NFTS: The India Update

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The NFT Space in India is growing but a lot remains to be seen as to how they will eventually be regulated. In her India update for Asia IP, Aastha Koolwal looks at how NFTs hold massive potential when it comes to transactions involving copyright or design, they may not be the in thing yet for patents. The NFT space in India is growing rapidly, but NFT regulation in India remains uncertain, with much left to be seen as to how these digital assets will eventually be governed.

While one is likely to have already read an article or two about NFTs (non-fungible tokens), it bears repeating that NFTs are unique authentication certificates representing either ownership of or a licence to an asset and, in most cases, at least some rights in an underlying or associated IP.

NFTs have suddenly jumped into the public eye in the last few months through some India-specific NFT transactions involving mainstream celebrities which have captured the imagination of the Indian everyman. Deloitte predicts that NFTs for sports and entertainment media alone in India is likely to become a multi-billion dollar market in 2022.

In 2021, an NFT collection by legendary actor Amitabh Bachchan, which included a recording of Mr. Bachchan reciting poems written by his father, the renowned poet Shri Harivansh Rai Bachchan, sold for a whopping Rs71.8 million (US$940,000). Several other movie stars like Salman Khan and Rajnikanth have followed suit, releasing NFTs and NFT collections, often to mark a special theme or occasions such as release of a movie, a birthday and so on. Other Indian celebrities to jump on the NFT bandwagon include cricketeers Sunil Gavaskar and Rohit Sharma, model Sunny Leone and fashion designer Manish Malhotra.

The Indian comics scene isn't far behind, with the iconic Amar Chitra Katha announcing the launch of several NFTs based on its well-known characters from its eponymous publication as well as its Tinkle comics series, and also covers from upcoming issues. In fact, one of the first NFT launches of an Indian comic character was that of Chakra The Invincible, created by the legendary Stan Lee. Better known for creating characters such as Spider-Man, The Incredible Hulk, The X-Men and Iron Man, Lee co-created and launched the NFTs on December 27, 2021, comprising 6,865 unique art pieces based on characters. A second release on the following day contained 5,400 NFT comic art pieces.

On both occasions, the entire set was auctioned off in less than a minute. Participants included people from 14 countries, but with 22 percent of the audience being from India. Ownership of such NFTs will permit not only trading of the underlying asset, but also monetization and use of underlying characters in further works of art – like perhaps a Tinkle metaverse, a mouth-watering proposition

for any 90s kid.

Earlier this March, leading contemporary artist Paresh Maity issued a rare collection of art NFTs on the WazirX crypto marketplace in India.

An interest in NFTs is not limited to just celebrities, art or comic characters. In fact, several major Indian brands are focusing on the NFT space with an eye on some obvious benefits:

- To educate customers and get them interested in the brand's story, increasing brand awareness.
- Supporting charities with the income from sale and licensing of NFTs, while ensuring the widespread adoption and spread of the brand's IP.
- Loyal customers are likely to be invested in the brand and are likely to be viral promoters of the brands NFTs.

For instance, the *Hindustan Times* media juggernaut intends to digitize India's iconic historical moments and turn them into NFTs. MG Motors India has also announced its plans to launch a set of collectible NFTs comprising digital assets representing their legacy, diversity and strong bond with AI and technology, and proceeds from sales of these will go towards fulfilling the company's corporate social responsibility activities. Similarly, Tech Mahindra, in an effort to give back to society and for talent promotion, will be launching an NFT marketplace with the intention of giving a platform to celebrities and creators to present their art and memorabilia in a digital form.

These are but few of the many examples of the growing NFT space in India, not including the several NFT marketplaces which have popped up just in the last two years.

Where lies the conundrum?

Almost two months after India announced its plans to launch a Digital Rupee and to tax digital assets, there is some clarity on the taxation of cryptocurrencies. However, the government is yet to bring legislation to regulate cryptocurrencies. To sidestep these issues, instead of relying on the cryptocurrency ecosystem for NFT transactions in India, many NFT creators have made their NFTs available as part of simple rupee purchases, like any other e-commerce purchase in India today.

It is important to bear in mind though, that while one may be paying for NFTs in legal tender, NFTs themselves are digital assets, based on blockchain technology, and therefore, are unregulated in India by any specific statute or rules.

Instead, one would have to ensure that the underlying IP is solidly protectable. Accordingly, while NFTs may prove to be a tremendous use case for transactions involving video, art etc., where the type of IP involved may be a copyright or a design, NFTs perhaps do not hold the same level of utility, at least in the present times, for patents. In fact, while patent transactions may well be recordable using NFTs backed by the immutability of blockchain technology, we still have a long way to go

before IP authorities or courts in India will assign any value to a patent NFT over and above what would be given to a simple patent certificate issued by the patent office or an assignment agreement executed in the traditional way.

A lot still remains to be seen about how NFTs will eventually be regulated in India and what recognition will be bestowed on ownership or rights through NFTs. The nation awaits with bated breath.

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