



BCC response to the DCMS Committee Inquiry on Non-fungible tokens (NFTs) and the blockchain

Introduction.

The British Copyright Council (BCC) represents those who create, hold interests, or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.

Our members include professional associations, industry bodies and trade unions which together represent hundreds of thousands of authors, creators, performers, publishers, and producers. These right holders include many individual freelancers, sole traders, and SMEs, as well as larger corporations within the creative and cultural industries. Our members also include collecting societies which represent right holders, and which provide licensed access to works of creativity. A list of our members can be found [here](#).

We welcome the opportunity to submit evidence on the DCMS Committee inquiry into the operation, risks, and benefits of Non-Fungible Tokens (NFTs) and the wider blockchain. This is a very broad and rapidly evolving space, but we write with reference to how NFTs and blockchain technology interact with the UK copyright regime, and the current working practices of creators and rightsholders. We would also note that many sectors of the creative industries are exploring how NFTs are impacting the engagement of consumers and audiences with cultural and creative works. However, we do stress that this is a new and ongoing stream of our work for us and for our members. As a result, new insights may emerge over the coming months, and we would welcome the opportunity to share new evidence at a later stage.

Is the UK's light-touch NFT regulation sufficient?

The light touch approach to NFT regulation does not remove the need to comply with relevant regulations. In the creative sector NFTs are often “minted” from original works protected by copyright. This “minting” constitutes a reproduction and requires a license from the right holders. Normal copyright rules apply.

We note that a NFT minted from a creative work such as a painting or a musical work constitutes a token or receipt attached to the relevant digital asset; as such it is unlikely that NFTs themselves attract copyright protection as original works or derivative works even though the work from which the NFT is created may enjoy copyright protection.

Most commonly, an NFT consists of several disparate elements including: a Contract address (a unique character string), a Token ID (a unique character string), a Token Name (a text string), the Original Creator ID (a unique character string) and either the Original Work itself or, more commonly, a link to the Original Work (via a web URL). When an NFT is traded, this generally does not extend to the original work, it is solely the NFT that changes hands. As a result, NFTs have very little to do with copyright since the actual original work is not being purchased but rather a unique link to its digital copy.

However, there are two key issues relating to NFTs from a copyright standpoint which warrant the Committee's attention from a regulatory perspective. Firstly, the majority of the underlying works being used to "mint" NFTs are works of art which do fall under copyright protection. Secondly, as the NFT market has gained prominence, it has become increasingly clear that many consumers and investors have a lack of clarity about the IP rights that are secured through the purchase of an NFT.

It is paramount that there is clarity that despite the "light touch" approach to NFT Regulation other laws such as copyright continue to apply.

On the consumer and investor protection point, there exists a lot of uncertainty regarding the intellectual property rights enjoyed by NFT owners and the extent to which they can then deploy purchased NFTs. Most commonly, unless the NFT creator takes explicit action otherwise during the design of the NFT, copyright law does not grant an NFT owner any rights. In the first instance, where NFTs have been "minted" while avoiding infringing on the intellectual property rights of creators and rightsholders, establishing guidelines for clear smart contracts would greatly reduce the risks of inadvertent copyright infringing uses by clearly laying down the scope of use of the NFTs.

What are the potential harms to vulnerable people of NFT speculation?

While many media accounts have been made about the potentially lucrative returns that can be achieved through NFT speculation, prospective investors need to be aware that many NFTs use of creative works infringes copyright. To help safeguard their investments, buyers do need to be equipped to verify that the NFTs they are purchasing are validated or from "verified collections" which may prove onerous, if not clearly signposted, for vulnerable individuals trying to navigate the NFT market. In addition,

buyers should be made aware that holding NFTs does not imply entire ownership of the underlying asset and that contract conditions should be reviewed prior to purchase.

Do blockchains offer security to British investors?

Here we must distinguish the difference between the security of blockchain as a technology, and the security of blockchain stored assets. As previously stated, unless specifically outlined otherwise, acquiring an NFT of a copyright-protected work does not grant the acquirer the right to exploit that work. They only require a digital copy of a work; more specifically, a token or receipt attached to the relevant digital asset. Through specific licensing of NFTs at the minting and contract stage, uncertainty can be considerably limited in this regard.

What are the potential benefits to individuals and society of NFT speculation?

NFTs can offer new or more practical ways to market creative works. For example, many creators have used NFTs to generate new revenue streams from licensing their works. Furthermore, using smart self-executing contracts allows for any type of agreement, such as a licence or a payment of royalties, to be irrevocably 'written' into a blockchain thereby offering additional much needed security and revenue streams for creators and rightsholders.

Conclusion

In summary, the UK copyright regime provides a world-leading system which recognises and rewards creative work while allowing for innovative advances. Right holders are successfully licensing the use of their creative works for minting. For the NFT market to flourish and reduce some inherent risks, the creation of digital assets used to fuel the market must be underpinned by understanding as well as effective and strong protection of copyright.