

I, LAWYER

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INNOVATION LAWYER PROJECT

# ART & LAW INSIGHTS

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## Global Legal Briefing

Zaglio Orizio e Associati  
in collaboration with our  
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2021

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## **NFTs: RISING AND SHINING OF AN ART MARKET TREND**

**BY CATERINA FRULLONI, VERA CANEVAZZI AND ILARIA BIGNOTTI**

**ART FOR CONSULTING<sup>4</sup>**

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Since the beginning of the pandemic, we have been wondering about the impact of this situation on the art market sector. As predictable, at a time when galleries, art fairs and auctions have been closed, there has been a huge implementation of new technologies and e-commerce platforms, in order to keep the relationship between artworks and collectors alive.

In fact, as emerged in the recent Art Basel report, in 2020 the 80% of the expenses made by the various operators in the artistic sector concerned technological and digital implementation. And just as the galleries got used with the online selling, so the public learned to enjoy the virtual version of artworks as well. However, eighteen months after the first lockdown, we must admit the development has exceeded all the expectations: forms of expression, languages and customs have radically changed, in particular taking in consideration the sector of NFTs and crypto art.

After days when you can't help, but hear about the keystrokes of NFTs in auctions, just a question comes to mind: what is exactly an NFT? Acronym for Non Fungible Token characterize a special kind of token, different from the ones we got used to, where a finite or infinite supply is displayed depending on the case, and all the tokens and the cryptos are the same without distinction. On the contrary, each NFT has its own peculiar ID, containing a certain information that cannot be the same as another. Theoretically, not only every information can be turned into a NFT, but it possible to bound a physical asset (like an artwork), to a digital one, creating for example the digital version of a painting that I own. As a result of this, the NFT ownership is marked with a property document, accessible from a link and protected by the access credentials; while in case of the digitalization of a physical asset, a transaction hash or the NFT ID can be applied directly on the good.

Taking a step back, it can be interesting to resume the most significant stages of the NFTs rising presence on the art market. March 11<sup>th</sup>, 2020, was undoubtedly a historic day for the art sector: a Crypto artwork by Beeple was sold for the first time at the record price of \$ 60,250,000, "Everydays - The First 5000 days" (21,069 pixels x 21,069 pixels), composed of five thousand images that the artist created and collected from May 1<sup>st</sup> 2007 to January 7<sup>th</sup> 2021, and which authenticity is guaranteed by encrypted codes, was bought by Metakovan, founder and financier of Metapurse, the largest NFTs

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<sup>4</sup> <https://www.artfor-consulting.com>.

Vera Canevazzi – Art Consultant ([www.vera-artconsulting.com](http://www.vera-artconsulting.com) - [info@vera-artconsulting.com](mailto:info@vera-artconsulting.com))

Caterina Frulloni – Art Advisor ([caterina@vera-artconsulting.com](mailto:caterina@vera-artconsulting.com))

Ilaria Bignotti – PhD, Art historian and Curator ([www.ilariabignotti.com](http://www.ilariabignotti.com) - [ilariabignotti79@gmail.com](mailto:ilariabignotti79@gmail.com))

fund in the world. Then, a crucial turning point was dispatched by the blockchain company Injective Protocol, which after the purchasing of a Banksy's artwork and the conversion of it into an NFT, burned the physical object live streaming. Injective Protocol bought Banksy's work for about \$ 95,000 last winter. After the reconversion in NFT, the digital asset reached a value of 382,000\$ in the week of March 15<sup>th</sup> 2021.

However, a Multi-Generational NFT - Mad Dog Jones's 'REPLICATOR' - has been sold for \$ 4,144,000 by the British auction house Phillip's on April 23<sup>rd</sup>, 2021. This new kind of NFT includes seven unique generations of digital artworks. The first generation, sold at auction, is 'Genesis', a video of an office's copy machine. As first NFT generation, it will produce six NFTs, at the rate of one per month, and each generation will obviously be unique from the previous and subsequent ones. In turn, further generations will produce other NFTs, but in smaller quantities (one work less each generation turn), until generation 7 will no longer produce any NFTs. Despite the initial investment to purchase the first generation, the owner is still not certain of possessing the future ones: in fact, each piece can be subjective to the generative errors of the previous generation. As it has been shown, NFTs artwork seems to be a more appealing solution for digital committed investors rather than a fresh interest for a classical art collector.

Are there any proven advantages for a NFT artwork? For sure, an essential point is strongly related to the authenticity: normally to attest the proven authenticity of a physical artwork, a certificate from the archive or foundation is required, upon payment of fees; on the contrary, the NFT authenticity is already given through the NFT generating account or address, providing a certainty for the provenance and the origin of the digital asset. Indeed, that information becomes part of the digital heritage of the asset and it cannot be omitted, deleted or modified, since it is inextricably linked to the NFT, without the need to advance procedures request to any associations. Another positive side is the aspect of circulation and storage of NFTs: as a special token it can be stored in a personal address and, in case of ownership's passages, someone could simply enter the address of the recipient's wallet, without losing any information through the transfer since they are linked to the blockchain. In addition, the multi-level disintermediation makes the method of selling NFT completely new: for an artist there is no longer any need to involve a gallery that retains a percentage on the artwork's price, but anyone, in a totally independent way, can create and sell NFTs. The methods for sale can be direct, through auction houses or specialized platforms, such as SuperRare, Nifty Gateway, Rarible, OpenSea or Makersplace.

The other end of the spectrum is characterized by cons, which are not intrinsic to the very nature of the asset, but concern merely its management methods: blockchain and crypto technologies generally have a significant impact in terms of energy use and carbon emissions. New solutions are however moving in the direction of environmental sustainability. For example, the Palm ecosystem has been designed to achieve fast transaction and extra energy efficiency, to create a new NFTs ecosystem which can take advantages from Ethereum's user base, but in a more scalable and sustainable way.

The initial NFT will be named "\$ PALM" and is expected to be up to 99% more energy efficient than proof-of-work based blockchain networks, providing artists with a more sustainable solution through proof-of-stake. Damian Hirst will be one of the first top artist committed, launching a series of ten thousand paintings, which will be sold accompanied by the artist's signature in NFT.

In addition to the above, the issue of copyright in connection with NFTs is quite thorny, and subverts the laws of the traditional artistic system: when someone buys an NFT, he holds the right to claim ownership of the NFT itself and the right to exclude others from claiming ownership of the same NFT. Beyond that, it will depend on whatever terms govern the NFT, depending on the platform's system where the NFT has been sold. So, every selling platform behave as a microcosm answering to a proper inner regulation system, and the commercial right of reselling an artwork once acquired, in most cases, is held by the involved platform; while the collector preserves his right to exhibit the artwork.

Recently, the turning point which foreshadows new horizons, certainly comes from the Uffizi Gallery in Florence, where the first digitalized masterpiece in NFT version, the *Tondo Doni* by Michelangelo, has been created, thanks to the contribution of the company Cinello. Made through an exclusive patent, this DAW® (Digital Art Work) is the first of its kind in the world, made unique thanks to a patented cryptographic system that prevents tampering and copying, and attests its ownership through NFT. For each DAW®, in fact, an NFT token is also created on the Blockchain which certifies the ownership of the reproduction at very high resolution, and a certification of authenticity is also attached from the director of the institution.

Still, what if turning the images of the Italian artistic heritage into digital reproduction and padlocking it with Blockchain and NFT could be one of the best ways for museums to raise funds after the pandemic situation? And who knows, maybe the future of the art market will be also ruled by these unique digital copies.

From the perspective of art history and archival conservation, the subject certainly raises epoch-making questions, to which experts in the field will have to respond: just by way of initial thoughts, how will the dissemination of all times masterpieces be influenced if this trend continues, and what consequences will it have on the knowledge of the general public? How will it affect the historicization of artworks and their critical reception?

Let us think of the impact that Pop Art has had on the transmission of images, especially with regard to the historical perspective; and let us think, therefore, of the weight already played by digitization and by the virtual at the beginning of the new Millennium on the subject of archives and on the practice of archiving works of art in private and public collections.