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From Christie's to Nifty's: Securing the Rights of a Future Virtual Gallery

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I. Introduction

NFTs are the new hot ticket item. Spice DAO, an anonymous NFT purchasing group, recently bought a copy of the book *Dune* for approximately three million dollars with the intentions of turning it into an NFT, burning it as a marketing stunt, and producing an animated series based off of it.¹ Unfortunately for them, they lack the copyright to capitalize on it the way they had intended, and instead can only hope to resell the book itself.² This right is clearly retained by the estate of the author in this case, but a major problem involving NFTs has been highlighted. When a piece of art has been minted into an NFT, the rights of the creators through its subsequent handling have yet to be formally established, such that leaders in the NFT industry are unsure about them. While it is currently unclear, non-transferable moral rights should be retained by artists in the sale and transfer of NFTs. Clarity in favor of expansion of current Visual Artists Rights Act (“VARA”) rights would protect the digital art being produced by thousands of artists today. The intent of copyright law is to protect the intellectual property of artists, and the use of the digital space as a medium should not preclude that protection.

Popular viral videos from the early days of Youtube are being sold and traded for large sums of money.³ Celebrities are selling personalized tokens to their fans.⁴ Popular branding

¹ Adrienne Westenfeld, The Crypto Bros Who Thought They Bought the *Dune* Rights Won't Give Up, ESQUIRE (Jan. 25, 2022), <https://www.esquire.com/entertainment/books/a38815538/dune-crypto-nft-sale-mistake-explained/>.

² *Id.*

³ See “Charlie Bit Me”, <https://www.charliebitme.com/#/> (last visited Oct. 17, 2021).

⁴ Rimme Dirchi, Hollywood Celebrities Who Have Launched NFTs, MINT, <https://www.livemint.com/news/world/hollywood-celebrities-who-have-launched-nfts-11644626580528.html> (last visited Apr. 1, 2022) (noting Snoop Dogg, Paris Hilton, Lindsay Lohan, and Eminem as celebrities that have started selling NFTs); Samantha Corsica, Simone Biles Joins Fellow GOAT Athletes With The Launch Of Her First-Ever NFT Collection, <https://afrotech.com/simone-biles-first-ever-nft-collection-autograph-tom-brady> (last visited Oct. 17, 2021).

icons, like the Gucci Ghost, are being collected as the ultimate level of brand loyalty.⁵ Digital images, in particular, are becoming a source of income for many artists. The purchase of images from already established artists is even more economically astounding. The famous Christie's Auction House sold Beeple's "Everydays" for \$69.3 million in March 2021.⁶ Mark Winkelmann, also known as Beeple, created new digital art everyday over a span of five-thousand days.⁷ This series was collaged together to create the famous NFT.⁸ Art collection purchasing of digital art NFTs is rivaling that of traditional pieces of art.⁹ Being that a purchaser will not have the physical piece of art to hang as they wish, it is unclear how traditional governing art laws will apply and what this means for the purchasers of NFTs. Even more so, the rights retained by artists during the sale need to be clarified. Yet, it is unclear how these laws will apply to the digital art space and how, if at all, application will vary in regard to NFT art sales. This comment will advocate for the expansion of current copyright and VARA provisions to cover digital art NFT sales and the artists that create them.

Although NFTs are being used in varied applications, this comment will only focus on NFTs within the digital art space. Part II of this comment will articulate what an NFT is, how art is turned into an NFT, and the relevance of the digital art NFT market. Part III will detail which intellectual property copyright elements currently exist that would cover traditional art pieces and their sales, as well as under the VARA as it currently stands. Lastly, Part IV will explore

⁵ Paige Mastrandrea, Trevor Andrew AKA Gucci Ghost Enters The NFT Art Space With Noise, <https://oceandrive.com/gucci-ghost> (last visited Oct. 13, 2021).

⁶ Sarah Cascone, Here Are the 14 Most Expensive NFTs Sold to Date, From Beeple to Mad Dog Jones and Beyond, ARTNET NEWS, <https://news.artnet.com/market/updated-most-expensive-nfts-1980942> (last visited Oct. 17, 2021).

⁷ Beeple: The First 5000 Days, CHRISTIE'S, <https://onlineonly.christies.com/s/beeple-first-5000-days/beeple-b-1981-1/112924> (last visited Apr. 1, 2022).

⁸ *Id.*

⁹ Mitchell Clark, NFTs, Explained, THE VERGE <https://www.theverge.com/22310188/nft-explainer-what-is-blockchain-crypto-art-faq> (last visited Sept. 3, 2021) (noting Beeple's "Everydays" valued more than \$15 million more than Monet's Nympeas).

which of these elements may potentially be applied to the growing field of digital art NFT sales. This comment will advocate for clarity in how such NFT sales should be handled and which rights will be retained by artists. While difficulties posed by the tangibility of NFTs exist, traditional copyright law can be adapted to suit the needs of an emerging digital space.

II. Background

a. What Is An NFT?

NFT is the acronym for non-fungible token.¹⁰ As such, this is an asset that is exchanged for currency with widespread applications in the blockchain space. Non-fungible is an economics term indicating a unique item that is not interchangeable.¹¹ By contrast, a fungible item is not unique and can be replaced by a copy.¹² For example, our currency is fungible such that one twenty-dollar bill can be replaced by another without affecting its value.¹³ NFTs, being non-fungible, are unique to the digital world. Most digital files we are familiar with are copies that are identical, or fungible, to the original in the computer code that identifies them. NFTs are different because during the process of creating them, they are assigned an identifier that creates a uniqueness via computer code.¹⁴ This uniqueness makes each one non-fungible. The NFT can be copied physically, but there is only one true owner of an original as per the identifier that is attached to it.

A token is a placeholder of value within the blockchain space.¹⁵ As such, the NFT is stored within a blockchain, where its value is established as an alternative asset to the

¹⁰ *Id.*

¹¹ What Are NFTs And Why Are Some Worth Millions?, BBC NEWS, <https://www.bbc.com/news/technology-56371912> (last visited Sept. 10, 2021).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

cryptocurrencies that may also concurrently exist.¹⁶ Its value is determined to be whatever someone is willing to pay for it. NFTs can include anything from art to online concerts and house deeds.¹⁷ One NFT can be used as collateral for another.¹⁸ NFTs can be paid for or transferred between digital wallets via cryptocurrency payments.¹⁹

NFTs are relevant in the blockchain space as through this medium they are registered, recorded, and stored. Blockchain technology is revolutionary as it is a decentralized system that utilizes its users' processing capabilities to expand and protect its system.²⁰ Decentralized refers to the method by which access is both shared and upheld. Blockchains often lack a central repository as well as a central authority, making them attractive to users for a variety of reasons.²¹ Governments do not control them and anyone around the world can have access, eliminating reliance on potentially corrupt monetary systems. A blockchain relies on its community of users to utilize their own systems to record the functions and actions taken within it.²² Each transaction is recorded on each person's system.²³ As such, the system is tamper-resistant because of the ubiquitous visibility.²⁴ Multiple blockchains exist, all with different value structures and strengths.

¹⁶ Jake Frankenfield, Crypto Tokens, <https://www.investopedia.com/terms/c/crypto-token.asp> (last visited Dec. 16, 2021).

¹⁷ Natalia Karayaneva, NFTs Work For Digital Art. They Also Work Perfectly For Real Estate., FORBES (Apr. 8, 2021), <https://www.forbes.com/sites/nataliakarayaneva/2021/04/08/nfts-work-for-digital-art-they-also-work-perfectly-for-real-estate/?sh=72a1608b43f3>.

¹⁸ *Id.*

¹⁹ Alex Gailey, 3 Experts Explain Why NFTs Are So Popular, and What They Mean For Crypto Investors, TIME (Feb. 14, 2022) <https://time.com/nextadvisor/investing/cryptocurrency/are-nfts-good-investment/>.

²⁰ Emily Rutland, Blockchain Byte: What Is The Difference Between A Centralized and Decentralized Blockchain?, 2-3, https://www.finra.org/sites/default/files/2017_BC_Byte.pdf (last visited Apr. 1, 2022).

²¹ Dylan Yaga, Peter Mell, & et al., Blockchain Technology Overview, 1 NAT'L INST. STANDARDS TECH. (Oct. 2018).

²² *Id.*

²³ David Rodeck & John Schmidt, What Is Blockchain?, FORBES ADVISOR (Feb. 10, 2022), <https://www.forbes.com/advisor/investing/cryptocurrency/what-is-blockchain/>.

²⁴ Yaga, *supra* note 21.

Bitcoin is a popular alternative financial system that uses this technology.²⁵ Through the “mining” of blocks, more space is ultimately created to store more data.²⁶ Because it is decentralized, every user on the system has viewing access to the whole.²⁷ As it currently exists, the Bitcoin blockchain does not support NFTs, but the other blockchains that do utilize similar mining technology to create space for information to be stored.

Popular companies that support NFTs include Ethereum and FLOW. For blockchains like these, once an NFT is uploaded as being bought and transferred by a specific individual, this information will be registered into the blockchain.²⁸ Ownership of the NFT cannot be questioned and it can be easily verified by each user that has access.²⁹ Although it may be possible that anyone can technically view, access, and make copies of an NFT for their own purposes, the true owner will be known.³⁰ This means that NFTs are more like collector’s items, available to be viewed by all with the bragging rights retained by the collector.³¹

Aside from cases in which an owner has a specialized separate drive or a physical copy, the owner will likely not be in possession of the NFT as it is part of the digital blockchain.³² Due to their large size, NFTs are rarely stored on the blockchains themselves, so they are often stored on independent websites or host sites. A link to the website or host site is often included on the blockchain instead.

²⁵ Euny Hong, How Does Bitcoin Mining Work?, INVESTOPEDIA, <https://www.investopedia.com/tech/how-does-bitcoin-mining-work/> (last visited Sept. 7, 2021).

²⁶ *Id.*

²⁷ Rutland, *supra* note 20.

²⁸ Non-Fungible Tokens (NFTs) <https://ethereum.org/en/nft/> (last visited Oct. 3, 2021).

²⁹ Rutland, *supra* note 20.

³⁰ Rutland, *supra* note 20.

³¹ Robyn Conti & John Schmidt, What Is An NFT? Non-Fungible Tokens Explained, FORBES ADVISOR, (Apr. 8, 2022) <https://www.forbes.com/advisor/investing/cryptocurrency/nft-non-fungible-token/>.

³² Andrew Guadamuz, What Do You Actually Own When You Buy An NFT?, WORLD ECONOMIC FORUM, (Feb. 7, 2022) <https://www.weforum.org/agenda/2022/02/non-fungible-tokens-nfts-and-copyright/>.

This poses risks for any vulnerabilities in the system. If the blockchain that an NFT is stored within is destroyed or dissolves, then the NFT, or at least the verified ownership, can go with it.³³ The same risk is presented with the websites or host sites. If either of these dissipate, then the actual NFT file can be permanently lost, leaving the owner with nothing to show for a purchase.

b. Turning Art Into NFTs

Physical and digital pieces of art can go through the process of “minting” to be converted into NFTs.³⁴ This is done on a number of platforms, such as OpenSea and Rarible.³⁵ For digital art, an artist starts by creating his or her piece of digital art through a computer program. The artist then uploads the file to a minting platform and marketplace, where the NFT is created and can be sold on that same platform to the highest bidder.³⁶ Minting involves creating code via smart contracts for ownership and transferability.³⁷ This code acts as the unique identifier for the NFT and is then uploaded to the blockchain as public record.³⁸ A smart contract is a program on the blockchain that facilitates the transfer of ownership by recording the transactions that are sent and received, including the token ID number and the address of the token owner.³⁹ Once recorded, the smart contract cannot be altered, and all information is stored within it.⁴⁰ The owner then has a unique key that grants access to the smart contract.⁴¹ The actual file of the

³³ Anne-Laure Alléhaut, NFTs May Come With Rewards, But Also Legal Risks, LAW360 (2021).

³⁴ Rachel Martin, What Does it Mean to “Mint” an NFT and How Do You Do It?, ARTESSERE, <https://artessere.com/blog/37-what-does-it-mean-to-mint-an-nft-and-how-do-you-do-it> (last visited Mar. 27, 2022).

³⁵ James Arney, How To Make Money With NFTs, EXPENSIVITY, (Jan. 15, 2022) <https://www.expensivity.com/how-to-make-money-with-nfts/>.

³⁶ Martin, *supra* note 34.

³⁷ Anna Katharina Tipotsch, Formulating A Smart Contract And Minting An NFT, SCHONHERR (May 21, 2021) <https://www.schoenherr.eu/content/formulating-a-smart-contract-and-minting-an-nft/>.

³⁸ Alléhaut, *supra* note 33.

³⁹ Tipotsch, *supra* note 37.

⁴⁰ Tipotsch, *supra* note 37.

⁴¹ Tipotsch, *supra* note 37.

digital art is usually housed off of the blockchain because of its size, so the token acts more like a placeholder of ownership.⁴² A web address to access the art is usually included.⁴³

Minting can also occur with physical pieces of art.⁴⁴ This process includes scanning physical art into a digital file and establishing that file as an NFT.⁴⁵ The rest of the process for minting is the same as previously mentioned. This preserves the file in a digital format to be transferred and sold through a new medium.

c. The Emerging Digital Art Market

Although the discussion of NFTs has been most prevalent quite recently, NFTs have been publicly available for purchase as early as 2017. The first popularized use of NFTs was on the Ethereum blockchain through CryptoKitties.⁴⁶ This is an Ethereum game where participants can express themselves through digital feline avatars, while also purchasing and breeding virtual cats.⁴⁷ Each cat is unique and non-fungible, both in its visible characteristics and its code. Although comical in its inception, the technology has since expanded to include more serious works of art.

Artists have taken to this alternative artform with the understanding of its vast application and financial potential. Social media platforms as well as direct NFT blockchain platforms provide a means for the selling and purchasing of NFTs. Smaller, freelance artists have been more inclined to utilize Instagram and Discord for business, while reputable auction houses have

⁴² Tipotsch, *supra* note 37.

⁴³ Tipotsch, *supra* note 37.

⁴⁴ Hugo P., Physical NFT Art, or Physical Art NFT?, NONFUNGIBLE, (Jun. 21, 2021) <https://nonfungible.com/news/art/physical-nft-art-or-physical-art-nft>.

⁴⁵ *Id.*

⁴⁶ Clark, *supra* note 9.

⁴⁷ Clark, *supra* note 9.

begun auctioning NFTs created by more popular and relevant artists. The NFT art market is valued at \$490 million dollars as of 2021.⁴⁸

Online marketplaces similar to auction houses have been dealing in digital art. Nifty Gateway is a popular one, functioning as a cryptocurrency NFT marketplace.⁴⁹ As of March 2021, it has also partnered with the brick and mortar Sotheby's Auction House.⁵⁰ Existing physical auction houses, like the famous Christie's Auction House, have been handling major digital art transactions as well.⁵¹ Sotheby's and Phillips Auctioneers LLC is also famed for its sale of a CryptoPunk for \$11.75 million.⁵² Created within a series by Larva Labs software developers Matt Hall and John Watkinson, a CryptoPunk is an avatar where each has unique facial characteristics, and has since become a "cultural icon for the crypto community."⁵³ The inclusion of digital art NFTs in traditional art auctions has raised the relevance of what was originally a satirical art form. With the large price tags they may carry, they are no longer items to joke over.

Well-known professional artists have started selling major pieces of digital art via NFTs.⁵⁴ Urs Fischer, an artist famous for his contemporary visual artwork, has recently entered

⁴⁸ Harry Robertson, The NFT Art Market Has Grown More Than 800% In 2021 So Far To \$490 million - But The Boom Could Now Be Heading Towards Bust, MARKETS INSIDER, <https://markets.businessinsider.com/news/stocks/nft-art-market-rapid-growth-slowdown-non-fungible-tokens-2021-4-1030371073> (last visited Oct. 12, 2021).

⁴⁹ Building The Future Of Art, GEMINI, <https://www.gemini.com/nifty-gateway> (last visited Apr. 1, 2022).

⁵⁰ Angelica Villa, In a First, Sotheby's Collaborates with Major NFT Player for Pak Sale, ARTNEWS, (Apr. 6, 2021) <https://www.artnews.com/art-news/market/sothebys-pak-nifty-gateway-nft-1234588719/>.

⁵¹ Sarah Cascone, Here Are the 14 Most Expensive NFTs Sold to Date, From Beeple to Mad Dog Jones and Beyond, ARTNET NEWS, <https://news.artnet.com/market/updated-most-expensive-nfts-1980942> (last visited Oct. 17, 2021).

⁵² *Id.*

⁵³ Taylor Dafoe, Visa Bought a \$150,000 Crypto Punk for Its Corporate Collection—and Immediately Triggered an NFT Market Rush, ARTNEW NEWS, <https://news.artnet.com/market/visa-purchased-first-cryptopunk-kickstarting-record-run-sales-popular-series-nfts-2002289> (last visited Aug. 24, 2021).

⁵⁴ Clark, *supra* note 9.

the NFT space.⁵⁵ He recently sold a traditional art piece for \$6 million at Christie's auction house.⁵⁶ He will be offering an NFT collection with Pace Gallery.⁵⁷ Damien Hirst will be joining him in the trend.⁵⁸ Hirst, another contemporary artist, is famed for being the wealthiest living artist, setting the world record for selling a traditional art collection valued at \$198 million.⁵⁹

Banksy, a significant street artist, had a physical piece of art purchased and later minted into an NFT.⁶⁰ Its purchaser, Injective Protocol, who often deals in blockchain purchases, then proceeded to burn the original physical piece of art as a statement drawing attention to NFTs as a new medium for artwork.⁶¹ This almost sacrilegious act raises legal questions regarding the rights retained by both the seller and buyer of art in the NFT space. At this moment, it is unclear if there are any possible repercussions for the art piece's destruction. When digital art now has the potential for earning capacity as much as, or even more than, traditional works of art, the rights that were previously detailed must be reinterpreted. As more artists are shifting into the NFT space, the need for protecting the work that is being created is most important.

III. What intellectual property rights currently exist for pieces of physical art?

a. The Copyright Act and The First-Sale Doctrine

The Copyright Act is in place to protect "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be

⁵⁵ Eileen Kinsella, Some of The World's Top Artists Are Trying Their Hand At NFTs. The World's Top Galleries Are a Bit More Skeptical, <https://news.artnet.com/market/galleries-give-green-light-nfts-artists-real-winners-1956422> (last visited Dec. 16, 2021).

⁵⁶ Carol Vogel, Bidding War for a Warhol Breaks Out at Christie's, NY TIMES (May 11, 2011).

⁵⁷ Kinsella, *supra* note 55.

⁵⁸ Kinsella, *supra* note 55.

⁵⁹ Hands Up For Hirst, ECONOMIST (Sept. 9, 2010).

⁶⁰ Dan Patterson, Blockchain Company Buys And Burns Banksy Artwork To Turn It Into A Digital Original, CBS NEWS, <https://www.cbsnews.com/news/banksy-nft-injective-destroy-art-digital-token/> (last visited Sept. 5, 2021).

⁶¹ *Id.*

perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”⁶² There are five exclusive rights granted to copyright holders: to reproduce the work into copies and phonorecords; to create derivative works of the original; to distribute copies and phonorecords of the work to the public by sale, lease, or rental; to perform the work publicly, if applicable; and to display the work publicly, if applicable.⁶³ Copyright protection exists for a period of the life of the creator plus seventy years.⁶⁴

Until the recent digital applications, satisfying the “tangible” requirement of the Copyright Act was never difficult with physical pieces of artwork. Traditional art could be held and moved around, and this tangibility element never posed an issue. It was clear that the art that was produced by the copyright holder was fixed in that tangible medium and, as such, the Copyright Act would apply and grant applicable protections and rights.

Traditional copyright law could not have contemplated the expansive use of computers to create works, but the original intention behind copyright law still exists and should apply. Article 1, Section 8, Clause 8 of the Constitution states that Congress shall have the power “[t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”⁶⁵ “[T]he Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas.”⁶⁶ Copyright law intended to protect and incentivize the creation of new

⁶² 17 U.S.C. § 102 (1976).

⁶³ 17 U.S.C. § 106 (1976).

⁶⁴ 17 U.S.C. § 302 (1976).

⁶⁵ Art 1, § 8, Cl. 8.

⁶⁶ Harper & Row Publishers, Inc., v. Nation Enterprises, 471 U.S. 539, 558 (1985).

works, which would benefit society overall. This intention still exists today and should apply despite the utilization of a new medium.

Transfer of copyright is allowed via written instrument.⁶⁷ It is assumed that with the transfer of the only existing physical copy of a work, that copyright is still withheld by the creator.⁶⁸ If a work is transferred without express transfer of copyright, then the transferee does not receive the copyrights.⁶⁹ The transferee would simply obtain property rights to the work, but the copyrights would be withheld and retained by the original creator. Specifically contracting for transfer of copyrights is allowed.

The First-Sale Doctrine is included within the Copyright Act.⁷⁰ This places limits on the rights retained by a creator of a work once a copy is sold and transferred.⁷¹ The First-Sale Doctrine is important within the scope of the distribution right of 17 U.S.C. § 106(3) because it creates a significant limitation on the copyright of distribution upon a work's sale.⁷² A copyright holder is allowed to transfer physical copies of the work while retaining copyrights, but the First-Sale Doctrine creates an exception.⁷³ It establishes that once a copyrighted work is officially transferred, the original creator no longer has a distribution right to that copy.⁷⁴ The new owner has the ability to sell or transfer it again, or do whatever they see fit with the work, while the original creator relinquishes his or her say in what happens to it. This First-Sale exception does not apply to other rights within 17 U.S.C. 106, like the right to reproduce or copy. These rights are retained by the creator regardless of the further transfers of the work. This allows a creator

⁶⁷ 17 U.S.C. § 204 (1976).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ 17 U.S.C. § 109(a) (1908).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

of a work to have an input in what ultimately happens to the created piece, specifically the substance or content of it, by retaining rights dictating how copies may be produced or which derivative works can be made. A classic example of this includes the sale of a book. A physical book can be resold between different owners, but the content within the book does not become the ownership of each subsequent owner. This is always retained by the original author. This author can produce more copies of the book, or they can produce derivatives works from the book, but they do not have a claim of ownership against the physical book that is being resold. The First-Sale Doctrine protects and promotes the creative works of artists, while being reasonable in the property rights gained by owning said work.

As compared to the transfer of physical works, transferring copies of digital works pose different problems because of their intangible nature. Copyright law specifically cites the requirement of fixation in a tangible medium for the copyrights to apply.⁷⁵ Case law has determined that a digital work's presence on a computer would be enough to satisfy this, despite the digital works being intangible themselves. It does get more difficult in the context of the specific copyrights, however. Transfers of digital copies do not physically happen. A file is duplicated, and a new copy is sent to a transferee. Unless the original file is destroyed, both creator/owner and transferee have an identical digital work. This coexistence of original and duplicate poses difficulties in the copyrights' current interpretation of transferring work. Being that digital works come from the same intention of creation as tangible ones, traditional copyrights should extend to digital works. A digital art artist deserves to have his or her work protected, and the Copyright Act should be updated to reflect a modern world. Tangibility must be reconsidered in a commonsense approach.

⁷⁵ 17 U.S.C. § 102 (1976).

The Second Circuit ruled in *Capitol Records, LLC v. ReDigi Inc.*, that the first-sale doctrine could not apply to digital works because they are in essence copies.⁷⁶ ReDigi was a site that allowed its users to resell previously purchased digital music files.⁷⁷ The file was “transferred” entirely, eliminating the previous owner’s access to the file once the transaction was complete.⁷⁸ Capitol Records brought suit claiming that ReDigi violated reproduction rights.⁷⁹ Even though the original file was deleted upon transfer likening it to a physical transfer, the court ruled for Capitol Records holding that ReDigi made it impossible to not infringe upon the copyright owners’ copyright of reproduction because every digital file transfer involved making a copy which would be sent to the new owner.⁸⁰ This was a right that the new owners did not possess. As such, the first-sale doctrine would not apply.⁸¹

Under copyright law, there is the right to create derivative works.⁸² This allows the copyright holder to fashion adaptations of the original piece to produce a new one.⁸³ This right is generally not transferred upon sale of a piece and is retained by the creator of the work. If a new owner were to create a derivative work from something to which they lacked the appropriate transfer of copyright, then they would infringe upon the original creator’s copyright. As applied to digital art, this becomes difficult when access to work is so easy that the line of infringement becomes difficult to determine. For example, a popular meme that is modified and reused by thousands of individuals may be considered an infringement as each individual lacked the

⁷⁶ Katya Fisher, *Digital Art & Blockchain: Once Upon A Time In NFT*, 37 *CARDOZO ARTS & ENT LJ* 629, 631 (2019).

⁷⁷ *Capitol Records, LLC v. ReDigi Inc.*, 910 F.3d 649 (2d Cir. 2018).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² 17 U.S.C. § 106(2) (1976).

⁸³ *Id.*

necessary copyright to create derivative works.⁸⁴ As many of these memes focus on photographs and still images, they are covered under the traditional Copyright Act.⁸⁵ In these cases, the original creator retains the copyright of derivative works and should have the ability to bring a claim for any infringements as he or she sees fit.

b. The VARA And Its Moral Rights Protection

The Visual Artists Rights Act of 1990 (“VARA”) is a branch of copyright law awarded specifically to artists.⁸⁶ These additional and supplemental copyrights exist regardless of transfer of ownership of the artistic works. As such, certain rights exist despite the First-Sale Doctrine. Moral rights are retained by artists, honoring his or her original vision and intention in the artwork no matter who ultimately has possession of the art. These should be expanded to include works produced by digital art artists as well.

The VARA includes the moral rights protection. Moral rights include the right to attribution and the right to integrity of the work.⁸⁷ Attribution focuses on being allowed to control who to attribute the work to and if the artist would like to proceed anonymously.⁸⁸ This includes using or not using an artist’s name on work they did or did not produce.⁸⁹ Regarding the right to integrity, an artist can control and prevent any modification of the work that they feel prejudices his or her honor or reputation.⁹⁰ If the integrity of the artwork is changed or handled beyond the scope of what the artist feels comfortable with, the artist holds the right to bring an action in response. Destruction of the piece of art can also qualify for violation.⁹¹ Most often,

⁸⁴ Ross Kowalski & Steven Lauridsen, Memes Are Here To Stay, And So Is Your Risk Of Being Sued For Copyright Infringement, Tucker Ellis LLP (Jun. 23, 2021).

⁸⁵ *Id.*

⁸⁶ 17 U.S.C. § 106A (1990).

⁸⁷ 17 U.S.C. § 106A (1990).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

courts will only uphold redress for destruction of artwork reaching the level of “recognized stature.”⁹² Moral rights cannot be transferred, but they can be waived if done so in writing.⁹³

As it is applicable to U.S. law, VARA only applies to visual art works including paintings, drawings, sculptures, and photographs, “existing in a single copy or a limited edition of 200 signed and numbered copies or fewer.”⁹⁴ The applications have traditionally only applied to this narrow category of classic art works and has not been revisited. It does not currently include any specific digital mediums. It specifically excludes any motion picture or audiovisual work or electronic publication.⁹⁵

Under VARA, only the destruction of works of “recognized stature” will be covered.⁹⁶ The breadth of what VARA includes has been determined through case law. In *Castillo v. G&M Realty L.P.*, the Second Circuit held that temporary artwork, such as graffiti, can acquire recognized stature.⁹⁷ The area in question became a “major global center for aerosol art” and attracted thousands of people, but was destroyed for the building of condominiums.⁹⁸ Recognized stature was dependent on “prominence in the world of aerosol art, the significance of [the] process of selecting the artists who could exhibit at 5Pointz, and the fact that, while much of the art was temporary, other works were on display for several years.”⁹⁹ The VARA claim succeeded because of this finding of “recognized stature.”

⁹² *Id.*

⁹³ 17 U.S.C. § 106A (e)(1) (1990).

⁹⁴ 17 U.S.C. § 101 (1990).

⁹⁵ *Id.*

⁹⁶ *Castillo v. G&M Realty L.P.*, 950 F.3d 155 (2d Cir. 2020); *Cohen v. G&M Realty LP*, 320 F. Supp. 3d 421 (E.D.N.Y. 2018).

⁹⁷ *Castillo*, 950 F.3d at 155.

⁹⁸ *Id.* at 162.

⁹⁹ *Id.* at 164.

In *Scott v. Dixon*, an artist's stature was not found to be worthy of VARA protection.¹⁰⁰ A sculpture was created on a piece of property, then destroyed once the property changed hands.¹⁰¹ Although the artist had some local notoriety, the court held that her reputation was not significant enough to afford VARA protection to each piece she created.¹⁰² Her VARA claim failed on this element.

Changes in location of an artwork, such as with a statue or art installation, have not been held to constitute a violation of VARA unless it has also been otherwise distorted or mutilated.¹⁰³ In *Phillips v. Pembroke Real Estate, Inc.*, an artist's installation in a park was removed and moved to another location, but a claim was brought under VARA stating that because the art was site-specific, the artist's intention was destroyed in moving it.¹⁰⁴ The court held that VARA does not apply to the site change of a piece of art.¹⁰⁵ The destruction of an artist's intention is not the same as actually destroying the work.

VARA has not been updated since 1990, a time well before digital art became something regularly produced. It is not included within the specific definition of a "work of visual art" while electronic publications and audiovisual works are explicitly excluded.¹⁰⁶ As it is currently written, much digital art, especially any works incorporating movement within them, would be excluded from VARA protections. The intention of promoting protection for the artists and the work they create should be updated to include those of digital art. Digital art is just as, if not more, vulnerable to moral rights infringements than the other works of art listed because of the nature of how it is shared throughout the internet. In an era where it is so easy to "Command-C"

¹⁰⁰ *Scott v. Dixon*, 309 F. Supp. 2d 395 (E.D.N.Y. 2004).

¹⁰¹ *Id.* at 399.

¹⁰² *Id.* at 400.

¹⁰³ *See Phillips v. Pembroke Real Estate, Inc.*, 459 F.3d 128 (1st Cir. 2006).

¹⁰⁴ *Id.* at 129.

¹⁰⁵ *Id.*

¹⁰⁶ 17 U.S.C. § 101 (1990).

an image or gif found online, then modify it however a person wishes, artists should have means for redress for misuse of their creations.

IV. IP & Digital Art Recommendations

a. The Overlap Between Current IP Rights & Digital Art NFT Needs

Due to the novelty of NFTs, copyright laws have not specified their coverage in law. Regulation of them routinely falls under other branches of law, but without much guidance. Existing copyright laws have not yet considered how to approach the inclusion of NFTs.

Although NFTs are not tangible, they should be included in the traditional Copyright Act.¹⁰⁷ As with digital art, they are fixed within the hardware of the shared blockchain systems. Extending the traditional rights to include the rights of reproduction, derivative works, and distribution become more difficult as they must be analyzed through a different lens. The very nature of blockchain technology requires constant replication through its decentralized system while copyright law traditionally controls the replication, duplication, or alteration of artistic works.¹⁰⁸ The fact that digital art NFTs are non-fungible should eliminate the concerns traditionally associated with other digital works. Although there may be issues with verification and authenticity, NFTs are intended to be distinctive and not copies of an original. The artists are creating intellectual digital works that deserve protection, while the process of converting said work into NFTs preserves a uniqueness that most closely parallels the uniqueness of physical pieces of art.

The current protocol for minting poses a problem for intellectual property rights, without further clarification.¹⁰⁹ Establishing guidelines for infringement would help distinguish

¹⁰⁷ 17 U.S.C. § 102 (1976) (the Act specifies tangible).

¹⁰⁸ Fisher, *supra* note 76 at 629.

¹⁰⁹ Collin Starkweather, Izzy Nelken & Sam Miller, How Intellectual Property Rights Can Complicate NFT Market, LAW360 (Aug. 17, 2021).

potentially fraudulent practices from good practices. An artist may technically mint the same piece of art to different blockchains to avoid detection.¹¹⁰ As the file can merely be uploaded with new identifiers dictating non-fungibility, it would be difficult to track between blockchains. An artist may also generate different NFTs of the same piece, or slightly modified ones, under different identifiers and sell them to different users.¹¹¹ At this time, there is nothing preventing them from doing so.¹¹² Changing just one pixel could result in a much different upload code. Similar to the tracking between blockchains, the unique identifiers would make it difficult to track between different purchasers. Additionally, unless the person minting the art is the creator him or herself, the process of minting will require consent as conversion of a digital piece of art into an NFT will most likely be considered creating a derivative work or a copy, and an infringement of copyright.¹¹³ The conversion and minting of physical pieces of art would only more strongly infringe as the medium would be significantly different. The copyright to create derivative works or to produce copies does not pass with sale, unless specifically contracted for. Expansion of traditional copyrights would allow for artists to protect their work and prevent the minting of their art into NFTs without their consent. While artists' rights should be protected and copyrights expanded to cover digital art NFTs, purchasers may have to do more due diligence in researching an NFT before purchasing as the current protocols and limitations more easily allow for possible exploitation and fraud.

Due to the non-fungible nature of NFTs, the original work is fully transferred making it different from other digital copies produced that have challenged the First-sale Doctrine.¹¹⁴

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Alléhaut, *supra* note 33.

¹¹⁴ *See Redbox Automated Retail, LLC v. Buena Vista Home Entm't, Inc.*, 399 F. Supp. 3d 1018 (C.D.Cal. July 17, 2019) (holding that the First Sale Doctrine is inapplicable to digital codes).

Unlike the constant copying of traditional digital files for “transfer” that makes it difficult to consider them within the copyright context, the desirable quality of the NFT is that it is officially and clearly transferred, with ownership and transfer of sale being recorded within the blockchain.¹¹⁵ The seller of the NFT generally relinquishes their ownership right making the transfer much clearer. Access passes with a digital key that is verifiable from the smart contracts on the blockchain. As such, the First-Sale Doctrine should be expanded to cover digital art NFTs in this context. Although the courts were hesitant to apply it to other digital work, the clear non-fungibility of an NFT parallels physical works and the protections that go with them should follow. This should encourage establishing formal rules regarding NFT transfers as it would be to easily clarify, rather than burden the court with the need for precedent with first impression cases.

Formal expansion of the First-Sale Doctrine would entitle a purchaser to gain the distribution copyright to the digital art, unless contracted for otherwise. A purchaser would be able to sell the NFT or transfer it without input from the creator. One of the main goals in support of NFT purchasing and collecting is the ability to resell the NFT for greater profits over time. Even though this has been followed without contest, formal clarification to ensure such a process will be followed would put the minds of many collectors to ease.

Ownership would transfer with the sale of the NFT.¹¹⁶ A person is able to resell the NFT as they desire. This is contrasted with items we normally buy online, like iTunes songs.¹¹⁷ These cannot be resold as they are in a sense licensed for personal use to a buyer without an official transfer qualifying it for the First-sale Doctrine. This is contrasted with an NFT. The

¹¹⁵ Ethereum, *supra* note 28.

¹¹⁶ Ethereum, *supra* note 28.

¹¹⁷ Ethereum, *supra* note 28.

purchaser of an NFT receives a private key as proof of ownership.¹¹⁸ This type of private key would either directly pass to another or be used to generate a new unique identifier upon complete transfer. Copyrights do not necessarily transfer with the sale, although in some cases they may if specifically contracted for.¹¹⁹

If contracted as such, artists can retain some ownership rights.¹²⁰ Artists can claim resale royalties.¹²¹ This makes it so that every time an NFT changes hands, the artist is still compensated.¹²² Beeple will receive ten percent of each sale each time one of his NFTs is sold and resold.¹²³ Just as property law has begun to address NFTs as new forms of property, copyrights can follow suit.

Copyrights are usually not transferred with the sale of an NFT and they should, by default, be withheld by the creator as with traditional works. As with most traditional sales, original artists may retain the ability to create derivative works with their retention of copyright, although this is currently unclear if applicable to NFTs. If an artist wants to create a new version of a previous piece of his or her own, then he or she will likely be able to do so, even if it is the difference of a pixel or two. Similarly, artists should also be able to make copies of their work as they see fit. This facet becomes challenging when the very nature of a digital copy makes a copy that is just as good as the original, minus the bragging rights of true ownership. Being that an entirely new NFT would be created with the creation of a copy that would be indistinguishable from the original, the value of each would likely be inversely proportional to the number of copies ultimately created. As a buyer of a digital art NFT, the lack of clarity in how many future

¹¹⁸ Ethereum, *supra* note 28.

¹¹⁹ Starkweather, *supra* note 109.

¹²⁰ Ethereum, *supra* note 28.

¹²¹ Ethereum, *supra* note 28.

¹²² Clark, *supra* note 9.

¹²³ Starkweather, *supra* note 109.

copies of an NFT can be made, can be determined upon sale in a contract, or the copyright laws can clarify how such procedures are to be handled.

InterNFT Working Group is an organization that has proposed standards to help control the rights of users between blockchains.¹²⁴ The standards focus on “recommendations and implementation options for open technical standards” encouraging an agnostic inter-blockchain approach.¹²⁵ If the approach to copyright differs between blockchains, it would only increase the difficulties posed when owners of NFTs try to change between them. Proposals are open submission, meaning that any coders can submit them, only needing review and approval from an organization member.¹²⁶ With the understanding that different blockchains will be used in the future for a wide variety of means, it aims for interoperability between networks and to standardize how NFTs are handled within and between.¹²⁷ Standardizing would help prevent the sale tracking issues between blockchains or purchasers that were previously discussed.¹²⁸

Copyright infringement is already taking place. Artists have fallen victim to individuals minting their artwork into NFTs without their permission.¹²⁹ At this point, most marketplaces will just remove the NFT after a complaint, but redress proves more difficult. Some artists feel the need to start over and rebrand themselves, losing valuable followers in the process. Clarity in the expansion of copyrights would allow for stricter repercussions, ones that would ultimately deter those tempted by “copyfraud.”

¹²⁴ <https://internft.org> (last visited Dec. 16, 2021).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Supra* notes 109-113.

¹²⁹ Don't Give Up Skeleton (@WeirdUndead), Twitter (Mar. 9, 2021, 3:58 AM), <https://twitter.com/WeirdUndead/status/1369210982518693888> (showcasing an artist's frustration with having his or her content stolen to be turned into NFTs); Corbin Rainbolt (@CorbinRainbolt), Twitter (Mar. 9, 2021, 6:42 PM), <https://twitter.com/CorbinRainbolt/status/1369433485086195717> (noting how artist was forced to watermark online paintings to prevent further appropriation into NFTs).

Public domain works are being placed in the marketplaces as new NFTs.¹³⁰ The public domain includes works that no longer carry copyright protection, whether being beyond the seventy years of copyright protection granted to the creator, or purposefully dedicated to be used by the public.¹³¹ As such, no one owns these works, and in theory they belong to everyone.¹³² The Global Art Museum (GAM) has taken it upon themselves to tokenize classic public domain paintings, using the digital files from the famous Rijksmuseum in Amsterdam.¹³³ Being that these paintings are part of the public domain, copyright infringement is not present, but it does highlight the ease with which individuals can appropriate work that is not personally created, and turn a profit off of it.

The intention behind the Copyright Act focused on protecting the creative works of artists. Digital art is a new medium that is produced for the same reasons any other art has been created: to arouse, to excite, to make humans feel something. These artists who stimulate should be formally protected with the expansion of current copyright laws.

b. VARA Should Be Expanded To Protect NFTs Under Its Existing Statutes

As it stands, VARA is very specific about the types of works it has chosen to include. As mentioned above, only select types of visual art pieces including still photographs, paintings, sculptures, and paintings can be included.¹³⁴ Many NFTs are only, and specifically visual art based. However, many do include an animation or transitory component which would not be traditionally included.¹³⁵ The purely static digital images may qualify under the existing statute,

¹³⁰ Andres Guadamuz, Copyfraud And Copyright Infringement In NFTs, TECHNO LLAMA (Mar. 14, 2021), <https://www.technollama.co.uk/copyrfrad-and-copyright-infringement-in-nfts>.

¹³¹ Timothy Vollmer, The Public Domain And 5 Things Not Covered By Copyright, CREATIVE COMMONS (Jan. 16, 2017), <https://creativecommons.org/2017/01/16/public-domain-5-things-not-covered-copyright/>.

¹³² *Id.*

¹³³ Guadamuz, *supra* note 130.

¹³⁴ 17 U.S.C. § 106A (1990).

¹³⁵ *See* 3LAU, Gunky's Uprising (2021) (Musician's animated artwork is accompanied by a music video).

but it is unclear if there would be a threshold to accommodate for some flexibility within the capabilities of this new medium. This would require legislative input. VARA should be updated to reflect the needs of a growing field of visual art and decide in favor of including even transitory digital artwork.

Being that VARA was created in 1990, the inclusion of digital art was likely not contemplated as the computer programs available were much more limited. It would have required much foresight to anticipate the breadth of digital art that would have come from the expansion of future programs, to potentially include them during that time. Modern times have highlighted the need for a renewed approach. Just as there is a push to update Section 230 of the 1996 Communications Decency Act (CDA) to renew protections available on internet platforms, the VARA should be updated to reflect the demands of modern problems.¹³⁶

If an artist does not want their artwork minted into an NFT, an artist should be allowed to bring a claim under VARA or disavow the piece, as the art has been changed significantly.¹³⁷ Being that VARA allows for an artist's intention to be central to its existence and value, the artist should have a say if the medium in which the art has been altered into, is one that the artist does not agree with. This may pose a challenge only in regard to its potential likeness to *Phillips v. Pembroke Real Estate, Inc.*, where a site change did not constitute an adequate VARA claim.¹³⁸ There, a destruction of intention could not be equated to actual destruction of the piece.¹³⁹ In a hypothetical legal battle addressing conversion of digital art via minting, if a court rules similarly, minting may be seen as only a site change, and thus not eligible for a VARA claim.

¹³⁶ Michael D. Smith & Marshall Van Alstyne, It's Time to Update Section 230, HARVARD BUS. REV. (Aug. 12, 2021), <https://hbr.org/2021/08/its-time-to-update-section-230>.

¹³⁷ Alléhaut, *supra* note 33.

¹³⁸ Phillips, 459 F.3d at 129.

¹³⁹ *Id.*

However, if the court is willing to extend a stronger artist intention argument, then it should be successful. Turning a piece of physical art into an NFT would be significant enough to qualify as a distortion or mutilation, that if especially deemed to be of recognized stature, would allow a claim to proceed.¹⁴⁰ At minimum, an artist should retain integrity and attribution rights and can determine if she or he would like to be associated with the newly minted NFT at all.¹⁴¹ Being that the artist did not create the NFT him or herself, he or she does not have to be associated with it.¹⁴² If the artist considers the minting to be a distortion or mutilation which would be prejudicial to his or her reputation, then that right should also be extended.¹⁴³

The VARA's moral rights interpretation has not specified inclusion of NFTs but being that many NFTs may satisfy the "recognized stature" component, they should be covered in times of destruction as well. The current NFT market is significant with many smaller artists using the route as a way of securing additional income. Unfortunately, it does not seem like these individuals would be included under VARA for destruction-based claims, based on *Scott v. Dixon* where the court was unwilling to uphold a claim for an artist with a small following.¹⁴⁴ By contrast, VARA would likely cover artists already established, or those whose work has been popularized for other reasons, increasing a subsequent NFT's recognized stature.¹⁴⁵ As held in *Castillo v. G&M Realty L.P.*, artists of high recognition that attract thousands will likely enable a VARA claim.¹⁴⁶

¹⁴⁰ 17 U.S.C. § 106A(a)(3) (1990).

¹⁴¹ 17 U.S.C. § 106A (1990).

¹⁴² See 17 U.S.C. § 106A(a)(1)(B) (1990) (noting an artist reserves the right to prevent use of his or her name with any work which he or she did not create).

¹⁴³ 17 U.S.C. § 106A(a)(2) (1990).

¹⁴⁴ *Scott*, 309 F. Supp. 2d at 400.

¹⁴⁵ See *Castillo*, 950 F.3d at 164.

¹⁴⁶ *Id.*

An important upheld similarity exists in the approval of “temporary” art for recognized stature.¹⁴⁷ As graffiti that was frequently changed was found to be covered under VARA,¹⁴⁸ NFTs that include a metamorphic or transitory component may also and should be included. This is revolutionary in contemplating the inclusion of dynamic, non-static NFTs of digital art under VARA. Some of the NFTs change by themselves over time or produce additional works.¹⁴⁹ The metamorphic NFTs may be likened more to graffiti than to video productions, potentially enabling their inclusion. If these metamorphic NFTs are produced by individuals with “recognized stature,” then it is only more likely that VARA may recognize them. Although such images with audiovisual components would seemingly be excluded from the current statute, the fact that at an instant one image exists from the NFT, should liken them enough to traditional static images, entitling them to VARA protections.

A challenge may present itself in claims against blockchain location shifting once an NFT has been purchased. Some artists work exclusively with the intention of being included on one specific blockchain. This may be due to capabilities within it or personal preferences. Like in *Phillips v. Pembroke Real Estate, Inc.*, changing to another blockchain may not qualify as a valid VARA infringement, if likened to moving a location-specific statue.¹⁵⁰ Despite recognized stature, clarification is needed to determine how rights may be retained and which laws should govern in the case of such a transition.

As in the Banksy example previously mentioned, Banksy would have a valid VARA claim not only for the burning and destruction of his physical work and its conversion into an

¹⁴⁷ *Cohen*, 320 F. Supp. 3d at 421.

¹⁴⁸ *Id.*

¹⁴⁹ See Kevin McCoy, *Quantum* (2014) (image continuously changes by itself); Pak’s *The Switch* (2021) (NFT owner has the ability to trigger irreversible switch that changes current image into unknown one).

¹⁵⁰ *Phillips*, 459 F.3d at 129.

NFT, but for any further modification done to this NFT post-minting.¹⁵¹ If Banksy wanted to have his name removed from the work, therefore likely decreasing its value, in theory he could and should be able to do so under VARA.

c. Digital Artists Should Retain Moral Rights In Creating Digital Art NFTs

Including digital art NFTs under VARA would allow an artist the ability to bring a claim for digital artwork that is used in a way that the artist does not agree with. If a new owner mislabels the piece or uses an artist’s name without permission, then there would be redress for the artist.¹⁵² If a piece is destroyed or minted against an artist’s wishes, VARA would provide protections for such acts.¹⁵³

Being labeled as the newest form of art collecting, the impact of including NFT digital art in the protections awarded to traditional art pieces would be significant. Its non-fungible nature makes each art piece as unique as a physical one, and the artists that are creating the digital art NFTs are subject to the same vulnerabilities as those producing tangible ones.

The creator of the technology for developing NFTs and *Quantum*, one of the first NFTs sold distinctly as a “monetized graphic,” described the original intention behind creating such technology.¹⁵⁴ He and his partner intended to prevent the exploitation of artists by empowering them to sell and market their art more easily, while increasing the safety against appropriators.¹⁵⁵ Unfortunately, as he notes, artists are now trying to “block NFT spammers from hijacking their works and monetizing them as NFTs without permission.”¹⁵⁶ This entirely defeats the

¹⁵¹ Patterson, *supra* note 60.

¹⁵² 17 U.S.C. § 106A (1990).

¹⁵³ *Id.*

¹⁵⁴ Anil Dash, NFTs Weren’t Supposed to End Like This, *THE ATLANTIC* (Apr. 2, 2021).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

motivating intent. Without clear means for redress, many of these artists are falling victim to what they were originally trying to be protected from.

V. Conclusion

The popularity of NFTs is incredibly new. The technology space moves much faster than the rate at which laws and regulations are generally created. We can shape existing law to cover the new additions, but that is not usually done until matters are litigated, or legislature preemptively addresses potential issues. Until either of these happen, we will not know for sure how to incorporate NFTs into an intellectual property lens.

Clarity in how these NFT sales are to be handled in a legal setting and which rights are retained by both artist and buyer is necessary. Although some speculate that the NFT market is just a trend, the large amounts of money that the medium has generated requires legal oversight. When digital art is being valued as much as physical classical pieces of art, the rights of the sellers and owners are important. This comment advocates for oversight in the sales and transfers of NFT digital art so that traditional pillars of copyright law can be extended to artists and owners.

Artists should have non-alienable rights preserved in the transfer of digital artwork NFTs. It is important that artists that create work that is just as influential in society as traditional artists, are protected from having their names tarnished or having the integrity of their work compromised. Digital art artists may be even more vulnerable than tangible art artists due to hacking capabilities and misinformation on the internet.

Legislature should address this growing need. Copyrights should be extended in a commonsense manner to protect the intentions that have remained consistent between artists throughout history. VARA, as a facet of the Copyright Act, should be reworked to reflect the

potential products of modern mediums and interfaces. Even if the NFT bubble bursts, NFTs will remain present in other capacities in the years to come.¹⁵⁷

¹⁵⁷ Harry Robertson, The NFT Art Market Has Grown More Than 800% In 2021 So Far To \$490 Million - But The Boom Could Now Be Heading Towards Bust, <https://markets.businessinsider.com/news/stocks/nft-art-market-rapid-growth-slowdown-non-fungible-tokens-2021-4> (last visited Oct. 12, 2021).