



## 5<sup>th</sup> IP Case Law Conference

29 - 30 April 2024

---

### IP in NFTs and Cryptocurrencies – *On the origin of the “specie”*

Hugh O’Neill

## Content

### 1. Non-fungible tokens (NFTs):

- Terminology and key-concepts
- TM protection – *tokenising*

### 2. Cryptocurrencies

- Terminology and key-concepts
- TM protection – *decentralization*

## Content

### 1. Non-fungible tokens (NFTs):

- Terminology and key-concepts
- Trade marks protection – *tokenising*

### 2. Cryptocurrencies

- Terminology and key-concepts
- TM protection – *decentralization*

## NFTs: Terminology and key-concepts

### Non-fungible tokens (NFTs)

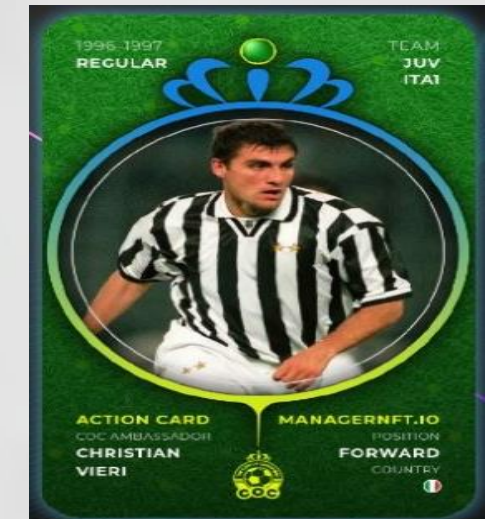
- **cryptographic tool** that uses a **blockchain**
- to create a **unique, non-fungible digital asset** which can be **owned and traded**

*Intellectual Property Rights and Distributed Ledger Technology  
with a focus on art NFTs and tokenized art, point 2.1*

## NFTs: Terminology and key-concepts

### Factual

- An NFT works as a **unique digital certificate** that can be used as a means of **recording an interest** of some kind in relation to **an asset**.
- An NFT relates to **an item other than itself**, but it is not to be confused with this item.
- An NFT can be linked to any **digital** or **physical item**, which would be used as **underlying asset** for the creation of the NFT.



## NFTs: Terminology and key-concepts

### Commercial & Legal

- ‘New’ market/asset class: *tokenizing*
- type of asset: digital (primarily) but physical too
- NFT *per se* not creating or transferring IPRs
- ‘bundle’ of rights/claims
- Relationship with existing kinds of property?

## NFTs: trade mark protection

- When performing the function of authentication as **digital certificates**, NFTs are classified in accordance with the type of **item they authenticate**

Class 9:

downloadable **digital image files** authenticated by non-fungible tokens [NFTs]

downloadable **digital music files** authenticated by non-fungible tokens [NFTs]

*Nice Classification alphabetical list, 2024*

Class 25:

**clothing** authenticated by non-fungible tokens [NFTs]

*Nice Classification alphabetical list, 2024*

## NFTs: trade mark protection

- When considered as a **technology**

Class 9:

*downloadable **computer software** applications for **minting** non-fungible tokens [NFTs]*

*Nice Classification alphabetical list, 2024*

Class 42:

*providing online non-downloadable **computer software for minting** non-fungible tokens [NFTs]*

*Nice Classification alphabetical list, 2024*

## Content

### 1. Non-fungible tokens (NFTs):

- Terminology and key-concepts
- TM protection – *tokenising*

### 2. Cryptocurrencies

- Terminology and key-concepts
- TM protection – *decentralization*

## Cryptocurrencies: Terminology and key-concepts

- More than **23,000** in circulation (from CoinMarketCap)
- Means of **payment**
- Means of **investment**



## Cryptocurrencies: Terminology and key-concepts

a digital **medium of exchange** in which transactions are verified and records maintained by a **decentralized system** using **cryptography**, rather than by a centralized public authority

**Crypto** → system that relies on cryptography

**Currency** → means of exchange

**Decentralised** → no central authority to control the crypto-system

## Cryptocurrencies: Terminology and key-concepts

### Notion of ‘decentralisation’

- no central entity that governs the system
- sovereign system
- software developers manage and update the system, no fixed legal or organizational structure



### Notion of ‘distinctiveness’

- [...] a trade mark must serve to identify the G&S covered by that mark as originating from a particular undertaking
- [...] must offer a guarantee that all the G&S have been manufactured or supplied under the control of a single undertaking

## Other IP areas for NFTs

- a tool to verify the **authenticity** of physical assets
- a tool to **track** and **validate** the sale and ownership of **digital goods**
- a tool in the **registration of IP rights**

## Final remarks

- **‘New’ blockchain-based technologies**
- ***Tokenization***
- ***Decentralization***
- **TM framework fit for purpose?**

