

Original Paper

On the Legitimacy of Exhaustion of Rights in Non-Fungible Token Transactions of Digital Works

Yijing Xia^{1*}

¹ Southwest Minzu University, Chengdu, China

* Yijing Xia, Southwest Minzu University, Chengdu, China

Received: June 15, 2022

Accepted: June 30, 2022

Online Published: July 10, 2022

doi:10.22158/jbtp.v10n2p71

URL: <http://dx.doi.org/10.22158/jbtp.v10n2p71>

Abstract

As the golden rule of resolving the conflict between intellectual property and right in rem of the same object, exhaustion of rights aims to avoid the influence of exercising intellectual property right on right in rem. The academic circle is unable to come to any agreement concerning the discussion of extending the rule of exhaustion of rights to the regulation of utilizing works in digital conditions. The blockchain technology and market have a transformative impact on the copyrights in the digital environment. NFT and the mode of NET of digital works have reshaped the traditional ecology of online works transmission and utilization, offering opportunities for the exhaustion of rights to be applied in the network environment. Hence, it is the right moment to create the digital environment to apply the exhaustion of copyrights.

Keywords

exhaustion of rights, NFT, digital works, blockchain

1. Raise of Problems

The exhaustion of intellectual property rights means that after a specific product with intellectual rights is legally transferred with the consent of the right holder, all the intellectual property rights of the product are exhausted. The purpose is to “prevent the right holder to abuse the rights, safeguard the legitimate interest and rights of other social subjects, so as to maintain the social relations and social order of legislators (Yang, 2000)”. As for copyright laws, the exhaustion of rights is frequently seen in the one-off exhaustion of the right of distribution, while the right of reproduction is not exhausted because of the initial sale of works.

The exhaustion of rights is an important aspect of the restrictive system of intellectual property. It also plays a positive role in adjusting and balancing the interest between intellectual property owners and tangible goods with intellectual property, and resolving the barriers caused by the free circulation of exclusive goods with intellectual property. Hence, this rule serves as an important guarantee in resolving the conflicts between intellectual property and the right in rem (Feng, 2007). However, in the digital era, the profound changes in the patterns of manifestation, utilization and transmission of works have certain impacts on this rule. As for the works stored in digital formats, during the process of reselling, the electronic equipment of recipients may generate and attempt to resell another duplication to the electronic equipment of non recipients. Therefore, it involves the right of reproduction, which

can not be included in the conventional context of exhaustion of rights. The academic circle is unable to come to any agreement concerning the discussion of extending the rule of exhaustion of rights to the regulation of utilizing works in digital conditions. However, the demand for the development of the digital industry has forced the application of exhaustion of rights. It is the right moment to create the digital environment to apply the exhaustion of copyrights.

The blockchain technology and market have a transformative impact on the copyrights in the digital environment (Bodó, Gervais & Quintais, 2018). NFT (Non-Fungible Token) and the mode of NET of digital works have reshaped the traditional ecology of online works transmission and utilization. Token transactions of blockchain overcome the inescapable barriers of right of reproduction, thus offering new solutions for the exhaustion of rights to be applied in the digital environment.

2. Overview of Non-fungible Token Transaction

(1) NFT, digital works and NFT digital works

NFT (Non-Fungible Token) means 非同质化代币 (also known as 非同质化通证). In essence, NFT is a type of unique, scarce and special digital asset. Its ownership can be transferred through smart contracts and the whole process can be recorded by blockchain. Meanwhile, NFT can be used to verify the authenticity and ownership of digital assets, thus it is extensively used in the art market (Wei, Guo & He, 2022). Despite being known as “tokens”, NFT is different from fungible tokens like ETH or BTC, which are monetary instruments and can be easily exchanged and split. Essentially, by encrypting a certain digital product with blockchain technology, NFT is the “tool” designed to generate the uniqueness and scarcity of digital content and the circulating effect of actual transactions. Digital works are sold in the form of NFT on the transaction platforms. Essentially speaking, it is the document that comes with unique marks, ingenious content and digitized forms. In the circle of the industry, the blockchain process needed by NFT is called “casting”. In the digital content of NFT transactions, works of literature and art are the most frequent forms that can be found. The digital artworks after casting can circulate on blockchain. NFT artworks are accessible and traceable to anyone (Chen, 2022). Compared with average digital works, NFT digital works turn the “carriers” into certificates of rights that refer to certain objects with transaction values. Consumers on third-party transaction platforms can pay service charges through digital wallets to own the publicly displayed digital works. Meanwhile, they are also able to generate new information about right holders on blockchain through the automatic performance of smart contracts.

(2) The essence of non-fungible token transactions of digital works

The exhaustion of rights does not involve the right of reproduction. The right of distribution of the copyright owner is the only restriction. Furthermore, the exhaustion of rights applies to transferring the copyright of duplicates. Based on the difference between license and sales in terms of legal connotation, “ownership” or “license” is one of the main legal disputes over the exhaustion of rights in the digital context (Wei, 2014). Relevant issues, such as whether the duplicates of digital works can be traded as commodity and whether the duplicates have independent property ownership rights, have been the obstacles to overcome for the rule of the exhaustion of rights in the network environment (Diao & Yuan, 2017). Hence, before the essence of non-fungible token transactions of digital works, the first issue of discussion is whether the sales of digital sales involves the license of rights or the transfer of ownership, as well as the essence of non-fungible token transactions of digital works in the traditional context of

network, so as to find out whether the exhaustion of rights has the legitimacy of being applied to transactions of digital works as non-fungible tokens.

When digital works are sold as commodities in circulation, they may be considered a type of legal relations and serve as copyrights and the carriers of the works. The former case forms the notion of licensing and being licensed of property rights in the works. If consumers gain access to or take possession of the digital work through license agreement, the copyright owner's ownership of the duplicate may not necessarily vanish. As for the latter case, two specific situations are involved: 1) The buyer-seller relationship based upon the transfer of ownership. 2) The legal relation based on the authorization of the right to use (Tao, 2022). Generally speaking, if the duplicate of a certain piece of digital work is traded through sales, it will undoubtedly lead to the exhaustion of the copyright owner's ownership. In this regard, the author tends to think that for the legal determination of digital work transactions, the legal effects that both sides attempt to achieve and the legal effects achieved upon the completion of transaction should be considered comprehensively. The specific interpretations of "licensing" and "authorizing" should be not restricted to literal explanations. What is worth mentioning is that some academic viewpoints also believe that licensing is another form of work sales in the digital context (Wei, 2014), which is obviously more conducive for the exhaustion of rights to be applied.

As for deciding the essence of digital work transactions as non-fungible tokens, when discussing the two types of legal effects, the technical features of NFT and characteristic attributes of NFT digital works. NFT, as the original digital assets in blockchain, has the characteristics of assets in terms of civil law, namely the possibility of transfer, management and objective value. The same object may both have intellectual property and the ownership of NET asset owners (Si, 2021). When the duplicates of a certain work exist on a third-party platform in the form of NFT, anyone of the duplicate has one-to-one corresponding relations to the specific metadata. In addition, blockchain itself has features like decentralization and tamper proofing, thus it has the natural effects of announcement and public confidence (Yu, 2021), so as to retain the right in rem of specific digital assets. During the NFT transaction of digital works, the transfer of property rights is obviously more suitable for psychological expectations. As for legal effects of completed transactions, buyers of NFT digital works can resell and pass on the works to others. In other words, the mode of non-fungible token transaction of digital works has given rise to transaction effects that are similar to physical commodity transactions. Some people define the mode of non-fungible token transaction as the buyer-seller relationship of digital content rather than licensing of digital assets (Tao, 2022), thus determining the nature of non-fungible token transactions of digital works.

3. The Legitimacy of Exhaustion of Rights in Non-fungible Token Transactions of Digital Works

(1) Conditions for the exhaustion of rights to be extended and applied

In the academic circle, the following conditions should be met for the exhaustion of rights to be extended and applied in digital works: 1) The legal effects of transferring the property rights of specific duplicates during digital work transaction. 2) The subject matter of transaction is the duplicate of digital work released online through legal means. 3) No new duplicate occurs in transaction. 4) The number of owners of duplicates does not increase (Tao, 2022).

In the mode of non-fungible token transactions, buyers pay considerations to own the information recorded on blockchain, so as to prove their property rights of NET digital works can be resold and presented to other people. Hence, the legal effects of transferring the property rights of duplicates are

generated. Afterwards, regardless of how many transactions, NFT transaction platforms always demonstrate the specific duplicates uploaded to servers by NFT casting. Moreover, the mode of non-fungible token transactions refers to certain objects with specific codes, thus restricting the uniqueness of objects in transactions, which complies with the above text.

(2) Breakthroughs of non-fungible token transactions of digital work transactions in traditional network context

As previously mentioned, there are two dilemmas in applying the exhaustion of rights in digital works:

1) Whether the sale of digital works is about the licensing of rights or transferring of ownership has impacts on applying the exhaustion of rights. 2) Digital works may be duplicated during the process of sales, while the right of duplication does not vanish necessarily. In essence, non-fungible token transactions of digital works are the acts of buying and selling along with the transfer of ownership, which is also the precondition for the exhaustion of rights. Besides, NFT and blockchain technology guarantee the scarcity of digital works in transactions. Token transaction of blockchain also overcomes the barriers of the unavoidable right of reproduction. In this case, blockchain serves a role similar to the registry of real property transactions. For assignees who legally obtain NFT digital works from copyright owners, they do not need to upload them to resell them on the same platform or other cooperative platforms. Similarly, vendees of “secondhand” NFT digital works do not have to download them to become the owners of the NFT digital works. The uniqueness, tamper proofing and traceability of non-fungible tokens and the confirmation of metadata by the distribution system can offer the sole identification. The interaction based on the Internet of Things and blockchain technology makes it possible for every block to store the unique ID information, which can be preserved and managed on the Internet of Things, thus determining the digital identity (Wei, Guo & He, 2022). Furthermore, the property right changes of NFT digital works rely more on the performance of smart contracts and changing the information stored in blockchain, so the buyers of the second deal don't have to download them for ownership. Hence, it is clearly proven that the exhaustion of rights can be applied to non-fungible token transactions of digital works.

4. Conclusion

The exhaustion of copyrights is a significant golden rule in the field of copyright law. However, due to the impact of new circulation features and the release of copyright works in the digital network environment, whether the exhaustion of copyrights can still be applied become a question worthy of discussion. The exhaustion of rights in the era of duplication can hardly meet the actual demands for development of digital copyrights. NFT and non-fungible token transactions of digital works offer opportunities to actively explore its further application in the network environment. A understanding of the applicability of this rule in non-fungible token transactions of digital works is vital to balancing the multiplex interest in the digital environment and responding to the development of the digital and cultural industries. In addition, the application scenarios and practical significance of non-fungible tokens still remain to be further explored.

References

- Bodó B., Gervais, D., & Quintais, J. P. (2018). Blockchain and Smart Contracts: The Missing Link in Copyright Licensing? *International Journal of Law and Information Technology*, 311, 336. Cited from Tao, Q. (2022). On the Legal Implications of Non-Homogeneous Token Based Transaction of Digital Works. *Oriental Law Studies*, (02), 70-80. <https://doi.org/10.1093/ijlit/eay014>
- Chen, C. (2022). Protection of Copyright Interests of NFT Artworks in the Perspective of Blockchain Economy. *China Business Theory*, (06), 109-111.
- Diao, S. X., & Yuan, H. (2017). Application of the Principle of Intellectual Property Exhaustion in Litigation in the Network Environment. *Journal of Chongqing University of Posts and Telecommunications (Social Science Edition)*, (03), 36-41.
- Feng, X. Q. (2007). Research on the Issue of the Exhaustion of Intellectual Property Rights. *Journal of University of Science & Technology Beijing (Social Science Edition)*, (03), 54-58, 71.
- Si, X. (2021). Theory of Real Right of Blockchain Digital Assets. *Exploration and Contention*, (12), 80-90, 178-179.
- Tao, Q. (2022). On the Legal Implications of Non-Homogeneous Token Based Transaction of Digital Works. *Oriental Law Studies*, (02), 70-80.
- Wei, L. T., Guo, Y., & He, M. J. (2022). Non-Homogeneous Tokens: Logic, Application and Trend Outlook. *Reference of Economic Research*, (04), 130-140.
- Wei, W. (2014). On the Application of the Principle of Initial Sale in the Resale of Digital Copyright Works. *Intellectual Property Rights*, (06), 21-28.
- Yang, C. F. (2000). *Introduction to the Research on the Philosophy of the Right Law* (p. 189). Nanjing University Press. Cited in Ma, Q., & W, Y. (2011). *On the Justification and Basis of the Principle of Intellectual Property Rights exhaustion*, *Intellectual Property Rights*, (01), 89-93.
- Yu, C. Y. (2021). On the Nature of Blockchain Virtual Token Transactions in Civil Code. *Oriental Law Studies*, (04), 139-151.