own the NFT. Each Bored Ape is an NFT on the Ethereum blockchain. When you purchase an NFT, you own the underlying Bored Ape, the Art, completely. Ownership of the NFT is mediated entirely by the Smart Contract and the Ethereum Network: at no point may we seize, freeze, or otherwise modify the ownership of any Bored Ape.
- ii. Personal Use. Subject to your continued compliance with these Terms, Yuga Labs LLC grants you a worldwide, royalty-free license to use, copy, and display the purchased Art, along with any extensions that you choose to create or use, solely for the following purposes: (i) for your own personal, non-commercial use; (ii) as part of a marketplace that permits the purchase and sale of your Bored Ape / NFT, provided that the marketplace cryptographically verifies each Bored Ape owner's rights to display the Art for their Bored Ape to ensure that only the actual owner can display the Art; or (iii) as part of a third party website or application that permits the inclusion, involvement, or participation of your Bored Ape, provided that the website/application cryptographically verifies each Bored Ape owner's rights to display the Art for their Bored Ape to ensure that only the actual owner can display the Art, and provided that the Art is no longer visible once the owner of the Bored Ape leaves the website/application.
- iii. Commercial Use. Subject to your continued compliance with these Terms, Yuga Labs LLC grants you an unlimited, worldwide license to use, copy, and display the purchased Art for the purpose of creating derivative works based upon the Art ("Commercial Use"). Examples of such Commercial Use would e.g. be the use of the Art to produce and sell merchandise products (T-Shirts etc.) displaying copies of the Art. For the sake of clarity, nothing in this Section will be deemed to restrict you from (i) owning or operating a marketplace that permits the use and sale of Bored Apes generally, provided that the marketplace cryptographically verifies each Bored Ape owner's rights to display the Art for their Bored Ape to ensure that only the actual owner can display the Art; (ii) owning or operating a third party website or application that permits the inclusion, involvement, or participation of Bored Apes generally, provided that the third party website or application cryptographically verifies each Bored Ape owner's rights to display the Art for their Bored Ape to ensure that only the actual owner can display the Art, and provided that the Art is no longer visible once the owner of the Purchased Bored Ape leaves the website/application; or (iii) earning revenue from any of the foregoing.

# Terms and Conditions

## Sometimes the terms of use and licenses are also embedded in the Smart Contract metadata

 **Contract Source Code** (Solidity [Standard Json-Input](#) format)

File 1 of 15 : clonex.sol

```
1  // SPDX-License-Identifier: MIT
2
3  /*
4     RTFKT Legal Overview [https://rtfkt.com/legaloverview]
5     1. RTFKT Platform Terms of Services [Document #1, https://rtfkt.com/tos]
6     2. End Use License Terms
7     A. Digital Collectible Terms (RTFKT-Owned Content) [Document #2-A, https://rtfkt.com/legal-2A]
8     B. Digital Collectible Terms (Third Party Content) [Document #2-B, https://rtfkt.com/legal-2B]
9     C. Digital Collectible Limited Commercial Use License Terms (RTFKT-Owned Content) [Document #2-C, https://rtfkt.com/legal-2C]
10
11    3. Policies or other documentation
12    A. RTFKT Privacy Policy [Document #3-A, https://rtfkt.com/privacy]
13    B. NFT Issuance and Marketing Policy [Document #3-B, https://rtfkt.com/legal-3B]
14    C. Transfer Fees [Document #3C, https://rtfkt.com/legal-3C]
15    C. 1. Commercialization Registration [https://rtfkt.typeform.com/to/u671kiR1]
16
17    4. General notices
18    A. Murakami Short Verbiage – User Experience Notice [Document #X-1, https://rtfkt.com/legal-X1]
19  */
20
21  pragma solidity ^0.8.2;
22
```

# There are many unanswered legal questions on these matters

- Is there a valid license (contract) by merely purchase of the token on a marketplace that does not convey the Terms and Conditions? Does this change if the smart contract links the Terms of Use?
- Can copyrights or exclusive licenses be transferred through sale of a token under any circumstances?
- Are the licenses enforceable? What about subsequent buyers?
- Who has the right to enforce the license?
- Is there a right to change license terms?
- What happens to a sublicense upon transfer of an NFT? (covered in CryptoPunks licenses but not in many others)
- Is there an enforceable copyright where the copyright is a generative art or AI art creation?

# Where does CC0 Fall Into the Licensing Framework

## Permissive models

Creative Commons (CC) licenses are public licenses that give everyone from individual creators to large institutions a standardized way to grant the public permission to use their creative work under copyright law



License	Abbreviation	Copy, Display & Distribute	Hate Speech Revocation	Commercial Use	Modify & Adapt
<b>Exclusive Commercial Rights</b> (No Creator Retention of Exploitation Rights)	CBE-ECR	✓		✓	✓
<b>Non-Exclusive Commercial Rights</b> (Creator Retains Exploitation Rights)	CBE-NECR	✓		✓	✓
<b>Non-Exclusive Commercial Rights</b> (Creator Retains Exploitation Rights) & Termination for Hate Speech	CBE-NECR-HS	✓	✓	✓	✓
<b>Personal Use License</b>	CBE-PR	✓			
<b>Personal Use License with Termination for Hate Speech</b>	CBE-PR-HS	✓	✓		
<b>CC0 1.0 Universal</b>	CBE-CC0	✓		✓	✓

## Where does CC0 Fall Into the Licensing Framework

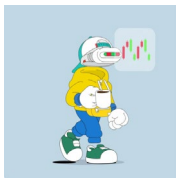
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### CC0 in NFTs

- Several PFP projects (and a few generative art projects and some 1 of 1 artists) have embraced a CC0 (public domain) approach
- In this model, the copyright is placed in the public domain by the creator so that anyone can use the art (not just the tokenholder) for any purpose. It, in effect, accelerates what would otherwise happen at the end of the copyright period
- There are multiple overlapping stated reasons why some creators or artists have chosen this model:
  - Leveraging the virality / network effects of the internet and social networks
  - Avoiding having to deal with perceived unenforceable enforcement of IP rights online
  - Avoiding centralization through licensing contracts
  - Avoiding potentially unclear issues relating to the enforceability of exclusive licenses or copyright transfers via token sales
- Key to the logic of this approach is that provenance (the token) provides a level of importance and authenticity that is not hurt by other people using the art

# Major PFP projects by license type

## Personal License Only



Invisible Friends



CryptoPunks (Before)



CloneX (Murakami Drip)

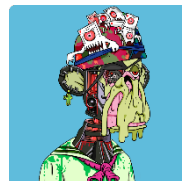
## Commercial Licenses



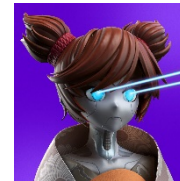
CryptoPunks (now)



BAYC



MAYC



CloneX (\$1M limit)

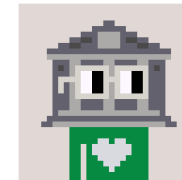
## CC0 / Public Domain



mfers



Cryptoadz



Nouns



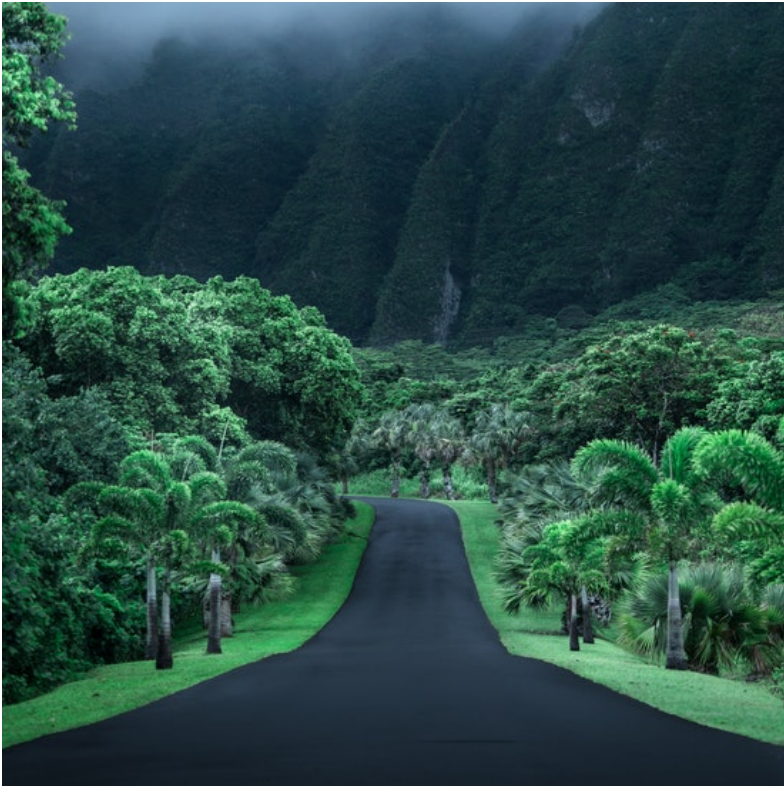
Moonbirds

Most PFP Projects Today Fall Into One Of These Two Categories

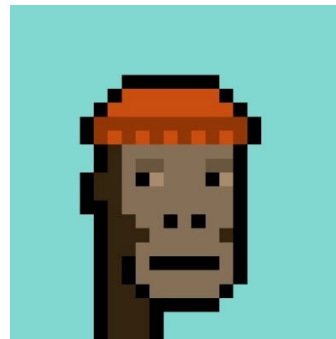


# Public Domain Photography

**Cath Simard, a well-known photographer pre-NFTs, sold one of her most famous images with a public domain style license**

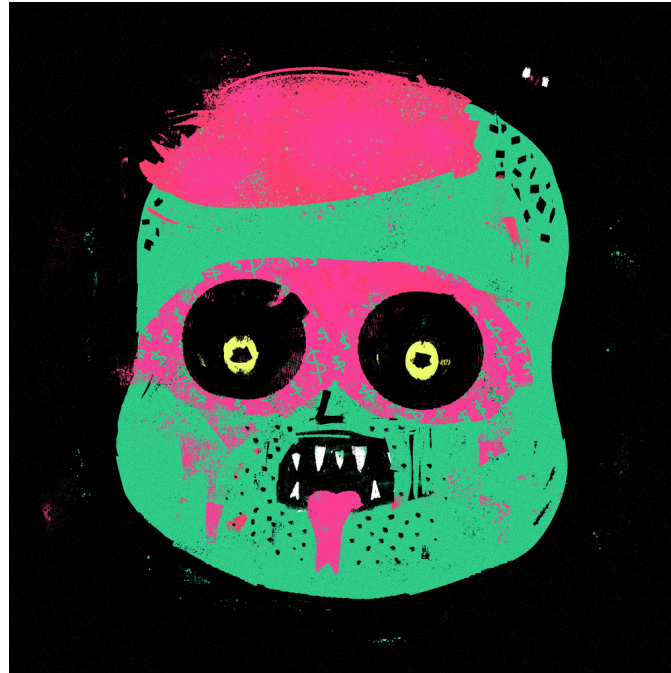


- **Free Hawaii, an image that had been used without authorization thousands of times off-chain, was minted as NFT and sold for 100ETH**
- **Upon purchase in Sept 2021 (by collector GMONEY), it automatically converted into a public domain-style license**





**XCOPY, a top selling 1 of 1 artist, recently has placed all of his art in the public domain**



# Summary

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**Cath Simard, a well-known photographer pre-NFTs, sold one of her most famous images with a public domain style license**

## Personal License Only

- The most traditional model for art and media sales
- The vast majority of generative art and 1 of 1 NFTs are still issued with this model
- In this model, the artist retains full control relating to the use of the art
- This is the “safe” and “traditional” approach

## Commercial Licenses

- This is primarily used in PFP collections
- It is an attempt to generate community building / network building
- It is unclear it is legally binding in all cases, but in practice the artist is unlikely to enforce against a holder
- The hope here is that holders with exclusive rights will be incented to invest in developing products or services related to the collection

## CC0 / Public Domain

- This is used primarily in some PFP collections and a very few collections outside of PFPs
- The CC0 logic is aiming to be blockchain / digitally native
- The theory is that the token is sufficient for provenance and network effects should be encouraged
- The hope here is that everyone might develop for the collection

Session 2: Copyright and Provenance in NFTs

## 6. Conclusions and Further Reading

# Takeaways from week 2

- IP covers three distinct categories: copyrights, trademarks and patents
- Copyrights and trademarks are the most typically relevant for NFTs
- There is nothing unique to NFTs in how copyrights and trademarks are applied
- The default model is similar to the off-chain model, namely that the creator retains the copyright and the NFT owner has a personal license only
- Certain NFT projects or artists are attempting to operate with more permissive models:
  - Commercial licensing models that aim to grant some commercial rights to token holders
  - CC0 / Public Domain models that place the work in the public domain
- There are unresolved legal issues relating to these models:
  - Some may be resolved by changes in legislation
  - Some may not be resolved legally but may be resolved in practice

## Where Can I Find Out More?

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# Further reading

- Treaties and International Agreements:
  - <https://tarlton.law.utexas.edu/c.php?g=457743&p=3129119>
- General Information about Patents:
  - <https://www.uspto.gov/patents/basics/general-information-patents>
- General Information about Trademarks:
  - <https://www.uspto.gov/trademarks/basics/what-trademark#:~:text=A%20trademark%20can%20be%20any,both%20trademarks%20and%20service%20marks>
- General Information about Copyrights:
  - <https://www.uspto.gov/ip-policy/copyright-policy/copyrightbasics#:~:text=What%20is%20a%20copyright%3F,of%20fixation%20are%20virtually%20unlimited>
- NFT Marketplaces Licenses:
  - <https://www.jdsupra.com/legalnews/nft-license-breakdown-exploring-1591564/>

## Where Can I Find Out More?

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# Further reading

- NFT Marketplaces Licenses:
  - <https://www.jdsupra.com/legalnews/nft-license-breakdown-exploring-1591564/>
- Licensing and Contracting Considerations:
  - <https://www.loeb.com/en/insights/publications/2022/04/brands-and-nfts-licensing-and-contracting-considerations#NFTLicense>
- Creative Commons Licenses:
  - <https://creativecommons.org/>
  - <https://www.wur.nl/en/article/What-are-Creative-Commons-licenses.htm>
- A Running List of Key Lawsuits Over NFTs:
  - <https://www.thefashionlaw.com/from-hermes-to-bored-apes-a-running-list-of-key-lawsuits-over-nfts/>

## Where Can I Find Out More?

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# Further reading

- CryptoPunks license:
  - <https://licenseterms.cryptopunks.app/>
- BAYC license:
  - <https://boredapeyachtclub.com/#/terms>
- MAYC license:
  - <https://boredapeyachtclub.com/#/mayc/terms>
- Otherdeeds license:
  - <https://otherside.xyz/license>, <https://otherside.xyz/nft-purchase-agreement>
- CloneX license:
  - <https://rtfkt.com/legal-overview>
- The “Can’t Be Evil NFT” Licenses:
  - <https://a16zcrypto.com/introducing-nft-licenses/>



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## Questions?

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