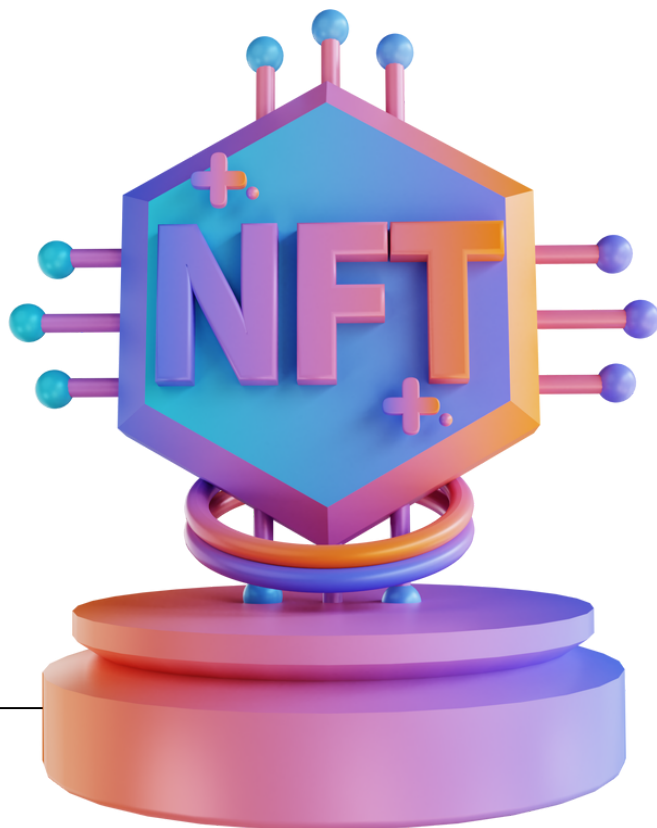


# NFT tips: must-read advice for beginners



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## **1. Although it may seem obvious, be very clear about what is and what is not an NFT.**

So that we understand each other, and simplifying everything a lot, do you remember the bumper car chips? Well, an NFT is something similar, although in a digital environment and with a bit more glamour around it.

In essence, an NFT is a digital token (a "token" or digital certificate, to make it plain) that represents an underlying non-fungible asset (an image, a tweet, an audio, etc.).

## **2. Although again, it may seem obvious, be very clear about what an NFT entitles you to. Look at the fine print!**

The possession of an NFT does not imply that you have any other rights beyond those directly associated with such possession. The acquisition of an NFT by default does not imply the acquisition of the exploitation rights of the underlying asset.

Let us explain this with a practical example.

If I have acquired an NFT of the photo of Michael Jordan's dunk from the personnel line or of Johan Cruyff's goal against Atletico Madrid in '73 (the so-called "Flying Dutchman"), this does not mean that I own the images or that I have any rights over them. The images as such and their exploitation rights will continue to belong to their author or to whoever has acquired them from said authors.

In other words, if you have an NFT of, for example, a photo and your idea is to make T-shirts, mugs or keychains to make a bit of cash, you better look for

another source of funding, since in principle, you have no rights for such commercial exploitation.



### **3. If you acquire a work and the rights to exploit it, make sure it is clear that the possibility to mint (create NFTs derived from that something) is expressly included in those rights. Look at the small print (2)!**

Copyright is, as I heard not many months ago from a fellow Argentinean colleague, like a daisy. They have many petals, and each one of them refers to a different modality or channel of exploitation.

The fact that, for example, you have been able to acquire the exploitation rights for a certain modality does not necessarily imply that you also have them in terms of the NFT.

We remember the very famous case of the association TheSpiceDAO that acquired an original of the novel DUNE with the idea of minting it (making NFTs with it), and discovered that, unfortunately, the possession of the physical copy did not give them any exploitation rights. Months later, after spending more than 2 million dollars on something that did not allow them to do what they had in mind, the association was dissolved.

In this sense, we also remember the no less mediatic dispute (ultimately settled) between Quentin Tarantino and Miramax. The production company understood that it had all the rights to

Pulp Fiction, but the director considered that specifically those related to the creation and exploitation of NFTs corresponded to him.

### **4. The NFTs that great way to monetise something**

Although part of the initial hype may have deflated, NFTs are still a very useful tool when it comes to monetising something, reaching an audience that would be difficult to access otherwise.

In this sense, for example, we have already seen how artists monetise their works, how NFTs of the first tweet of the social network of the little bird or with part of the original source code of the internet have been sold or how for example professional soccer teams use NFTs to promote social participation in the decision making of the club (an NFT = a right to vote when deciding which player should give a press conference after a match or how to decorate the tunnel of the locker room with images of the club).



### **5. Thinking of renewing your trade mark portfolio to include NFTs? Keep Calm and talk to your lawyer**

According to the EU Intellectual Property Office guidelines, the term NFT as such is not valid when specifying the list of goods and services of your trade mark.

Sensu contrario, it is recommended to apply for something along these lines in class 9 "downloadable digital files authenticated by non-fungible tokens [NFTs]" or along the following lines

"Minting and creation of non-fungible tokens (NFTs) and cryptographic tokens" if what we want is to provide the service of creating NFTs for third parties, in this case in class 42.

Finally, if what we want to protect is the sale, distribution or other type of service related to virtual goods authenticated by NFTs, these will be classified according to the classification principles established for services. That is, services for the sale of downloadable digital files authenticated by non-fungible tokens [NFTs] would fall within class 35, exchange or financial advice in relation to physical and virtual goods authenticated by non-fungible tokens (NFTs) would fall within class 36 and entertainment services through the use of virtual goods, namely downloadable digital art, authenticated by an NFT would fall within class 41. As a final note, assess in particular whether you really need to apply for new trade mark registrations.

Let's take a practical example to enlighten our dear readers as they deserve. MERCADOSA, a company known worldwide for its sports shoes, has trade marks registered in class 25 for footwear. As a result of its digitalization strategy, it is considering registering a whole series of new trade marks claiming protection for NFTs and digital assets (virtual sneakers). The truth is that as of today there is no clear solution in this regard. Some registration offices have already confirmed that in order to prevent the commercialization of digital assets (e.g. sneakers) it may be sufficient to act on the basis of a trademark protecting physical/traditional sneakers.

In any case, when in doubt, and given the casuistry of the matter, it may not be superfluous, if we are clear that we are going to interact in digital contexts, to ensure protection for NFTs.

## **6. Although it may seem so (for the moment) NFTs are not the Far West.**



To conclude, we make a very brief reference to three of the most mediatic cases, and in fact of the few that have transcended to the general public, regarding NFTS. Curiously, as far as we know, the plaintiffs were successful in all of them.

The textile giant MANGO was the subject of an injunction granted by a commercial court in Barcelona, requested by Visual entidad de Gestión de Artistas Plásticos (Vegap) on behalf of Joan Miró, Antoni Tapies and Miquel Barceló when reproducing some of their works in NFT format.

A similar conclusion was reached in the very famous cases of Yuga Labs (Bored Ape Yacht Club) and the so-called Metabirkins.