

The Art Industry Gets Creative: Art Basel Features NFTs and Blockchain Art

By Stephanie Nakash

Art Basel is an international art fair staged in Miami Beach. Each year, the event features the best artwork from leading galleries across the world and brings together the best artists creating such works. Despite last year's hiatus due to COVID concerns, the event returned this year—in innovative and ground-breaking fashion.

Embracing the move into the digital space, Art Basel 2021 hosted non-fungible tokens¹ (NFTs), which are unique pieces of digital content recorded in blockchain as non-divisible digital assets. Specifically, NFTs allow artists to leverage blockchain technology to distribute and sell works. Art Basel, as an in-person event, provided the opportunity for artists who have created artwork in the blockchain space to bring their creations to life at the event. In particular, the exhibition featured cryptoartists with work showcasing AI-generated images and images of sci-fi-themed animations. Further, this year's event allowed attendees to collaborate with the pieces to create their own NFTs on-site at the Miami Beach Convention Center.

As the rise of NFTs continues to burgeon, now taking form in the mainstream art world, prevalent legal issues arise, particularly with respect to copyright law and contract law.² Recently, Liverpool-based art collector and computer programmer Amir Soleymani along with NFT platform Nifty Gateway stand as an example foreshadowing potential legal and contractual issues that arise alongside the creation and implementation of NFTs.³ The case concerns an auction relating to the digital artist Beeple's artwork titled 'Abundance.' Mr. Soleymani claims he placed a \$165,000 bid for the 'Abundance' NFT. Specifically, Mr. Soleymani alleges that the online auction terms were changed upon his bid, claiming he had only bid on the piece in its original edition. In the universe of NFTs, it is "widely acknowledge that NFTs that are not 'first edition' carry significantly lower value than the 'original' first edition."⁴ Thus, the suit challenges whether the enforceability of arbitration clauses in the terms are valid, raises uncertainties surrounding NFTs and their contractual structures, and questions traditional adages known to traditional law, such as *caveat emptor* (let the buyer beware).⁵

In addition to contractual disputes arising from the sale of NFTs, copyright issues have similarly entered the picture. In the case of digital artist Ludvig Holmen, a fake NFT artist defrauded over 2,000 participants of an auction when he offered 2,000 NFTs in pre-sale. When interested users purchased the supposed NFTs created by Holmen in the shape of 3D busts, instead of receiving the collectible NFTs, they found a black background image with emojis; the NFTs had been stolen from Holmen and subject to a scam. Holmen explained "it was a bit annoying that someone took and used [my] work in that way . . . [a]lthough it was nice to see that the work has been appreciated by someone, without my knowing it."⁶ As trouble now arises with respect to tracing the addresses of the said scammers and in redressing injured parties' harms, Holmen himself is considering gifting some of his art to those affected by the scam.

Both the *Soleymani* and *Holmen* cases stand as paradigmatic examples of the issues that arise when applying existing laws to an emerging digital asset class. As the NFT market continues to

¹ <https://www.merriam-webster.com/dictionary/NFT>.

² <https://artlawandmore.com/2021/07/08/what-are-the-legal-issues-concerning-non-fungible-tokens-nfts/>.

³ <https://www.theartnewspaper.com/2021/10/01/art-collector-sues-nft-platform-over-beeple-auction>.

⁴ <https://www.pinsentmasons.com/out-law/analysis/court-case-potential-legal-contractual-issues-nfts>.

⁵ <https://www.theartnewspaper.com/2021/10/01/art-collector-sues-nft-platform-over-beeple-auction>.

⁶ <https://www.cryptodefinance.com/fake-nft-artist-stole-us140k-solana/>.

become a reality, real-world legal and regulatory issues drift from the cyberspace to the physical world with a big bang.

--*Stephanie Nakash*

Stephanie Nakash is a 2L from New York, interested in intellectual property and technology work. She enjoys playing sports, traveling, cooking, and trying new things in her free time.