

# RPC Law x Web3: Ownership of digital assets in Web3



This is the inaugural part of a series of articles relating to legal issues around Web3. Over the course of the next few months, we hope to provide you with some thoughts and insights on the areas of Web3 where potential legal issues may arise based on current laws.

In this article, we shed light on what one actually owns when he or she buys a non-fungible token or NFT, and pointers for both founders and holders of NFTs to consider.

## What is Web3 and how is ownership of digital assets represented?

In very simple terms, Web3 is an evolution of the internet that is blockchain-based and decentralised. Creators would post their content directly on the blockchain and digital tokens recorded on the blockchain would be used to represent ownership of assets in decentralised networks.

It is this movement towards Web3 that has partially driven the interest and adoption of NFTs, which are commonly seen as the digital tokens that represent ownership of specific assets on the blockchain. While there has been a shift in focus of NFTs from solely being representations of digital art, to what are now increasingly badges of community membership, it is still important to consider what it is NFTs truly represent by way of ownership.

## So does an NFT constitute a deed of ownership of the asset it is linked to?

The answer in practice is mostly no. In a recent report by Galaxy Digital<sup>1</sup> found

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1. <https://www.galaxy.com/research/insights/a-survey-of-nft-licenses-facts-and-fictions/>

that out of the top 25 NFT projects considered, only one purported to give true ownership of the underlying artwork to the NFT holder.

To understand how this has occurred, it is important from a legal perspective to separate ownership of the token, and ownership of the associated asset.

The most common asset tied to NFTs today are works protected by copyright such as digital art or music. Copyright vests in such works by virtue of the Copyright Act, giving their creators ownership rights. However, until the Copyright Act expressly stipulates that ownership of a work is represented by an NFT, and an assignment of such ownership takes place when the NFT is transferred, one cannot assume that ownership of the NFT guarantees anything other than ownership of the token.

Ultimately, the rights that you obtain in the associated asset by buying an NFT are determined by the rights initially granted by the NFT Project itself. When one considers the various NFT Projects out there, it is clear that there is no uniformity in the rights granted to NFT holders.

### Looking at a few popular projects as examples

- Projects such as Azuki or Doodles retain ownership and offer a limited license for the NFT holder to use the associated image. This license (the terms of which can be found online) usually covers use of the associated image as a profile picture, and may provide for commercial use up to a certain value and use in a metaverse.
- Some projects stipulate terms which are unclear. While the “terms & conditions” published by Bored Ape Yacht Club (BAYC) states that a holder “owns the underlying Board Ape, the Art, completely”, it then confusingly goes on to stipulate the terms of a license, which should not be required if ownership had in fact been transferred.

While some holders of BAYC apes have utilised the art in a manner consistent with ownership, it is in reality unclear as to whether a holder of a BAYC NFT actually has full ownership of the associated image.

- Many NFT Projects don’t publish any license terms whatsoever. In such situations, it must be presumed that the NFT creator retains all intellectual property rights, and at best the only license granted with the NFT is an implied license to use the associated image as a profile picture.

Alarming, some NFT projects launch with no license terms, only to impose a set of terms some time after the NFTs have been minted. In some situations, these terms may not be what NFT holders expect. In the case of Moonbirds, the creator announced (months after the launch) that both projects were going to move to a “CC0 public license” where no rights are reserved on the intellectual property. This leaves Moonbirds NFT holders owning what is in essence a bare NFT, as there is nothing to stop a person who does not hold the NFT from exploiting the associated Moonbirds image.

### I’m into NFTs for community and utility, why should I care about whether I own or have a license in the associated asset?

There are two main reasons why you should care about this as an NFT holder.

The first relates to the value of your asset. Assuming that an NFT only derives its value from the value of the associated asset, arguably whether you own that asset outright or only have a limited license in it ought to have a bearing on the overall value of your NFT.

The second relates to your ability to use the asset. If the associated asset of your NFT is an image, you will need either ownership or a suitable license in the

copyright to make any copy of that image. Without a proper license, can’t do simple things like use the image as a profile picture, “accessorise” it incorporating other images, make copies for use on your watch face, or create a variation of the image for use on the metaverse.

It goes without saying that if you want to go further and exploit the asset commercially, you will need a license to do so, and be aware of the limitations of your license. The usual limitations relate to the amount you can earn from commercialisation before you have to pay royalties back to the creator.

### I’m an NFT project founder, what should I think about when associating intellectual property rights with my NFTs?

First you need to make sure you have your rights secured as you can only grant rights that you yourself possess. Complexities can arise when a third party created your artwork, or if your artwork was created by an AI. It is also important to ensure that the entity that you intend to release the NFTs either owns or has a license in the intellectual property in the associated artwork.

On the assumption that you own the copyright in the associated artwork, you will need to consider whether to assign ownership or grant a license. While assigning ownership would be more in line with the Web3 ethos, there are a couple of things for founders to consider before going down this path.

- Unless there is a license back of rights to you, you will lose your rights to not just collaborate with Web2 entities, but to potentially create further adaptations or copies of your own art.
- Perfecting an assignment of ownership may require certain formalities depending on the copyright law in your country.

These issues may be why most NFT projects grant NFT holders a mere license instead of outright ownership.

Even when granting a license there are things to consider. Just as an example:

- Do you want your holders to be able to commercialise your art?
- Are there any limitations on the manner in which holders can adapt your art, eg can holders release their own NFTs based on adaptations of the art?

It is important that licensing terms are set out in a proper license agreement, and it should not be assumed that these can be contained within the smart contracts embedded in the NFT. This is because a

smart contract cannot be programmed to cater to the nuances required in enforcing a license. In any event you do not want to be relying on reading computer code if you have to enforce your license terms in Court.

Ultimately, whether you assign ownership or grant a license to your works, these terms should be made clear at the point that your project is launched. NFT holders may have certain impressions on the rights they believe they have when they mint, and you do not want to be accused of “rugging” them if you impose different terms a few months or even years after launch.

## Summary

Attempts have been made to try to standardise the license regime for NFTs with a concept similar to open-source licensing<sup>2</sup>. If a fixed set of licenses is adopted, this would likely reduce the chances of accidental infringement. For now it is important for Web3 proponents to be aware that there is a wide variance in the rights you get by owning an NFT, and it will be some time yet before NFTs definitively represent “deeds of ownership” in their associated assets.

2. <https://a16zcrypto.com/introducing-nft-licenses/>