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LEGAL REGULATION OF NON-FUNGIBLE TOKENS (NFTS) AS AN OBJECT OF INTELLECTUAL PROPERTY IN UKRAINIAN LEGISLATION

Nowadays electronic technologies have been significantly developing each day since its creation. They may regard to absolutely different spheres of life, even to law. Intellectual property law is not an exception to this rule.

As L. Tarasenko emphasises, the thesis that NFTs are a new digital object of copyright, which is a rather interesting but controversial statement. Some authors point out that the very idea of selling copyright in the digital space is destructive and criticises NFTs as a form of intellectual property. Other authors point out that NFT confirms the (intellectual) property rights to digital property that is relevant, innovative and that will be further dissemination [1].

Non-fungible token (NFT) is a non-fungible cryptographic token on the blockchain, which is a unique type of asset that can be either fully digital or a tokenised version of real resources [2]. The provided notion issues its main essence. NFT is a cryptographic token on the blockchain which is attached to a specific digital asset (video, photo, audio) and ensures its origin and originality. NFT tokens are limited in number and each one is unique. NFT tokens were first picked up by gamers, who used them as digital collectables or game props, such as weapons, clothing, and other items, and then NFTs came to game art [2].

According to Article 1 (56) of the Law “On copyright and related rights”, a product is an original intellectual creation of the author (co-authors) in the field of science, literature, art, etc. expressed in an objective form [3]. The Law gives a notion and features for products to be as objects of intellectual property and have its legal protection provided by the state. In our case, as it was mentioned before, NFT is only a cryptographic token on the blockchain that is directly attached to a product (video, photo, audio).

L. Tarasenko has the same opinion regarding NTF's function in the sphere of law. The object of copyright is not the NFT itself, but the NFT product, i.e. the product recorded in a specific digital tokenised form. The scientific literature also indicates that NFT helps authors register their product (video, photo, audio) for further sale through a system of smart contracts, and the copyright for such an object is subsequently confirmed by a digital certificate [1].

In addition, it is important to mention proprietary rights to the NFT. When

purchasing an NFT, the digital artwork is not being purchased itself, but rather a code that serves as a reference to the file containing an artwork. The digital version of an artwork is not stored on the blockchain but rather with third parties or separate repositories. Therefore, the artwork associated with the token may not be directly present in the cryptographic register. Nevertheless, the author of the digital work retains the intellectual property rights to it, not the buyer of an NFT, unless an agreement has been reached between the seller and the buyer of the token. In the absence of such an agreement, the transfer of property copyrights is not guaranteed, and a buyer of an NFT does not obtain property rights to the digital product [4].

Moreover, the legal regulation of NFTs in Ukraine is missing nowadays. The implementation of the Law «On Virtual Assets» (that regulates such social relations) in Ukraine is dependent on the adoption of amendments to the Tax Code of Ukraine that pertain to the taxation of transactions involving virtual assets. Once this step is implemented, non-fungible tokens can be regarded as virtual assets that are tangible goods, have value, and are represented by a set of data in electronic form. Such assets will be able to serve as proof of property rights, including claims to other objects of civil rights. However, the Law contains a controversial provision which states that virtual assets are not a means of payment in Ukraine and cannot be exchanged for property or services [4].

In summary, NFTs are a digital form of representation of a product, not the copyright in the product itself. However, when an author or proprietary copyright holder tokenises a product, it can lead to the creation of new forms of copyright specific to the digital world. In other words, NFTs can be a means of reflecting creativity and ownership in the digital environment.

References

1. Tarasenko L. NFT – the latest digital copyright object or form of expression. Theory and Practice of Intellectual Property. 2022. No. 2. P. 90–97. URL: <https://doi.org/10.33731/22022.259748> (date of access: 23.04.2024).

2. Цифрове мистецтво, блокчейнізація та NFT: Юридичний розбір | Institute of law. Institute of law. URL: <https://ilti.com.ua/czifrove-mistecztvo,-blokchejnizacziya-ta-nft-yuridichnij-rozbir> (date of access: 23.04.2024).

3. Про авторське право і суміжні права: Закон України of 01.12.2022 no. 2811-IX: as of 15 April 2023. URL: <https://zakon.rada.gov.ua/laws/show/2811-20#Text> (date of access: 23.04.2024).

4. Ігор Смірнов. Правове регулювання NFT в Україні. Think brave. Think brave. *Останні новини бізнесу України.* URL: https://biz.ligazakon.net/analytics/219394_pravove-regulyuvannya-nft-v-ukran (date of access: 24.04.2024).