The Legal Implications of NFTs
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Recently, Non-Fungible Tokens (NFTs) have become more and more popular, plaguing social media platforms and gaining traction in the cryptocurrency world. With the rise of NFTs, there are still many questions surrounding their legal implications. To stay informed about the growing digital assets market, I have provided a brief summary of Osborne Clarke LLP’s article ‘What are the legal issues around NFTs?’. Although NFTs are a new form of asset transfer, they are subject to existing laws and regulations.

An NFT is a digital asset recorded on a blockchain ledger to prove ownership and authenticity of the asset. What makes the NFT different from all other digital assets is that each asset is uniquely its own; the asset is not interchangeable like other digital assets. Because the asset is unique, it can represent anything such as a real property title. Although NFTs are inherently non-fungible, the rights associated with the asset must be clarified. The question of whether the issuers of these NFTs are certifying ownership of an asset, a license to use of intellectual property rights, or something else remains unanswered. The unspecified transfer of rights is likely to bring many claims by both the issuer and purchaser. But these claims can be minimized by proper due diligence of the purchaser and issuer.

Intellectual property rights are a highly debated topic regarding NFTs, as issuers will want to control purchasers’ use of an intellectual property right associated with an NFT. Typically, the issuer retains copyright and intellectual property rights, and the buyer will be granted the right to display the underlying asset. Thus, caution must be used when transferring intellectual property rights because what the purchaser will own depends on any coding or smart contract embedded in the NFT.

The article further discusses the financial regulatory concerns surrounding NFTs as an asset. NFTs are not specifically regulated yet, but if they exhibit characteristics of other regulated investment units, then there might be legal obligations attached to them. Specifically, issuers would need to demonstrate the non-fungibility of all NFTs that they offer to avoid it being considered a security token or cryptocurrency, which is subject to financial regulation.

Non-Fungible Tokens have many legal questions surrounding them, as it is the first digital asset of its kind. Careful diligence by both the issuer and purchaser is recommended until further regulations come into effect. For more information, please see this article "What are the Legal Issues Around NFTs?" from Osborne Clarke LLP.