



NFT LICENSING TASK FORCE

PROBLEM DESCRIPTION:

The advent of **blockchain technology** and the establishment of **non-fungible tokens** (NFTs) for the distribution of digital content have the potential to bring radical innovation to the art world and the creative industries. Such a technology has already been leveraged by several digital artists, who are granted the possibility, for the first time in history, to sell unique copies of their digital works. Galleries and art collectors have rapidly followed suit, with the NFT ecosystem reaching a market cap of over \$350M in 2020 alone.

The **opportunities are great**, however, there is still a great deal of [legal uncertainty](#) concerning the legal status of NFTs. What precisely is being sold with the sale of an NFT, the token or the work that the token is associated with? And what are the rights that are being granted or licensed to the corresponding NFT owners?

These questions cannot be easily answered, as the answer depends on the NFT platform that is used to create or sell the NFTs. The most important thing to understand is that **purchasing the NFT of a digital work is not the same as purchasing the copyright in that work**. Indeed, in most cases, the NFT does not even incorporate the digital work; it only references it via a hash. Hence, the owner of an NFT is regarded as the owner of a unique digital copy of the work, but does not necessarily enjoy the right to reproduce, redistribute, or otherwise exploit that work—unless explicitly provided for by the copyright owner. This is akin to purchasing the copy of a book, which does not entail a transfer of the copyright in the book.

Hence, while **copyright law** does not protect artists against the creation of unauthorized NFTs (i.e. they cannot rely on copyright law to prevent the unauthorized release of work as an NFT), copyright is nonetheless necessary to **fully harness the value of NFTs**. Most NFT owners do not have any right in the copyright of the work associated with their NFTs, except for the limited usage rights ([if any](#)) that have been granted to them via the terms of use of the platform where these NFTs have been minted (e.g. Superrare, OpenSea, etc.) This typically only includes the right to privately enjoy the work and display it publicly on social media or in virtual galleries.

In order to increase the value of their NFTs, artists might decide to provide additional rights to the NFTs holder (e.g. the right to create derivative works, or to allow for the commercial usage of the underlying works). This would require **tying a copyright license** to these NFTs in such a way as to enable for the licensed rights to follow the token when it is transferred.



As a general rule, copyright licensing is achieved in two ways:

1. by means of *public licenses* that apply to everyone—like the GNU General Public License or Creative Commons license; or
2. by means of *personal licenses* that only apply to a specific individual or entity.

Oftentimes, these two types of licenses are combined in order to provide for a more granular system of licensing, whereby works released under a somewhat restrictive public license (e.g. Creative Commons BY-NC) are subsequently licensed to specific parties under a more permissive personal license (e.g. to allow for commercial usages), generally in exchange of consideration.

However, none of these solutions allow for the licensed rights to be granted, only and exclusively, to the current holders of an NFT, and to be transferred automatically to the new token holders everytime the NFT is being transferred. Accordingly, to facilitate the licensing of rights associated with NFTs, we are planning to develop *semi-public licenses* that apply to everyone holding a particular NFT.

TASK FORCE OBJECTIVES:

The first objective of the task force is to **draft the legal text of the license**. The work will build upon earlier efforts at drafting NFT licenses, such as, *inter alia*:

1. [NFT License](#) of Dapper Labs (subject to [criticism](#))
2. [Rarible NFT license](#) written by Gabriel Shapiro and Stuart Smolen
3. [NFT License Project](#) by Enrico Schaefer
4. [NFT Art Licensing Agreement](#) (only between artists and minters)

With the exception of the first NFT License, none of these licenses have reached widespread adoption. Moreover, most of these licenses are fairly restrictive and do not allow for the making of derivative works or for the commercial exploitation. This task force is aimed at creating a whole new set of licenses with modular terms and conditions—à la Creative Commons—in order to enable artists to increase the value of their NFT by associating additional rights to them.

Second, the task force will focus on the **technical implementation** to create an [immutable link](#) between the NFT and the associated licenses, while also allowing for the possibility for upgradability, if needed. We will consider the possibility of embedding the license directly into the NFT (via OpenLaw, CommonAccord, Ricardian contracts, etc.) as well as ways to hash the digital work and the legal license together as one NFT package. The license should also be readable and referenceable by software so platforms can automatically check for them.