BROOKLYN ARTS COUNCIL
THRIVE SERIES

NFTs, Metaverse and web3 for Art

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Diving Into The Metaverse

Click on images to open further resources
Metaverse enthusiasts believe that our digital identities will eventually become just as meaningful as our offline selves, and that we’ll spend our money accordingly. Instead of putting art on the walls of our homes, they predict, we’ll put NFTs in our virtual Zoom backgrounds. Instead of buying new clothes, we’ll splurge on premium skins for our V.R. avatars.
Art takes the Metaverse by storm

DSL Cyber MoCA - a museum of contemporary art in Second Life

New Art City is a virtual gallery & exhibition toolkit for digital art.

The Sandbox & TIME bring “TIME Square” to the Metaverse

Sotheby’s opens a virtual gallery in Decentraland

The world’s oldest auction house drops a digital replica of its London Galleries in the Voltaire Art District.
Blockchain Basics
Transaction

- A transaction is initiated between parties
- The transaction is sent to all nodes in the network

Verification

- Each node verifies details of the transaction using cryptographic methods
- A block of verified transaction is assembled and checked by the network

Security

- When consensus is reached, the block is added to the chain and becomes immutable, non-reversible
- The block is kept on every node

Transparency

- Once approved, the transaction is secured, recorded, transparent

Trust

- Fostered by automation
Tokens 101

**Payment token:**
- Major cryptocurrencies (e.g. Bitcoin)
- Fully interchangeable
- Value based on supply and demand
- Finite supply in circulation

**Utility token:**
- Gives its holder access to blockchain-based products or services
- E.g. Ether to pay for smart contracts to be executed on the Ethereum blockchain

**Security token:**
- Asset traded like stocks: investment in a common blockchain-based enterprise with an expectation of profits
- Regulated by the SEC
- Gives its holders voting rights in the ecosystem, like a shareholder

**Non-fungible token:**
- Digital representation of a unique asset
- Cannot be duplicated or altered: proof of ownership, identity, authenticity
- Can be bought with cryptocurrencies
- Value depends on scarcity
- Most commonly use Ethereum’s ER-721 smart contract standard
NFTs: A Primer

Kevin McCoy Quantum
Setting the art scene

The Shift

I Joined a Penguin NFT Club Because Apparently That’s What We Do Now

Critic’s Notebook

One Year After Beeple, the NFT Has Changed Artists. Has It Changed Art? Hardly at all.
NFTs: What Is All The Fuss About?

Non Fungible Token

- Unique digital token
- Traded on a blockchain network
- Linked to an asset

- Volatile value based on number of tokens in circulation
- Scarce, sometimes collectible item
- Additional perks: VIP events, exclusive content...
- Community of collectors/enthusiasts (e.g. Discord)
- Baked-in royalty scheme
NFTs: Behind the Scenes

- Asset (corporeal or digital)
  - A digital representation of that asset is added to the blockchain (“minted”)
  - A unique link is created (“hash”)
  - A value is assigned to that digital link (“NFT”)
  - The NFT is offered for sale
  - The NFT is purchased
  - The NFT transferred from wallet A to wallet B

- A block of verified, immutable information is added to the NFT chain
  - The underlying asset does not move: stays in storage
  - The purchaser obtains a digital certificate of authenticity, authorship, ownership, and provenance
  - The purchaser can also obtain rights in the ecosystem (T&Cs)
  - The seller grants a limited license to display the NFT
What About Art
Cool art by female-identifying artists

Jen Stark @jenstark

Maliha Abidi Women Rise @WomenRiseNFT

Amber Vittoria @amber_vittoria

Nadieh Bremer Patchwork Kingdom @NadiehBremer
Generative Art
NFT Platforms

- Rarible
- N oficial
- SuperRare
- Voice
- ALETHEA.AI PRESENTS NOAH'S ARK
- SuperRare
- Polyarrhythmia

Features:
- NFTs for everyone. Create and earn together.
- Curated Drops, Verified Drops, Marketplace, Activity
- Collect digital art from the world’s top artists
## Platforms Models

<table>
<thead>
<tr>
<th>Open access</th>
<th>Invitation-only (curated)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-custodial</td>
<td>Custodial</td>
</tr>
<tr>
<td>Auction format</td>
<td>Marketplace</td>
</tr>
<tr>
<td>Seller’s fees</td>
<td>Buyer’s fees</td>
</tr>
<tr>
<td>Ethereum (ERC 721)</td>
<td>Other blockchains (e.g. Tezos, Solana)</td>
</tr>
<tr>
<td>IPFS</td>
<td>Centralized</td>
</tr>
<tr>
<td>Fixed royalties</td>
<td>Flexible royalties</td>
</tr>
<tr>
<td>Creator-friendly</td>
<td>Collector-friendly</td>
</tr>
</tbody>
</table>
Adapting Art World Models
Benefits of NFTs for the Art World

- Putting digital art on the forefront of the art market and in the visor of galleries and art dealers: increasing level of support
- Major auction houses see the potential to develop a presence in the primary market and work with living artists and have created their own payment infrastructure to accept cryptocurrencies
- Avenues for cross-collaboration between audio-visual artists, brands and technologists
- Unlimited avenues for community building
- Museums and other non-profits can turn to NFTs associated with works in their archives to fundraise, instead of relying on private donors
- Establishing provenance for digital and physical artworks
Shortcomings

• Environmental impact of mining ETH – use alternative blockchains (e.g. Tezos)
• Developing legal framework
• Diversity and access – increase scholarships for computer science education, funding for digital and crypto artists
• Rampant risks of copyright infringement – register © with the Copyright Office
• Interoperability issues
Legal Issues In the NFT Space
Ownership

NFT ≠ underlying asset

Selling an NFT

= granting a license to display & resell the NFT

Buying an NFT

= acquiring a blockchain-based certificate of ownership
  + right to display and resell the NFT
**IP layers of NFTs**

**CREATOR**
- Copyright: art, music, video
- Trademark: brand, logos, slogans
- Likeness: image, voice, name

**USER**
- Display
- Resell
  - Royalty lives in the smart contract but can rarely be transported across platforms

**Potential for © infringement:**
- Does the person minting the NFT of an artwork actually have the right to do so?
- The burden is on creators to monitor the Internet
- DMCA takedown process

**Licensing:** usually governed by the T&Cs of the platform
- License to the **platform**: often includes right to use the NFT for marketing purposes
- License to the **purchaser**: often limited non-commercial right to display
- Embedding terms of sale into the metadata / description of the NFT (Rarible, MakersPlace)

**Non-commercial**
- No editing or modification
- No derivative works
NFT licenses

- Grant another person **certain privileges or rights** to use the intellectual property in a manner specified in the agreement, e.g. 2 years, worldwide, non-commercial.

- Embed/link the terms in the smart contract or metadata of the NFT:
  - Bespoke licenses
  - Creative Commons License (e.g. CC0)
  - NFT License 2.0: open-source resource aiming to standardize NFT licenses across the space
  - Right to make commercial use (e.g. Bored Ape Yacht Club)
Recurring Legal Issues in NFTs

- Banking law and Anti-Money Laundering
- Securities law when selling fractions of NFTs
- Tax law
- Gambling / Sweepstakes law
In The News

Rarible Partners With Adobe to Support Content Attribution for NFTs

Tolkien estate blocks JRR Token crypto-currency

ONE TOKEN THAT RULES THEM ALL

Hermès suing American artist over NFTs inspired by its Birkin bags

French luxury brand says Mason Rothschild’s furry MetaBirkins digital tokens ‘rip off’ its trademark

Long Neckie Women of the Year

By Nyla Hayes

Long Neckie Women, a collection by 12-year-old digital artist and ouija board enthusiast Sanchez Mitchell, has its online debut on Oct. 27.

Residence, Nyla Hayes, is based on TIME’s Women of the Year and the rise of the NFT.

TARANTINO NFTs

Miramax Sues Quentin Tarantino Over Planned ‘Pulp Fiction’ NFTs

The director announced this month that he was selling nonfungible tokens based on the screenplay for his 1994 movie. Miramax asserted in court documents it still has “broad rights” to the film.
Drafting a “Smart” NFT Contract

pragma solidity ^0.4.28;

/// @title ERC-721 Non-Fungible Token Standard
/// @dev See https://eips.ethereum.org/EIPS/eip-721
/// @note the ERC-165 identifier for this interface is 0x80ac58cd.
interface ERC721 /* is ERC165 */ {
    /// @dev This emits when ownership of any NFT changes by any mechanism.
    /// @param from the previous owner.
    /// @param to the current owner.
    /// @param tokenId the id of the token that was transferred.
    event Transfer(address indexed _from, address indexed _to, uint256 indexed _tokenId);

    /// @dev This emits when the approved address for an NFT is changed or
    /// reapproved. The zero address indicates there is no approved address.
    /// @param _operator the old approved address.
    /// @param _approved the new approved address.
    /// @param _tokenId the ID of the token that was approved.
    event Approval(address indexed _owner, address indexed _approved, uint256 indexed _tokenId);

    /// @dev This emits when an operator is enabled or disabled for an owner.
    /// @param _operator the owner.
    /// @param _allowed whether the operator is allowed.
    /// @param _tokenId the id of the token that was operated.
    event ApprovalForAll(address indexed _owner, address indexed _operator, bool _approved);

    /// @notice Count all NFTs assigned to an owner
    /// @dev NFTs assigned to the zero address are considered invalid, and this
    /// function throws for queries about the zero address.
    /// @param _owner An address for whom to query the balance
    /// @param _tokenId The number of NFTs owned by `_owner`, possibly zero
    function balanceOf(address _owner) external view returns (uint256);

 ERC-721
Written with Solidity
Smart Contracts

- "Smart": code with a series of “if, then” conditions that cause certain actions
- "Contract": allows to move value between parties (transactional in nature)
- "Smart" + "Contract":
  - Lines of self-executed code
  - Stored on blockchain
  - Controls assets and its own enforcement – no termination
  - For example: automated royalty payment each time the asset changes hands
Smart Contract: Not So Smart, Not A Contract

\[
\text{Contract = offer + acceptance + consideration}
\]

- **Roadblocks:**
  - Enforceability in a court of law is not automatic
  - Modification of the agreement
  - Not a one-size fits all:
    - Destruction of the underlying asset
    - Rights of reproduction and derivative works
    - Right of approval on exhibition of the work
    - Mutual approval of changes or amendment of the contract
    - Duration of the contract
    - Attorney’s fees
- **Solution:** existence of a “real” contract embedded/linked inside of the smart contract (off-chain)
NFT Creator Contract

- **Hypothetical**: a brand approaches you to create an artwork that they will turn into an NFT and sell to customers, giving them exclusive access to events in the metaverse.

- **Collaboration**:
  - How many versions or artworks is the company asking you to produce?
  - How many NFTs will be created using the artwork? Can the company create more NFTs without your approval?
  - Who is responsible for minting the NFTs?

- **Money**:
  - How much is the company paying you for your work?
  - How much is your royalty and how will it be calculated?

- **Rights**: Who owns the rights in the artwork to be associated with the NFT?
  - Is this a work-for-hire, i.e. the company owns 100% of the rights, or is it a license, i.e. you grant the company certain rights and retain the rest?
  - Can you use the artwork in another context, e.g. in your portfolio, on your social media, in your own NFT?
  - Can the company use the artwork in another context without your approval, e.g. in merchandise?
  - How will you be credited and where?
Further readings

- ABCs of NFTs, Art and Law
- Jason Bailey’s Artnome Blog
- Five Things Artists Should Know (and Do) Before Getting Into NFTs
- Are Smart Contracts Real Contracts
- How CC0 Can Help or Hurt NFT Projects
- Center for Art Law resources on art and copyright
Louise Carron is an Associate at Klaris Law where she takes part in the firm’s production legal practice and advises clients across creative industries on transactional matters, copyright and fair use, first amendment, web3, NFTs and the metaverse, in addition to prepublication review of podcasts, scripted documentaries and unscripted shows, news articles and manuscripts. Prior to joining Klaris, Louise spent three years as the Executive Director of the Center for Art Law, where she ran daily operations, taught workshops on legal basics for artists, and mentored interns. Louise regularly hosts guest lectures for law schools, art schools and non-profits, participates in panels and podcasts and writes on copyright-related issues. A French native, Louise has a double Bachelor’s in French Law and Common Law and a Master’s in Comparative Business Law from the Université Paris Nanterre and received an LL.M from the Benjamin N. Cardozo School of Law (NY) with a concentration in Fashion, Art, Media and Entertainment Law. Louise is admitted to practice law in New York and lives in Brooklyn with her plants.

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