

## ***Key Issues of Non-Fungible Token (NFT): How Transfer of Copyright Should Adapt?***

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### **Abstract**

*Non-fungible tokens, also known as NFTs, are a special kind of digital record of ownership that is utilized in a certain manner to guarantee validity and uniqueness of intangible goods. Due to its features, NFTs become interesting among art creators and even asset collector. Transactions on NFT create incredible values, which raises a number of legal issues, particularly in the realm of intellectual property rights related to copyright. This research aims to explain the connection between the existence of NFT and current copyright law in Indonesia focusing on the ownership and transfer of rights from the purchasing of NFTs. The author will try to compare on other jurisdictions (Ireland & Germany) concerning the copyright legal framework. Furthermore, the practice by licensing method in current NFTs marketplace will also be demonstrate through this paper. The research methodology employed is a normative juridical approach with an analytical and descriptive research design. Based on the research conducted, there is still a legal gap in Indonesian copyright law, particularly in the realm of NFTs and the idea of droit de suite, which has existed in intellectual property right concept globally. Finally, this paper will present several recommendations for the government and other relevant stakeholders upon NFTs transactions.*

### **Abstrak**

*Non-fungible tokens, atau NFT, adalah suatu cara khusus untuk pencatatan kepemilikan yang digunakan untuk menjamin validitas dan keunikan suatu barang tidak berwujud dalam digital. Fitur pada NFT menjadi daya tarik lebih bagi kalangan pencipta dan kolektor aset. Layaknya mata pisau, transaksi melalui NFT menciptakan nilai yang menakutkan, namun juga menimbulkan sejumlah masalah hukum, khususnya di ranah hak kekayaan intelektual yakni hak cipta. Penelitian ini bertujuan untuk mengefektifkan hubungan antara eksistensi NFT dengan hukum positif di Indonesia terkait hak cipta yang berfokus pada kepemilikan dan pengalihan hak atas pembelian karya melalui NFT. Penulis akan membandingkan payung hukum hak cipta dari yurisdiksi lain, yakni Irlandia & Jerman. Selanjutnya, tulisan ini juga akan memaparkan praktik metode lisensi di pasar NFT. Metodologi penelitian yang digunakan adalah pendekatan yuridis normatif dengan penelitian deskriptif analitis. Berdasarkan penelitian yang dilakukan, masih terdapat kealpaan hukum dalam regim hak cipta Indonesia, khususnya pada praktik NFT dan juga gagasan *droit de suite* yang telah hadir dalam konsep hak kekayaan intelektual secara global. Terakhir, tulisan ini akan menyajikan beberapa rekomendasi bagi pemerintah dan pemangku kepentingan terkait praktik transaksi NFT.*

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## INTRODUCTION

Rapid technology sophistication is a daily event in the current world, and a technology sector that requires our foresight and attention is at the junction of science and regulation. People may have once believed that not everything could be adapted to the digital realm, yet what was once deemed impossible is now within our reach. However, between 2020 and 2021, a new term entered the digital lexicon: the non-fungible token, or NFT. A non-fungible token, or NFT, is data that is stored on a blockchain, which is a digital ledger.<sup>1</sup> NFTs, like digital currencies such as bitcoin, operate on a blockchain-based infrastructure. In cryptocurrencies, the set of codes on coins can be divided into several sections, whereas non-fungible tokens cannot be recombined.<sup>2</sup> So, the collection of codes owned by NFTs is different from each other, or it can be said to be unique<sup>3</sup>.

In 2014, a platform called “Counterparty” offered NFTs for the first time, and the first NFT ever generated was called “quantum” it is now valued at several millions.<sup>4</sup> The National Basketball Association (“NBA”) was among the several organizations and individuals that expressed interest in joining the NFT industry between. In 2020, the NBA's digital collectibles arm, NBA Top Shot, was launched. It is an online marketplace that allows fans to buy, sell, and trade officially licensed, one-of-a-kind digital collectibles featuring NBA players and moments.<sup>5</sup> In place of traditional trading cards, the NBA utilizes NFTs to generate digital versions of its player cards. It is expected that NFTs will be integrated into a broad range of objects, including digital versions of artworks that were initially only available in print.

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<sup>1</sup>Clifford Chance, “Non-Fungible Token: Global Impact”, *Clifford Chance Publication*, June 2021, p. 2.

<sup>2</sup>Éder Pereira et al, “Non-Fungible Tokens (NFTs) and Cryptocurrencies: Efficiency and Comovements”, *Fintech*, Vol.1, October 2022, p. 310-311.

<sup>3</sup>Marius Schneider and Nora Ho Tu Nam, “Chinese Court Rules on NFT Transactions and Responsibility of Trading Platforms”, *Journal of Intellectual Property Law & Practice*, Vol. 17, No. 8, 2022 p. 606.

<sup>4</sup>Jolene Creighton, “NFTs Explained: A Must-Read Guide to Everything Non-Fungible”, <https://nftnow.com/guides>, accessed 20 January 2022

<sup>5</sup>Mike Antolin, “The NFT marketplace allows you to buy and sell original NBA digital content”, <https://www.coindesk.com/learn/nba-top-shot-101/>, accessed 16 January 2022

In Indonesia, there is a quite famous phenomenon, that is quite shocking, namely the '*ghozali everyday*'. He received such profit from NFT around 13 billion Rupiah because of the selfies that he took for 5 years and sold on the *Opensea* marketplace platform.<sup>6</sup> Since then, the practice of buying and selling, as well as the creation of NFTs, has begun to grow in Indonesia.

Copyright holders believe that the protection provided for their copyrighted works is considerably increased by the presence of NFTs, because it provides such unique codes to distinguish one NFT to another. In addition, the transaction of copyrighted trading works in the NFT domain may be easily tracked to prevent copyright infringement against the author. However, the NFTs has caught the attention of the author as it has brought about disruptions in the realm of copyright law. From the examples presented above, it is evident that there is potential for buying and selling copyright, without a clear concept of the transfer of rights between the copyright owner and the buyer. Although the advancement of information and communication technology has been incorporated as a factor within the Indonesian Copyright Act No. 28 of 2014 on Copyright ("Copyright Law")<sup>7</sup>, it cannot fully address the current technological advancements embodied by NFTs. Consequently, it impedes the provision of complete protection and decreases the possibility of disagreements over their use, especially in terms of copyright transfer.

Up to this point, NFT trading has been legal and classified as crypto commodity trading, which is governed by the Commodity Futures Trading Commission.<sup>8</sup> It is unclear whether such a transfer of rights results in a transfer of copyright ownership from the creator, or merely a transfer of property rights. This is because copyright holds two inherent rights for the creator, namely economic rights and moral rights, with the latter being non-transferable. Therefore, an analysis of this issue is necessary by comparing the copyright laws of other

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<sup>6</sup> Teti Tiran, "Hak Cipta Karya Digital pada NFT Dikaitkan dengan Hak Akses yang Memiliki Nilai Ekonomi sebagai Hak Kebendaan Berdasarkan Peraturan Perundang-Undangan di Indonesia", *Jurnal Kewarganegaraan*, Vol. 6, No. 3, October 2022, p. 607.

<sup>7</sup> See Elucidation of Law No. 28 of 2016 regarding Copyright Law ("Indonesian Copyright Act No. 28 of 2014"), paragraph 2.

<sup>8</sup> Retno, et.al, "Pengenalan Hukum Pajak Pada Cryptocurrency dan NFT Di Indonesia", *Owner Riset & Jurnal Akutansi*, Vol.6, No. 2, April 2022, p. 1647.

countries such as Germany and Ireland. It is undeniable that the copyright laws of these countries are more advanced and superior to those of Indonesia. Given the likelihood that the NFT process is being carried out by individuals who are not well-versed in copyright law, legal ambiguities arising from this scenario could create significant legal problems.

Several journals have raised questions about NFT and its relationship to copyright, such as Ni Kadek & Ida's research from 2022, which focuses on the protection of works of art in the form of NFT based on Indonesian laws and whether NFT is a viable method for preserving IPR.<sup>9</sup> In addition, Yenny and David's (2022) research that also focuses on the protection and efficacy of copyright protection against NFTs.<sup>10</sup>

In this paper, the author will examine the connection between the existence of NFT and current copyright law in Indonesia, compare to Germany and Ireland, and attempt to include the international framework, focusing on the ownership and transfer of rights from the purchasing of NFTs. Furthermore, this paper will also present the current practice under the NFT market. Finally, this paper will discuss whether the current regime has already preserved the interest of NFTs practice upon copyright protection of the author and other involved parties.

## **RESEARCH METHOD**

The author of this study utilized a normative juridical research methodology and an analytical descriptive approach in conducting the research. The normative juridical method is the method used when examining knowledge based on statutory regulations and existing legal concepts. While analytical descriptive is used to describe the data and evaluate the data collected, in this case from multiple literature review sources, analytical descriptive is used to describe and analyze the data and comparing the legal system and legal features with those of Ireland and Germany.

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<sup>9</sup> Ni Dewi & Ida Sukihana, "Perlindungan Hukum Terhadap Karya Seni Dalam Bentuk Non-Fungible Token (NFT)", *Kertha Wicara: Jurnal Ilmu Hukum*, Vol. 11, No.4, July, 2022, p. 906-918.

<sup>10</sup> Yenny Liegestu & David Tan, "Perlindungan Hak Cipta Terhadap Aset Digital NFT (Non-Fungible Token)", *Maleo Law Journal*, Vol. 6, No.2, October 2022, p. 127-141.

## **RESEARCH RESULT AND DISCUSSION**

### **A. Non-Fungible Token (NFT) Terminology and Understanding**

The popularity of Non-Fungible tokens (NFTs) started to rise after Jack Dorsey, the CEO of Twitter, offered his first tweet for sale. The tweet was eventually bought for \$2.9 million, which was equivalent to 1,630.58 ETH based on the prevailing ether value at the time.<sup>11</sup> This was followed by the launch of CryptoKitties, which reportedly saw success in NFT transactions.<sup>12</sup> The popularity of NFTs continued to grow, becoming a hot topic in 2021 as the use of the internet and blockchain technology increased, positioning NFTs as a futuristic creation.

So, what exactly is NFT? to comprehend NFTs fully, it is important to differentiate between non-fungible and fungible tokens. Fungible tokens are the most common in the blockchain world and have identical properties as other tokens, allowing them to be effortlessly exchanged with other tokens possessing similar characteristics.<sup>13</sup> NFTs, on the other hand, are novel digital assets that are unique, blockchain-enabled, and non-interchangeable with other cryptocurrencies or traditional currencies. They represent various items such as art, music, collectibles, and in-game items.<sup>14</sup> The individual digital file is maintained on a blockchain network, and any modifications in possession are verified by a global network and publicly recorded. This indicates that the custody chain is permanently recorded in the file outsold, making it nearly impossible to substitute a counterfeit. From a technical standpoint, NFTs are exclusive cryptocurrency tokens that exist solely on a blockchain, which is a decentralized public ledger that keeps track of the

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<sup>11</sup> Mike Winters, "An NFT of Twitter co-founder Jack Dorsey's first tweet has lost almost all of its \$2.9 million value", <https://www.cnbc.com/2022/04/14/2point9-million-dollar-nft-of-jack-dorseys-first-ever-tweet-plunges-in-value.html>, accessed 10 October 2022

<sup>12</sup> Lennart Ante, "The Non-Fungible Token (NFT) Market and its Relationship with Bitcoin and Ethereum", *BRL Working Paper Series*, No. 20, 2021, p. 5.

<sup>13</sup> Ahmad, Xiaodi, and Jayaraman, "Understanding Non-Fungible Tokens (NFTs): Overview, Opportunities, and Challenges", *The 49th Annual Northeast Business & Economics Association Conference*, New Hampshire, 2022, p. 3.

<sup>14</sup> Lennart Ante, *op.cit*, p. 5.

ownership and transaction history of all stored items. Each NFT is a distinct block of data on the blockchain that has its own identification.<sup>15</sup>

The concept of NFT is entrenched in the history of using art as a form of investment for aesthetic enjoyment and social status, as evidenced by the multi-million-dollar sales of artworks like Pablo Picasso and Andy Warhol at auctions. Art, in particular, is thought to have a value that is maintained over time (years or even centuries) and is regarded "exclusive," which may explain why individuals are willing to pay so much for it as an investment.<sup>16</sup> The uniqueness of a code generated on NFT also protects artists or creators from infringement or plagiarism of the works they create. In this instance, NFT may offer the creator a royalty as an economic rights advantage. Artists/authors can effectively monetize their work. The NFT owner only has a unique code from the NFT issued, which follows its primary purpose, to avoid similarities, plagiarism, or other IP violations against artists/authors.

## **B. Intellectual Property Upon NFT Phenomenon Under Indonesian Copyright Law**

The concept of intellectual property is described by two different approaches. The first prevalent method is to correlate intellectual property with legal rights resulting from intellectual work in the economic, scientific, literary, and artistic domains; the second approach is to link it to the promotion, as a deliberate act of public policy, of innovation and its diffusion and application, as well as to the encouragement of fair trade in a manner that contributes to economic and social growth.<sup>17</sup> Copyright plays a unique function in the context of growth. This has been

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<sup>15</sup> Melanie J, 'Brands and NFTs: Licensing and Contracting Considerations', Loeb LLP, 22 April 2022, <https://www.loeb.com/en/insights/publications/2022/04/brands-and-nfts-licensing-and-contracting-considerations>, accessed 10 October 2022

<sup>16</sup> Sanction Scanner, "What is a Non-Fungible Token (NFT)?", <https://sanctionscanner.com/blog/what-is-a-non-fungible-token-nft-375>, accessed on 10 October 2022.

<sup>17</sup> Wolters Kluwer Editorial Staff, 2017, Introduction to Intellectual Property: Theory and Practice, Second Edition, WIPO, London: Kluwer Law International, p.3.

the case for the past two decades, as globalization and the development of new technologies have accelerated.<sup>18</sup>

According to the Indonesia Copyright Act, copyright is an exclusive right that immediately belongs to the creator.<sup>19</sup> This right is the automatic right exists based on the declarative principle after a work or production is created in a tangible form without prejudice to restrictions in accordance with the provisions of the applicable laws and regulations.<sup>20</sup> The notion of exclusive rights in copyright law confers upon the owner the legal entitlement to prevent third parties from exploiting the protected work or material without the owner's express authorization, thereby granting the owner exclusive control over the use and distribution of the work.<sup>21</sup>

Further types of copyright can be found in Article 40 of the Indonesian Copyright Act and the most relevant branch of Intellectual Property law in the current NFT ecosystem is copyright, which gives copyright holders legally enforceable claims to control use and reproduction of artworks. Copyright occurs automatically following the creation of an original work and it belongs to the original author (subject to some limited exceptions).<sup>22</sup> These rights may be passed to the subsequent owner of a work for the duration of the copyright, which is not permanent. In addition, Intellectual property rights, as widely recognized, are considered a category of intangible property rights, possessing a non-physical nature.<sup>23</sup> Therefore, the digital art under the NFT, shall also be considered as intellectual property rights or material rights that are intangible although under Copyright Act it does not specify the two-dimension of work in the field of technology in the cyberspace.<sup>24</sup> Various types of creative works such as literature,

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<sup>18</sup> *Ibid*, p. 65.

<sup>19</sup> See Article 1 paragraph (1) Indonesian Copyright Act Number 28 of 2014.

<sup>20</sup> Ranti, et.al, "Intellectual Property Development & Komersialisasi Non-Fungible Token (NFT): Peluang, Tantangan Dan Problematika Hukum Dalam Praktik", *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan*, Vol. 5, No. 2, June 2022, p. 211.

<sup>21</sup> Simatupang, Khwarizmi Maulana. "Tinjauan Yuridis Perlindungan Hak Cipta dalam Ranah Digital." *Jurnal Ilmiah Kebijakan Hukum*, Vol. 15, No. 1, 2021, p. 67-80.

<sup>22</sup> Budi Agus Riswandi, 2017, *Pembatasan dan Pengecualian Hak Cipta di Era Digital*, Bandung: Citra Aditya Bakti, p. 8.

<sup>23</sup> See Article 16 paragraph (1) and the Elucidation of Indonesian Copyright Act Number 28 of 2014.

<sup>24</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, UNTS 299, 33 ILM 1197 (1994), cited following from Dr. Janusz Barta and Dr. Ryzsard



music, art, sound recordings, audio-visual content, and broadcasts are suitable for conversion into an NFT.<sup>25</sup> Copyright encompasses distinct rights that are separable and can be exercised individually or licensed to third parties.<sup>26</sup>

### **C. Transfer of Rights and Ownership Upon Purchasing an NFT**

There is frequently a lack of understanding over who holds the intellectual property associated with an NFT. However, it is inevitable that the digital art under the NFTs subject to IP protections including copyright. Here, there needs to be more understanding regarding the ownership of an NFT and what exactly it represents.<sup>27</sup> There has been much speculation about the potential for NFT to bring about a fundamental shift in copyright law. It is important to note that NFT should be understood not as a standalone form of intellectual property, but rather as a means of commercializing artistic works in this manner.<sup>28</sup> In comparison, NFT ownership does not give the owner unlimited rights to the property that is the basis of the transaction. Cornell University legal scholars James Grimmelman, Yan Ji, and Tyler Kel hold the view that “*Copyright law does not give an NFT owner any rights unless the creator takes affirmative steps to make sure that it does.*”<sup>29</sup>

One of the primary questions that business professionals and scholars may have regarding NFT is why individuals would be willing to pay such exorbitant amounts for digital works that are already readily available online.<sup>30</sup> According to Caitlin Ostroff of the Wall Street Journal, the reason for this is that buyers are obtaining the product directly from the original author or copyright owner.<sup>31</sup> Hence, the value of NFT is tied to the bragging rights associated with the knowledge that the purchaser or investor is acquiring such a valuable commodity carrying a

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Markiewics, 2021, International Copyright Law and Practice, International Copyright Law and Practice: Volume 2, New York: LexisNexis - Matthew Bender Elite Products, p. 27

<sup>25</sup> See Article 40 Indonesian Copyright Act Number 28 of 2014

<sup>26</sup> Dr. Janusz Barta and Dr. Ryzsard Markiewics, *op.cit.*, p. 27

<sup>27</sup> Ifeanyi E. Okonkwo, “NFT, copyright and intellectual property commercialization”, *International Journal of Law and Information Technology*, Vol. 29, Issue 4, 2021, p. 297

<sup>28</sup> *ibid*, p. 298

<sup>29</sup> James Grimmelman, “Copyright Vulnerabilities in NFTs”, <https://medium.com/initc3org/copyright-vulnerabilities-in-nfts-317e02d8ae26>, accessed 18 October 2022

<sup>30</sup> Ifeanyi E. Okonkwo, *o.cit.*, p. 299

<sup>31</sup> Wall Street Journal, “NFTs Are Fuelling a Boom in Digital Art. Here’s How They Work featuring Interview with Caitlin Ostroff”, [https://www.youtube.com/watch?v1/4zpROwouRo\\_M](https://www.youtube.com/watch?v1/4zpROwouRo_M), cited from Ifeanyi E. Okonkwo, p.299



certificate of ownership, making it possible for NFTs to thrive. For most of the well-known NFTs to date, such as CryptoKitties and Cryptopunks, there has been no copyright exchange involved. In these cases, the buyer acquires the metadata (i.e., property) linked to the work, rather than the copyright to the work itself.<sup>32</sup>

In the majority of jurisdictions, it is permissible to assign the ownership of a copyright (or alternatively, grant an exclusive license for the duration of the remaining copyright term). In such a circumstance, the assignee would assume complete or partial control over the rights associated with the work, while the original author would retain only those rights as may be mutually agreed upon between the parties involved. This section will see thoroughly how the Indonesia, Ireland and German Law sees the copyright on NFTs. In addition, international perspective based on several convention on Intellectual Property also explained in this section.

***a. Indonesian Law***

Indonesian law recognizes two distinct rights that are accorded to authors: moral rights and economic rights. It is noteworthy to mention that moral rights, being an inseparable aspect of the author's personality, which cannot be assigned during the author's lifetime. Nevertheless, moral rights may be transferred through testamentary disposition upon the author's death.<sup>33</sup> Regarding the economic rights of an author, it is a generally accepted principle that these rights are transferable, with one example being through the execution of a written agreement,<sup>34</sup> or commonly referred to in the realm of copyrights as licensing. The Copyright Act stipulates that the copyright holder has the authority to grant a license to another party via a written contract, for a defined period of time that does not exceed the term of the copyright.<sup>35</sup> The aforementioned license serves to impose a responsibility on the licensee to provide adequate remuneration to the author/copyright holder in the form of royalties over a specified timeframe, in

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<sup>32</sup> Lucas Minnick, "Cryptopunks, Cryptokitties, And Crypto Copy-Cats", <http://asuselj.org/cryptopunks-cryptokitties-and-crypto-copy-cats/>, accessed 15 October 2022

<sup>33</sup> See Article 5 paragraph (2) Indonesian Copyright Act Number 28 of 2014.

<sup>34</sup> See Article 16 paragraph (2) Indonesian Copyright Act Number 28 of 2014.

<sup>35</sup> For example, in Article 18 of the Indonesian Copyright Act Number 28 of 2014, copyright will transfer back to the creator when the agreement reaches a period of 25 years, this copyright includes creation of books, and/or all other written works, songs and/or music with or without text.

accordance with established norms in industry practices and principles of fairness.<sup>36</sup> Furthermore, the Copyright Act mandates, as stipulated in Article 83 paragraph (1), that the licensing agreement shall be recorded by the Minister in the general register of copyright licensing agreements.

What about the royalty for the creator of such art? Copyrights as an incentive system are often separated into licensing and assignment. A license is written authorization granted by the copyright holder or owner of a related right to another party to engage in a practice relating to the economic rights of an original work or the product of a related right, subject to certain conditions.<sup>37</sup> Assignment, on the other hand, is defined as an inheritance, grant, gift, will, written agreement, or any other justified under the provisions of law, made clear and in writing, with or without the notarization of the copyright owner.<sup>38</sup>

Based on the above explanation, it can be observed that the transfer of a creation under the Copyright Law only transfers the economic rights attached to a copyright, but not the moral rights of the creation. Unfortunately, Indonesian law has not yet clarified further about resale rights or the principle of *droit de suite* in international law. The term '*Droit de suite*' is a French term that refers to the concept of "the artist's resale right" in copyright law. This refers to the right granted to artists or their heirs to receive a portion of the profits from the resale of their copyrighted works.<sup>39</sup> This resale right is useful in increasing the profits that the creator can gain from his creation. Currently, Indonesia only adopts the transfer of economic rights with the principle of sold-flat.

#### ***b. Irish Law***

In Ireland legal parlance, 'copyright' is the term used to describe the area of intellectual property law that regulates the creation and use made of a range of cultural goods such as books, songs, films, and computer programs.<sup>40</sup> It lists the

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<sup>36</sup> See Article 80 paragraph (5) Indonesian Copyright Act Number 28 of 2014.

<sup>37</sup> See Article 1 paragraph (2) Indonesian Copyright Act Number 28 of 2014.

<sup>38</sup> Budi Agus Riswandi, "Legalization of Artists' Resale Right (*Droit De Suite*) As the Protection System and Incentive Indonesia Painting", *Research World Journal of Arts, Science & Commerce*, Vol.8, No. 1, January 2017, p. 94-95.

<sup>39</sup> Paul Goldstein and Bernt Hugenholtz, 2010, *International Copyright*, Second Edition, Oxford: Oxford Community Press, p. 313.

<sup>40</sup> Intellectual Property Office of Ireland, "General Information Concerning Copyright and Related Rights", <https://www.ipoi.gov.ie/en/understanding-ip/help-guidance/ip-information-booklets/copyright-and-relatedrights.pdf>, accessed 10 January 2023

numerous things covered by copyright law as works. The owner of copyright is granted certain rights, including the right to duplicate the work and the ability to convey it to the public. The copyright owner has a set of exclusive rights, but these rights have limits, notably the inability to claim infringement when someone creates their original work. Furthermore, the duration of these rights is quite lengthy, often extending up to 70 years after the death of the author of the work. In Ireland, the Copyright and Related Rights Act of 2000 is the principal legislation governing copyright.<sup>41</sup>

The intangible property protected by copyright law is distinctive in that it arises automatically and usually for the benefit of the author. Hence, in this case, the copyright protect the digital art that comes in the NFT. Copyright transfer regulates under chapter 8 art.120 of Ireland copyright which stated that *‘The copyright in a work is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.’*<sup>42</sup> As a result, any copyright resulting in the products (such as an artwork) would not be transferred unless the contract governing the NFT specifically allows for such and it satisfies the conditions for the transfer of copyright under prevailing laws.<sup>43</sup>

Besides, *droit de suite* or also known as Artist Resale Right has been knowledge in Ireland since 2006 under the Statutory Instrument No. 312 of 2006 pursuant to the European Directive 84/2001 of European Commission. The Act also stipulates the royalties for artists in terms of a percentage, such as 4% for sales prices up to 50,000 euros. In addition, the law also says that in order for such a resale to be eligible for royalties, it must be a resale from the second or subsequent sale of an artwork, the work must be in copyright, which means the artist must be alive or have died within the last 70 years, and it must have been sold for at least €3,000.<sup>44</sup>

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<sup>41</sup> See Copyright And Related Rights Act Of Ireland Number 28 of 2000, <https://www.irishstatutebook.ie/eli/2000/act/28/enacted/en/html>

<sup>42</sup> *Ibid*, chapter 8

<sup>43</sup> Rory et.al, “NFTs and Intellectual Property Law”, <https://www.matheson.com/insights/detail/nfts-and-intellectual-property-law>, accessed 05 January 2023

<sup>44</sup> See Statutory Instrument of Ireland Number 312 of 2006.

**c. German Law**

German law use terminology of “Grant of right of use” to express copyright transfer, rather than “assignment”- in English term, or *cession*, in French.<sup>45</sup> Understanding copyright contracts under German law requires an understanding of the "monistic" approach to German copyright law.<sup>46</sup> Thus, the author’s economic rights of exploitation may serve his financial interest, as well as his moral right of exploitation that serve his financial interest.<sup>47</sup> In this extent, German authors rights, even in the narrow sense of economic rights, cannot be entirely alienated.<sup>48</sup> Section 29 of German Copyright law precludes the outright and full assignment of the author’s copyright, instead only allowing for the contractual granting of “right of use”.

Under section 31(1) of German Copyright law, an author may contractually grant such right of use (*nutzungsrecht*), with regard to one or many uses, either a simple or exclusive grant. Pursuant to Section 31(2), the party acquiring a simple right of use (re: *nonexclusive license*), is entitle to use the work as specified in the grant by may not be prohibit to use by others. Further, Section 31(3) explain that the party acquiring an exclusive right of use (re: *exclusive license*), is entitled to use the work as specified in the grant and to exclude all others from doing so, including the author unless otherwise agreed. Under Section 34, a licensee may transfer a right of use a sub-grant (re: *sublicense*) mostly can be done after obtaining the consent of the author, who may not refuse such consent in bad faith, which appears to enable him or her to control the exploitation of his or her work. In practice, most licensing agreement include blanket authorization, deem valid by the court, whereby the author gives his or her consent in advances. In the event of absence of an explicitly given consent, the court held that such consent might be implied with the contract between the author and the first licensee.<sup>49</sup>

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<sup>45</sup> Michael Gruenberger and Adolf Dietz, 2021, International Copyright Law and Practice: Volume 2, New York: LexisNexis - Matthew Bender Elite Products, p. 78.

<sup>46</sup> *Ibid*, p. 74.

<sup>47</sup> *Ibid*, p. 80.

<sup>48</sup> *Ibid*, p. 80.

<sup>49</sup> See article 4(3)(c)(iii) *Infra*, German Copyright Act (*Urheberrechtsgesetz* - UrhG), cited from Dr. Michael Gruenberger and Dr. Adolf Dietz, p. 82.

There is, indeed, some limitation for a license or contract regarding copyright transfer. To be highlighted, German copyright is not assignable as such.<sup>50</sup> Accordingly, German Law grants remuneration rights that are not contractually waivable in advance and provide for other rules that just monistic conception of copyright to protect, further and more effectively, authors economic interest against the interest of his/her contracting party.<sup>51</sup> To prevent authors from being unfairly disadvantaged, Section 307 (1) of the German Civil Code allows for standard-form terms to be invalidated and replaced by default provisions of German contract law if they do not comply with essential principles of statutory provisions and violate the requirement of good faith.

Further, regarding Resale right (*droit de suite*) under German Copyright Law<sup>52</sup>, it provides a non-waivable right of visual artists to share in the proceeds from the resale of embodiments of their works of visual artist to share in the proceeds from the resale of embodiments of their works of visual art, as well as of their photographic works, if an art dealer or an auctioneer is involving as seller, buyer, or intermediary. In cases with an international dimension, the *droit de suite* under Section 26 of German Copyright act apply only if to conditions are met: 1) German Law must be applicable to the fact at issue according to *the lex loci protectionis* rule; and 2) the acts of reselling must take place at least partly in Germany, pursuant to the territorial principle.<sup>53</sup>

#### **D. Copyright Transfer on NFT Licenses**

In most jurisdictions, copyright can be transferred, which one of them through a license. In the realm of copyright, a license is a permission granted by the copyright holder, or licensor, to a licensee, who is typically a publisher, to use the copyrighted work in a manner and under the conditions that have been mutually agreed upon.<sup>54</sup> The term “license” refers to a limited-duration transfer of copyright rights revocable if the licensee fails to pay royalties or otherwise breaches the

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<sup>50</sup> See Article 4(2)(a), German Copyright Act (*Urheberrechtsgesetz* - UrhG), cited from Michael Gruenberger and Adolf Dietz, p. 86.

<sup>51</sup> Michael Gruenberger and Adolf Dietz, *op.cit*, p. 86.

<sup>52</sup> See Section 26 of German Copyright Act (*Urheberrechtsgesetz* - UrhG)

<sup>53</sup> Michael Gruenberger and Adolf Dietz, *op.cit*, p. 101.

<sup>54</sup> Wolters Kluwer Editorial Staff, *op.cit*, p. 107.

contract. A transfer of copyright is a transaction in which outright ownership of the copyright or some right included in the copyright – goes from one person to another.<sup>55</sup> Upon the transfer of a copyright, the transferee will acquire all or some of the rights associated with the copyright, leaving the original author with only what is expressly agreed upon.

Hence, the ownership rights of the asset forming the basis of NFT transactions are contingent upon the rights articulated in the license agreement accompanying the NFT acquisition.<sup>56</sup> In the absence of an explicitly stated IP license in an NFT project, it is reasonable for the buyer to assume that they do not acquire any intellectual property rights and that the use of the NFT is restricted to personal use.<sup>57</sup> Nonetheless, this might lead to ambiguity about the distinction between proprietorship and a licensee to the NFT's content.

Presently, there is no one-right licensing model, and it depends on the content owners what user can or cannot do.<sup>58</sup> All rights holders should specify in the license what a user may and may not do. This applies to all the requirements listed below. To preserve their intellectual property, content owners should include the following two required rights in their licenses:

**a. Right to display and use**

This entails granting the customer a non-exclusive permission to access or utilize the NFTs. Usually, this right applies to any work that may be published or shown, including works of literature, music, theatre, and others.<sup>59</sup> This sort of license may provide the user a restricted permission to utilize the material

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<sup>55</sup> Wiliam S Strong, 2014, *The Copyright Book: A Practical Guide*: sixth edition, USA: The MIT Press, p. 79.

<sup>56</sup> Caglayan Pinar & Zehra, "NFTs and Copyright: Challenges and Opportunities", *Journal of Intellectual Property Law & Practice*, Volume 16, Issue 10, June 2021, p. 1121-1123.

<sup>57</sup> Cameron Thompson, "NFTs and Intellectual Property: What Do You Actually Own?", <https://www.coindesk.com/learn/nfts-and-intellectual-property-what-do-you-actually-own/>, accessed on 10 October 2022

<sup>58</sup> James Gatto, "NFT License Breakdown: Exploring Different Marketplaces and Associated License Issues", *The National Law Review*, <https://www.natlawreview.com>, accessed 23 October 2022

<sup>59</sup> Angger Budiadji, 2012, "Implementasi Hak Mengumumkan Musik Atau Lagu Pada Radio Siaran Swasta Nasional Di Kota Surakarta Berdasarkan Undang-Undang Nomor 19 Tahun 2002 Tentang Hak Cipta, Faculty of Law, Universitas Negeri Sebelas Maret, Surakarta, p. 12.



underpinning the NFT, whether in another marketplace or via a third-party platform.<sup>60</sup>

**b. Right to sell and/or commercialize**

Copyright protects the creator's exclusive right to reproduce and provide permission to others to do the same. According to the Copyright Law, re-producing a work is classified as either a permanent or temporary change.<sup>61</sup> In practice, it typically enables the right to sell, trade, or transfer as long as the buyer does not utilize the digital asset for commercial purposes. However, there are also type of license that prohibit the buyer to do that and it would state that *"your purchase of [the NFT] does not give you the right to publicly display, perform, distribute, sell or otherwise reproduce [the NFT] for any commercial purpose."* In contrast, such marketplace also permits a creator to assign certain rights to the buyer while keeping ownership and management of the intellectual property.<sup>62</sup>

In the context of NFT transactions, it is imperative for NFT users who are contemplating purchases to carefully considering two salient factors above. If copyright holders decide to authorize greater usage of their NFTs, they should be explicit about the usage and limits they put on the buyer. An essential area of inquiry that necessitates exploration within the confines of this paper pertains to the transactional mechanism utilized in NFTs, commonly referred to as a "smart contract." The genesis of this term can be traced back to the seminal work of Nick Szabo, a venerable computer scientist and cryptographer, who first introduced the concept over two decades ago.<sup>63</sup>

*"A smart contract is a set of promises, specified in digital form, including protocols within which the parties perform on these promises."*

In the domain of blockchain technology, the functionality of "smart contracts" surpasses the simple transfer of financial assets during transactions. Instead, these contracts embody core features of blockchains, including immutable

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<sup>60</sup> Argoodlw, "The Six Rights of Copyright – Part V: The Right to Public Display", <https://goodattorneysatlaw.com/right-to-public-display/>, accessed 13 October 2022

<sup>61</sup> Manurung, P and Evelyn Angelita. "Perlindungan Hukum Terhadap Hak Cipta Atas Karya Cipta Digital di Indonesia." *Premise Law Journal 1*, No. 2, 2013, p.11.

<sup>62</sup> Daniel Anthony, 'Commercializing NFTs – generating value from digital assets and intellectual property rights' <https://www.jdsupra.com/legalnews/commercializing-nfts-generating-value-1110648/>, accessed 17 October 2022

<sup>63</sup> Nick Szabo, "An Introduction to Smart Contracts and Their Potential and Inherent Limitations" Skadden, 2021, accessed 19 October 2022

and globally accessible data.<sup>64</sup> Mudasser Ali from the University of West Florida, presents a cogent analogy that draws parallels between a vending machine and the concept of a smart contract. Ali posits that a vending machine serves as a physical manifestation of a contractual agreement, where the insertion of money triggers the release of a corresponding item. The system is designed such that insufficient payment results in the withholding of the item, and further safeguards, such as a lockbox and other security measures, ensure the protection of stored coins and their contents from potential trespassers. Essentially, the vending machine operates as a contractual intermediary, facilitating transactions between any interested party in possession of the requisite currency..<sup>65</sup>

It is common knowledge that smart contracts are neither contracts nor smart; instead, they are merely instructions typed into computer code and stored on a blockchain that is supposed to execute itself.<sup>66</sup> At a basic level, smart contracts are a tool to implement a sale agreement. Hence, if an artist wants to transfer copyright ownership or exclusive rights to a collector, it must be done through a smart contract. Is the meaning of a smart contract the same as that of a traditional contract or agreement? The answers would be no. A smart contract is a computerized transaction protocol that automatically executes the terms of the contract when predetermined conditions are met between the parties.

Smart contracts aim to reduce destructive behavior. Violations committed by parties in bad faith, and on the other hand, also to increase the efficiency of business processes considering that trade finance settlements can be carried out automatically through the system. Artwork circulating in the cyber/digital world is known as plagiarism. For example, in March 2021, Indonesian illustrator Kendra Ahamsa received reports from her friends that a crypto artist named Twisted Vacancy had plagiarized her work<sup>67</sup>. In the present context, NFTs are encapsulated

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<sup>64</sup> Sarah Ari Mukti, "NFTs for Art and Collectables: Primer and Outlook", *SocArXiv Papers*, May 2022, <https://osf.io/preprints/socarxiv/gwzd7/>, accessed 20 October 2022

<sup>65</sup> Alexander Savelyev, "Contract Law 2.0: Smart' Contracts as The Beginning of the End of Classic Contract law", *Information & Communications Technology Law*, Volume 26, 2017 - Issue 2, p. 7-9.

<sup>66</sup> Tracey Dowdeswell, "NFTs and The Enclosure of The Digital Realm", *Information & Communications Technology Law*, August 2022, p. 5-6.

<sup>67</sup> Marchel Thee, "Indonesian Artist Turns Psychedelia Revival Into Business Empire", <https://asia.nikkei.com/Life-Arts/Arts/Indonesian-artist-turns-psychedelia-revival-into-business-empire>, accessed 16 January 2023

within smart contracts, which serve as the governing entities responsible for executing specific actions, such as ownership verification and facilitating the transferability of NFTs.<sup>68</sup> Creators should design what is included under the smart contracts (i.e., how much for first and secondary sales, royalties, transaction cost, and other related features).<sup>69</sup> Given that NFTs are contingent upon the functionality of smart contracts, a secure technological infrastructure is paramount for the efficient operation and safeguarding of users within the NFT economy.

In relation to the positive law regarding copyright, the utilization of copyright in Indonesia remains to be premature and can result in adverse effects, given the absence of a legal infrastructure that grants legitimacy to the smart contract practice. The question of whether smart contracts can be equated with the licensing regime outlined in Chapter XI of the Copyright Law, which deals with Licensing and Compulsory Licensing, requires a more in-depth analysis. This is particularly crucial as Indonesia has not yet established regulations regarding the resale right or *droit de suite*, which could serve as a legal foundation for the commercial transaction of creations via Non-Fungible Tokens.

#### **E. Practical survey and the development of NFT License**

The burgeoning utilization of NFTs, particularly through the presence of copyright licensing in various marketplaces, has in the inception of a fascinating and potentially paradigm-shifting practice. This practice presents the possibility to monetize specific intellectual property or, alternatively, to confer equal rights upon all individuals to employ and authorize copyright permissions for creative and academic works that conform to the established guidelines of standard creative licenses.

##### **a) Commercialization**

The grant of commercialization rights to a selected NFT proprietor presents a multitude of potentialities for NFT purchasers to realize financial gain from their

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<sup>68</sup> Ghaith Mahmood, "NFTs: What Are You Buying and What Do You Actually Own?", <https://www.thefashionlaw.com/nfts-what-are-you-buying-and-what-do-you-actually-own/> accessed 22 October 2022

<sup>69</sup> Cathrine Zhu, "A Checklist Of Legal Considerations For The NFT Marketplace" <https://news.crunchbase.com/fintech-ecommerce/a-checklist-legal-nft-marketplace/> accessed 25 October 2022

investments. This particular type of license endows the licensee with the capacity to utilize the NFT and its accompanying copyright for the purpose of commercial exploitation. As an example of this phenomenon, Bored Ape Yacht Club, a preeminent entity in the cryptocurrency arena, accords its NFT buyers with the rights associated with their respective NFTs, including the right to commercially utilize them. Notwithstanding, a written assignment remains a necessary component for effectuating a complete transfer of copyright ownership.<sup>70</sup> While under RTFKT<sup>71</sup> The terms of a commercial use license enable NFT holders to employ the inherent intellectual property for the purpose of producing and selling physical goods, with the potential to generate up to one million dollars in revenue.<sup>72</sup> Analogously, the 'copyright license 2.0' instituted by CryptoKitties serves a similar purpose by enabling NFT owners to market their artwork at a valuation of \$100,000 or less. Nevertheless, the license contains provisions that prohibit the use of NFT art in any inappropriate or malicious context, such as modifying the artwork or deploying it in association with hate speech, violence, or other transgressive conduct, with the ultimate objective of safeguarding the original creators' intellectual property rights.<sup>73</sup>

#### **b) Creative Common (“CC”) license**

The inception of this form of licensing dates back to 2002, and was introduced by the non-profit entity known as Creative Commons, based in the United States.<sup>74</sup> A Creative Commons (CC) license is one of several publicly available copyright licenses that allow for the free dissemination of artistic works. This license affords creators a degree of flexibility and protects users from potential copyright infringement by adhering to the stipulated conditions specified by the

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<sup>70</sup> Knowledge Transfer Ireland, 'KTI Practical Guide, License Agreements' (KTI, 2021) [www.knowledgetransferireland.com](http://www.knowledgetransferireland.com), accessed 25 October 2022

<sup>71</sup> RTFKT is a manufacturer of customized sneakers for video game aficionados. The brand sells limited edition customized sneakers in addition to virtual equivalents for which consumers can put on and unlock special effects

<sup>72</sup> RTFKT, 'Digital Collectible Terms' (RTFKT), <https://rtfkt.com/legal-2A>, accessed 26 October 2022

<sup>73</sup> Dapper Labs, 'NFT License 2.0: Why an NFT can do what no other creative IP can do' <https://medium.com/dapperlabs/nft-license-2-0-why-a-nft-can-do-what-mickey-mouse-never-could-27673d5f29>, accessed 19 October 2022

<sup>74</sup> Duncan Geere, 'The History of Creative Commons', <https://www.wired.co.uk/article/history-of-creative-commons>, accessed 26 October 2022

original author.<sup>75</sup> The Creative Commons licenses comprise of seven distinctive types, with each varying in its degree of permissiveness, ranging from the most restrictive to the one that relinquishes the most copyright control to the public domain. The overarching objective of these licenses is to provide creators with the flexibility to impose restrictions on the usage of their work in accordance with their desired specifications.<sup>76</sup>

Misconceptions abound in the realm of NFTs regarding the precise nature and parameters of CC licenses. Accordingly, the official website of CC has taken a proactive step by introducing a dedicated FAQ section to provide clarity on this matter. It is noteworthy that CC remains confident in the efficacy of its licensing regime and its ability to accommodate the evolving landscape of technology, including the advent of NFTs. However, it must be noted that the ownership of an NFT, which serves as a mere identifier linked to a copyrighted work, does not grant the owner any inherent usage rights over the underlying work.<sup>77</sup> *Creators of NFTs such as Chain Runners, Mfers, and CrypToadz have gained advantages by adopting the CC0 license*<sup>78</sup> into their foundations.<sup>79</sup> The utilization of Creative Commons licenses by NFT creators is primarily motivated by the desire to enhance the visibility and recognition of their projects. Currently, this type of licensing is becoming increasingly prevalent in the NFT realm. As technological advancements continue, CC licensing is expected to emerge as an efficient and effective licensing mechanism for the underlying copyrighted works associated with NFTs.

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<sup>75</sup> Common Creative, “1.1 The Story of Creative Commons (Creative Commons)” <https://certificates.creativecommons.org/cccertedu/chapter/1-1-the-story-of-creative-commons/>, accessed 25 October 2022

<sup>76</sup> Wageningen University & Research, “What are Creative Commons licenses?”, Wageningen University & Research newspaper, <https://www.wur.nl/en/article/What-are-Creative-Commons-licenses.htm>, accessed 23 October 2022

<sup>77</sup> Marianna Ryan, “Creative Commons and NFTs – is CC licensing compatible with the new technologies?”, <http://copyrightblog.kluweriplaw.com>, accessed 26 October 2022

<sup>78</sup> CC0 is the “no copyright reserved”; it practically implies surrendering all copyright and devoting them to the public domain.

<sup>79</sup> Eric James, “CC0 and NFTs: Understanding Ownership”, <https://nftnow.com/features/cc0-and-nfts-understanding-ownership/>, accessed 26 October 2022

## **F. Dilemmas and Risk of Copyright Transfer in NFT**

The emergence of NFT demonstrates that the law is not constantly pushing boundaries and provides solutions to all legal issues, when we believe that law should cab adapt and progressive upon the advancement of technology. Nonetheless, this does not render this NFT practice vulnerable by law, and the parties involved are free to act on everything without any limits or are legally protected. Existing laws explain this conduct in a flexible and detailed manner in the digital environment. The NFT practice protects the creators in the event of interference and unlawful use by other parties. The presence of an NFT confirms who the legitimate owner and/or author of a work is, as well as whether or not the artwork being traded is authentic or counterfeit. NFT specifies and explains how creators receive royalties. In other words, it is relatively simple to identify the sale of copyright through NFT if the original purchaser resells it to a third party and the copyright owner is informed of the proceeds generated.

The NFT custom is analogous to an auction system in which the creator (or a trader) can exchange an intellectual work with other parties who believe it to be original. In the NFT system, a license or agreement manages the transfer of ownership of a copyrighted work. As it refers to the parties' autonomy, there is no rigid form of the copyright license. However, it is clear that the transfer of copyright ownership is most likely confined to the transfer of economic rights from the creator to the owner, not moral rights. Moral rights are rights associated with creators due to their thinking. This moral rights exist and cannot be transferred to other parties. This right is subjective and can only be understood by its creator; it cannot be transferred or assigned and belongs perpetually to the creator.

Despite the absence of a clear definition of NFT within the framework of Indonesian legal regulations, the increasing prevalence of NFT practices and their contribution to the Indonesian community have necessitated a more mature regulatory approach with regard to intellectual property rights and other legal considerations. Given the authority to formulate legal regulations, the Indonesian government should enforce provisions that are codified within smart contracts, including the transfer of economic rights.



Currently, Indonesian law has yet to accommodate NFT practices concerning the transfer of rights. Hence, as the entity responsible for creating legal regulations, the government must establish a robust framework to govern the provisions enshrined in smart contracts, including the transfer of economic rights. The Indonesian population is widely acknowledged to possess limited legal literacy, underscoring the importance of mitigating situations where parties involved in NFT transactions might perceive the transfer of rights as a full transfer of ownership and copyright-right from the author or copyright holder to the buyer.

It is crucial to note that the ownership of an NFT does not inherently confer direct ownership of the related asset or artwork. Rather, the ownership of an NFT is limited to a unique token, represented by a hash code and its corresponding record within the underlying digital asset.<sup>80</sup> The ownership of the copyright and property rights in NFT artworks are not always held by the same party, as the copyright holder may sell the artwork to another individual who will then become the owner of the artwork. This results in the differentiation between the copyright and property rights. This practice exemplifies the principle of “droit de suite”, which is widely recognized in the copyright legal systems of Germany, Ireland, and even internationally. However, its implementation has yet to be explicitly articulated in Indonesian legal framework.

The 1948 Brussels Text added the concept of “*Droit De Suite*” to the Berne Conventions, which gives visual artists an economic right to receive a portion of the profits whenever their works are resold. Several countries have established their own form of *droit de suite*.<sup>81</sup> This resale royalty right is based on two principles. The first is that works of fine art, which are valuable because of their originality or limited edition, are undervalued by copyright and author's rights, which focus on

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<sup>80</sup> Anction Scanner, “What Is a Non-Fungible Token (NFT)?,” Sanction Scanner, last modified 2021, accessed 9 February 2022, <https://sanctionsscanner.com/blog/what-is-a-non-fungible-token-nft-375>., cited from Dewi Sulistianingsih and Apriliana Khomsa Kinanti, Hak Karya Cipta Non-Fungible Token (NFT) Dalam Sudut Pandang Hukum Hak Kekayaan Intelektual, *Krtha Bhayangkara*, Vol. 16, No. 1, 2022, p. 199

<sup>81</sup> See generally report of the Register of Copyright, *Droit De Suite: Th Artist Resale Royalty* 1992: Liliane de Pierredon-Fawcett, the *Droit de Suite* in Literary and Artistic Property: A Comparative Law Study (1991) Katzenberger, cited from *Paul Goldstein and Bernt Hugenholtz*, 2010, *International Copyright*, Second Edition, Oxford: Oxford Community Press, p. 313

mass distribution. The second is that artists who sell their works at low prices should have the opportunity to benefit from the increase in value when the works are resold. The author believes that the current Indonesian law, when compared to the two reference laws of Ireland and Germany, is unable to address the notion of property rights in the context of NFTs. This raises concerns regarding the potential harm to creators as there is currently no implementation of the resale right principle, also known as *droit de suite*, as recognized in the Berne Convention and other legal systems.

Therefore, it is more accurate to consider NFTs as a tool for licensing or providing supporting evidence in the transfer of a work of art, rather than as the main evidence. The primary evidence must be in the form of registration with a public institution, namely the DGIP (Directorate General of Intellectual Property) in Indonesia. Thus, the role of NFTs is merely to reinforce intellectual property rights, rather than replace them, as intellectual property rights occupy a position as the protector of NFTs.<sup>82</sup>

The development of this technology undoubtedly comes with its risks, as it is widely known that threats always seek to steal physical or digital assets through novel means. One primary concern pertains to the absence of clear licensing terms for NFTs. In the absence of an explicit license, disputes over the use or ownership of digital media associated with an NFT would likely be subject to common law contractual and licensing principles, which could result in unfavorable outcomes for both the NFT purchaser and the owners of the intellectual property.<sup>83</sup> Second, this paper believes that despite NFT marketplaces offering significant terms and conditions, additional enforcement measures are required within the licensing agreement. In cases where NFTs are purchased by unidentified entities, the practicality of enforcing licensing terms without specific coded mechanisms to address breaches is notably challenging. Furthermore, concerning smart contracts, the vulnerability to hacking poses a significant risk for users. The recent Poly

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<sup>82</sup> Dewi Sulistianingsih and Apriliana Khomsa Kinanti, *Op.cit*, p . 204

<sup>83</sup> Elizabeth & Andrew, "NFT Licensing: Three Mistakes To Avoid", <https://www.klgates.com/NFT-Licensing-Three-Mistakes-to-Avoid-10-17-2022>, accessed 25 October 2022

Network breach, in which an NFT valued at \$600 million was stolen, serves as a concrete example of this issue.<sup>84</sup>

## CONCLUSION

In conclusion, the emergence of NFTs has presented new opportunities for individuals to utilize their intellectual property in unique ways while providing evidence of originality and protecting against copyright infringement. However, as with any new technology, NFTs present new legal challenges that need to be addressed. It is acknowledged that in Indonesia, despite the fact that NFT practices give protection to artists and parties engaged in the sale and transfer of digital art, they still face legal challenges as the country has yet to establish a robust framework to govern its provisions. This results in the potential harm to creators and misperception among NFT participants. This is due to the absence of specific regulations governing NFTs, as well as the fact that the Indonesian Copyright Law itself has yet to encompass the principle of resale rights or *droit de suite*.

## SUGGESTIONS

Based on the research conducted, the author recommends that the government (lawmakers) to implement comprehensive and transparent copyright protection procedures in the field of cyberspace of in this case NFT practice. Due to the rapid development of technology and the tremendous value of NFT transactions, there is an urgent need for copyright protection for NFT digital assets. The author's other concern for the government is the inclusion of the concept of *Droit de Suite* or the artist resale right into Indonesian legal system. This seems to be crucial for providing copyright holders incentive. Germany and Ireland, the countries being compared in this research, have recognized this concept. Furthermore, copyright holders or NFT users who engage in the purchase and sale of NFTs in a marketplace must be assured of the rights they would obtain from such NFT transaction. This is critical in determining what can be performed with the transaction, especially under terms of copyright.

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<sup>84</sup> Turner Right, 'Hackers stole at least \$600M in Poly exploit across three chains' <https://cointelegraph.com/news/polygon-pays-2m-bounty-on-bug-which-could-have-compromised-850m-in-user-funds>, accessed 24 October 2022

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