

Nonfungible Tokens and Copyright: Ownership, Digital Exhaustion, Resale, and Collective Rights Management

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On September 22, Winston & Strawn Partner Mike Tomasulo spoke on a Strafford live webinar called “Nonfungible Tokens and Copyright: Ownership, Digital Exhaustion, Resale, and Collective Rights Management.”

The panel guided IP counsel on copyright issues related to non-fungible tokens (NFTs), and examined ownership, digital exhaustion, resale, and collective rights management. Best practices for ownership and resale of NFTs and addressing infringement issues were also discussed. Key considerations for companies minting and purchasing NFTs included:

1. The business and legal decisions a company makes regarding its inbound agreements (e.g. with artists, athletes, leagues, etc.) and outbound agreements (with purchasers) touch on all aspects of the company, from securities issues to DMCA to copyright.
2. The rights the NFT creator gives up and the rights the NFT purchaser acquires are far from standardized. Some platforms leave the issue open while others (e.g NBA Top Shot) have detailed purchase agreements that lay out in great detail what the NFT purchaser can and can't do with the NFT and the underlying digital asset.
3. Complicated business structures (e.g. decentralized autonomous organizations (DAOs)) and royalty structures may add to the sense of community the platform is seeking to foster, but they also may introduce other business and legal risks, including securities and copyright issues.

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