

TOKENIZATION OF CREATIVITY: USER MOTIVATION, CONSENSUAL VALUE AND CHINESE COPYRIGHT LAW

Ruslan A. Budnik^{1,2}

¹ HSE University, Moscow, Russia

² Shenzhen MSU-BIT University, Shenzhen, China

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The subject of this study is the legal-economic analysis of the non-fungible token phenomenon. Due to the a priori accessibility of many tokenized intellectual products, the ability to monetize them by copyright methods turns out to be hard to implement. The paper puts forward a hypothesis that token owners apply innovative monetization methods, which do not stand on the prohibition and restriction of access to the protected results of intellectual activity. Instead of deactivated copyright restrictions, token buyers receive some new, additional, non-trivial economic utility that researchers have not reflected yet. If this utility exists, we should identify, analyze and include it in the equation of relations regarding NFT. The second hypothesis of the study stems from the first one. It states that the results of creative activity in the post-economic society take the place of a new etalon of value, which replaces the materialistic standard of worth based on rarity. The consensual value contained in tokenized works brings additional motivators for token purchasers and compensates for the lost sources of income.

Our goal is to put and verify the scientific hypotheses of tokenized works' additional non-obvious value existence. We suppose that this innovative utility substitutes traditional copyright ban-based monetization abilities. The research's purpose is also to theoretically generalize its results and formulate a legal-economic concept that explains the motivation for the purchasers of non-fungible tokens and sets the regulations for the NFT market.

Methodology. The study of the non-fungible token phenomenon and the verification of formulated hypotheses conducts from the standpoint of the law, economics, an interdisciplinary legal-economic – institutional point of view, as well as with the help of the monistic copyright doctrine of the People's Republic of China. The research methodology also includes an analysis of the relevant body of knowledge and various points of view of the scientists on the subject of research.

The study's main result is the novel elaborated concept of the non-fungible token owner's moral right. This concept fills the rising doctrine of utilitarian digital rights with legal-economic essence. We constructed the non-fungible token owner's moral right consisting of two powers: the right to designate one's name as the owner of a token for a specific creative product and to demand such an indication from others; and also, as a duty of NFT platforms to support the function of informing about the name or pseudonym of the token's owner.

Analysis of the appropriate accumulated knowledge, development, and verification of formulated hypotheses on tokenized works' consensual value and additional economic utility, allowed us to achieve the goals of this study. We resolve the issue of token purchasers' motivation and legal-economic grounds for their rational behavior by formulating and substantiating the concept of non-fungible tokens' owner moral right.

1. Introduction

One of the most notable innovations of the modern world can be called the developing phenomenon of digital art [1, p. 3], which gave rise to many innovative ways of its commercial and altruistic use [2]. Alternative models of monetization of digital art are in the focus of understanding by the legal community of the world in terms of their legal qualification [3, p. 192-219]. A previously unknown phenomenon is investigated in order to find its compliance with already existing objects of law and the relations that have developed around them, or to pass a verdict on the absence of the desired identity and justify the need to build new legal structures and methods of regulation. Among specialists, there is no fundamental dispute about the fact that the object of digital art itself is nothing more than an object of copyright or related rights: a work of fine art, a work of music with or without text, an audiovisual work or another complex object [4, p. 45].

An intense discussion has emerged around such a phenomenon as a non-fungible token (hereinafter referred to as NFT) [4, p. 12]. The multidimensionality of this phenomenon lies in the fact that it has a legal, economic and technological dimension. The legal meaning of the NFT is to fix the transferred rights to the digital art object; economic content includes deriving income from the use of the work and exchange operations with its token; the technological basis allows for trustworthy transactions and storage of information about them on a decentralized blockchain platform [5].

The term “blockchain tokenization”, which has become widespread in these circumstances, does not have a legal definition, so we offer its author’s interpretation. The tokenization of a work is understood as the release (minting or stamping) by its copyright holder on the blockchain platform of a non-fungible token in relation to this object of copyright or related rights, an integral part of which is a license agreement (electronic smart contract) on the transfer of a certain number of intellectual rights to a work to the purchaser of the

token.

The scope of rights transferred through a token is individual in each case, it can vary in a wide range: from the transfer of property rights in full (alienation); to the minimum possible – the use of one particular copy of the work in one of the many available ways.

At the same time, the token itself is not an object of copyright, it is an element of the blockchain system that performs the function of a container of information about a digitized work, called metadata. The information content of the token consists of such components as service information for verifying a record in the blockchain; data on the repository in which the digital copy or original of the work is stored; a smart contract specifying and fixing the rights of the buyer of the token; identifiers of the seller and buyer of the token [6, p. 105].

A distinctive feature of a significant part of digital art objects, the rights to which are fixed and realized with the help of NFT, is the a priori availability of their copies on network resources, and often on physical media [7, p. 183]. For example, paintings by classical artists, copies (reproductions) of which can be hung on the streets of the city, or funny images of “crypto punks”, a collection of which laid the foundation for the NFT digital art market, printed on T-shirts.

Two circumstances can be singled out as reasons for the initial prevalence of tokenized objects [8, p. 213-222]. The first is that the work has entered the public domain due to the expiration of the copyright term, which allows it to be used without permission and payment of remuneration. An example here would be fine art works by internationally recognized artists with expired copyright protection.

The second factor is the purposeful actions of the author or other copyright holder to distribute the digital art object free of charge. This approach is explained by the fact that in modern realities, the demand or “clickability” of an object is achieved through a massive attraction of users’ attention through advertising and marketing activities and the provision of free access to it. Only under these conditions is it possible to maximize the audience, get feedback from it and get an assessment of the

work, on the basis of which to build a strategy for its monetization. Thus, it is free access to the object of digital art that becomes a necessary condition for successful commercialization, but not the restriction of its circulation [9].

For these two reasons, new digital art objects and digitized duplicates of famous works, the rights to which are sold using tokens, are available in the form of electronic copies and physical copies even before tokenization.

From the point of view of the classical doctrine of intellectual property, based on the prohibition of using a work without the permission of the copyright holder, the behavior of token purchasers, who in a significant part of cases initially, even before the purchase, due to a *fait accompli*, are unable to restrict the distribution of a creative product on and off the network, seems counterintuitive. [10, p. 144]. Methods of commercialization of such a work, based on restrictions and providing for the collection of fees for use, turn out to be unrealizable or at least difficult. At the same time, the arsenal of token purchasers has accumulated a wide range of innovative ways to monetize them, not related to the restriction of access to the work [11, p. 206].

2. Methodology

In this study, we put forward and test the hypothesis of the consensual value of creative products,¹ which is overcoming the materialistic approach to calculating the value arising from the rarity and scarcity of goods.

The construct of the consensual value of creativity required, in turn, the development of the concept of the personal right of the owner of the token based on the institutional theory of the mutual conditioning of legal and economic aspects of relations in modern society.

3. Results

3.1. NFT and the consensual value of creativity

¹ The consensual value in the understanding proposed by the author of the article is the value that is formed and verified by society, in particular, by its relevant social strata and target clubs, with the help of technological tools of group communication.

3.1.1. Creative product as a new standard of value

The origins of value and value in the modern world are based less and less on material goods. At the practical level, this is manifested in the dominance of the intellectual and information product in the economies of the developed countries of the world [13]. At the same time, such a category characteristic of the materialistic period of the development of civilization as a rarity remains the basis of value and monetary expression of value to the present moment. Rarity or scarcity as a condition that occurs when the demand for a gift of nature, a good or service exceeds its available volume. The natural standard of value based on scarcity is gold as a rare earth metal that requires significant effort in mining.

In a post-industrial society, which for the most part creates intangible products and services, we have a fundamentally different dependence, namely, the derivation of their value not from scarcity, but, on the contrary, from the growth of universality, high prevalence, an increase in the audience, the number of users, the involvement of the broad masses and individual individuals [14]. This phenomenon is also defined as a network effect, in which the value of a good, product or service for one user increases with an increase in the number of other consumers [15].

The increase in value due to the increase in prevalence, rather than rarity, is most pronounced in the example of creative products. The more popular and in demand a work, for example, a mobile application, the more valuable it looks to others, and the more “cash” in various units of value it ultimately collects. This circumstance pushes us to the next intellectual step: at the present stage of development, humanity needs a new standard of value based on the qualitative perception of this artifact by a significant number of citizens of the world.

The second important circumstance for our analysis is the erosion of the state's monopoly on issuing money into circulation as an equivalent of value/utility, a means of payment and an instrument of wealth accumulation. This state came both purely technically with the advent of cryptocurrencies and

the global network of blockchain platforms for their processing, and at the mental level, when part of society accepted this alternative to public finance and endowed it with trust based on the trust of other citizens of the world in a new asset and supporting infrastructure.

The demand for a new value and the emergence of the infrastructure supporting it created the conditions for the formation of a new standard of value and a value/utility equivalent derived from it as a means of expressing this value [16]. The new standard of value, from our point of view, can be based not only on the abstraction of numbers and non-objective trust, which cryptocurrencies symbolize, but on the consensus of members of society regarding what they consider the most valuable resource or product at a new stage of their development.

So, we came to synthesize the prerequisites and calculate the essence that will become the new standard of value. To do this, it must meet a number of criteria. This good, object or resource has an intangible nature. Its value comes not from rarity, but from prevalence and demand. This phenomenon is connected with the intellect of a person, with the information side of his activity, and not with physical resources, in other words, with what gives form, and not with what is given form. To be accepted as a benchmark of value, this object must already be perceived today as a valuable asset. To the greatest extent, the above criteria correspond to the results of intellectual activity, more precisely, those that are not related to the material world, namely works of literature, science and art, or objects of copyright and related rights.

3.1.2. The mechanism for determining the value of a creative product

Then the question arises about the mechanism for determining and differentiating the value of creative products, what, who and how determines this value, which object is more or less valuable, and why. As an answer, we see one of the key hypotheses of this study, which is that it should be a consensual value, established and verified by independent public groups or club-type structures [17]. A careful look at the communities of sellers

and buyers of NFT tokens and their tools suggests that this is an imperfect, volatile, subject to external influence and speculation, but a working mechanism for identifying the consensual value of a creative product [18, p. 293]. If we ignore the technological complexity of the blockchain and cryptocurrencies, then in essence this is a classic mechanism for the formation of an exchange price for a product through a balance of supply and demand. The price of tokens is formed by a complex socio-cultural mechanism, which includes innovative tools of the club economy, such as collaborative filtering, cross-cultural communication algorithms, and recommender systems [19].

The price of tokens for works of digital art in NFT communities is formed on the basis of a consensus on the value of a certain work using the above-mentioned means. The fact that this mechanism works is more important than the fact that sometimes it looks like a frivolous test, a curious game with primitive pictures of “crypto-punks”,² “bored monkeys”,³ or digital copies of world art masterpieces that have entered the public domain.⁴

3.2. Personal right of the owner of the token as a component of its value

In creative activity, the personality of a scientist, artist, poet, author of a computer program or musician plays a decisive role. The author of a work is reflected in his creation, the work itself is a continuation of the author's personality, an extension of this person, according to the apt remark of G.M. McLuhan [20]. The personality of the author is one of the determining factors in the evaluation of the work, both before and after acquaintance with a particular work.

Our hypothesis is that the very fact of buying a token for a work, as well as the identity of the purchaser, influence the perception of the value of the work and the dynamics of the price of its token.

² Famous NFT project Larva Labs.

<https://www.larvalabs.com/>

³ Limited NFT Collection.

<https://boredapeyachtclub.com/#/>

⁴ The Hermitage presented 38 NFT projects at the first digital art exhibition. TASS, 2021.

<https://tass.ru/kultura/12888681>

The fact of purchasing a token broadcast to the community information that at least one buyer sees value in the product. This circumstance, in accordance with the principles of the club economy, implies a community consensus regarding the value of this work, which in turn signals the prospect of an increase in the price of the token.

The next circumstance concerns the influence of the personality of the purchaser or collector on the perception of the value of the work, and hence on the price of the token. The art world traditionally reacts to the personality of an authoritative collector or a successful art dealer [21, p. 29]. The high authority of the collector or trader affects the price of the work in the direction of its increase and the next sale takes place with a premium to the previous one. The NFT/blockchain environment enhances this well-known effect due to the transparency of transactions.

The foregoing allows us to formulate the concept of the personal right of the owner of the token by analogy with the moral right of the author of the work. In the case of acquiring a token for a work, a closer and more significant connection of the owner of the token with the tokenized work arises than with an ordinary material thing, which in turn induces an increase in the consensual value of the work and an increase in the price of the token. The authority of the buyer of the token and the consensual value of the product enters into a kind of resonance as in-phase waves that add up and mutually reinforce, and the increased synergy of value is supported and transmitted by means of the blockchain platform.

According to the proposed concept, the personal right of the token owner consists of two powers. The first right is the right of the owner to a name, that is, the right to designate one's name as the owner of a token for a particular work, and the right to demand such indication from others. The implementation of the first right is assumed by default, since the name or pseudonym of the acquirer is a standard attribute of the blockchain block. However, such a designation is carried out in a metadata format that is difficult to read by a person due to the presence of a "coding binding" of this information, through which it is difficult to

perceive the text. Therefore, we are talking here about a human-readable format for representing the name of the owner of the token.

The second personal authority of the owner of the token is in the nature of a legal obligation - a measure of proper behavior provided for by the agreement of the parties. This right should be reflected in the rules of NFT/blockchain platforms as an obligation to support the function of informing about the name or pseudonym of the owner of the token for a particular work, unless he wishes to remain incognito.

The concept of the personal right of the owner of the token has developed as part of the search for an answer to the question about the motives of NFT purchasers. In our opinion, this concept allows us to identify and explain the accessory utility of tokens with the resulting financial consequences. A resonant increase in the price of a token can multiply compensate for the losses from the withdrawal of some opportunities for monetizing a work in classical ways - through the use of prohibitive copyright mechanisms. It is this effect that buyers of tokens use based on their own experience, the functions of the platform and the established patterns of behavior of community members. This motive of their actions was not previously articulated, analyzed and reflected in due detail.

4. Discussion: the personal right of the owner of the token through the prism of institutional theory and copyright of the People's Republic of China (PRC)

4.1. Institutional substantiation of the personal right of the owner of the token

The institutional theory is based on the axiom that legal and economic processes are mutually dependent. It makes no sense to rank law and economics among themselves, among these two social institutions it is impossible to single out the one that plays a leading role, in dialectical unity and opposition they are equivalent [22, p. 27]. Civil, commercial, entrepreneurial, trade relations are always of a legal and economic nature, they develop and develop simultaneously in both forms as two sides of the same coin [23]. The institutional

approach is contrastingly different from the Marxist one, which postulates the primacy of the economy over the legal superstructure.

The postulates of the institutional theory important for the present study are defined in such a way that the legal implication always stands behind any economic processes, and also that the importance of economic exchange is not lower than the production factor. The legal and economic connection is continuous, it ensures that various interests are taken into account and reflects the balance of social groups, it makes it possible to justify which rights and values dominate in a particular period, and who should make decisions on these problems [24, p. 184]. The legal-economic connection ultimately determines the distribution of resources, power, income and wealth.

The personal right of the token owner is a synthesis of legal and economic factors, which is assumed by the institutional theory. This right reflects a pattern that directly follows from institutionalism and consists in the legal and economic inseparability of property and non-property powers, the unity and mutual conditionality of material and moral motives of behavior that determine relations around NFT tokens. The personal right of the owner of the token to the name and his right to be indicated as the copyright holder of the work is brought, if not to the level of equivalence, then to the hierarchical level preceding the height of the moral rights of the author of the work. The proposed concept is intended to reflect the fact that the reputation and authority of the owner of the token can increase the value of the object of ownership, and vice versa, the value of the work increases the reputation of its owner. The correlation of the legal and economic component of relations in the field of NFT, rooted in institutional theory, sheds light on the motivation of token purchasers.

4.2. Chinese copyright and personal right of the owner of the token

The concept of the personal right of the owner of the token succinctly fits into the copyright legislation of the PRC due to its reliance on the monistic doctrine of intellectual rights and the

principles of institutionalism (see, for example, [25, p. 67]).

The monism of China's copyright law is clearly seen in the norm of Article 10 "copyright content" of the PRC's Copyright Law. The norm hypothesis begins with the thesis "copyright includes the following personal and property rights" and then the economic and moral powers of the author are listed in a single list without distinguishing categories. The monism of Chinese copyright law, which consists in the absence of a divide between the property and moral rights of the author, and vice versa, in the deep integration and seamless connection of these legal categories, corresponds to the postulate of the interdependence of law and economics in institutional theory (see, for example, [26, p. 49]).

In copyright laws, built on a dualism of property and moral rights, the picture is different. In the fourth part of the Civil Code of the Russian Federation, for example, it is expressed in the distinction between property and personal non-property rights by clustering articles of the law on this basis [27, p. 133]. This approach makes it difficult to understand the integrated legal and economic motivation of NFT market participants. Conversely, the monistic concept of Chinese copyright law provides us with a key to understanding this phenomenon.

The institutional basis of China's copyright law lies in its structure. The second paragraph of the law is a set of norms devoted to specific objects of copyright and related rights and the circumstances of their creation. The hypothesis and disposition of these norms exhaustively describe both the legal and economic side of relations regarding the creation and use of objects of this type, does not leave gaps for free interpretation and informs the law enforcement officer of the ultimate legal and economic certainty. Thus, for example, Article 12 deals with copyright in a derivative work; article 13 on the rights to a work created in co-authorship; article 15 on the rights to motion pictures and works created in a manner analogous to film production; article 18 rights to works of fine arts.

Another feature of Chinese legislation, which at the same time emphasizes its monistic basis and reliance on institutional theory, is the admissibility of recognizing the result of intellectual activity as the

author - legal entities, and not just individuals, as, for example, in the Russian Federation. Article 11, which defines the ownership of copyright, in the second paragraph reads: "A legal entity or other organization is recognized as the author of a work, if the work was created under the direction of a legal entity or other organization, expresses their creative intent, while this legal entity or other organization recognizes its responsibility for the work."

Thus, a legal entity in China may own not only property, but also personal non-property rights. For countries with a dualistic tradition of copyright, this situation is uncharacteristic. However, it is fully operational in the countries of the monistic doctrine, often found in states of the customary family, in the form of a rule that applies to works created for hire (work made for hire) and prescribes the transfer of moral rights to the legal entity - the employer of the authors and performers (see, for example, [28, p. 73]).

The vesting of a legal entity with moral rights under the copyright laws of the People's Republic of China establishes the foundations and creates the need for the concept of personal right of the owner of the token as follows. Digital art collections are often created for the purpose of tokenization by teams of artists, who can form a legal entity with their own copyright identity and act as a collective author [29]. On the other hand, token collectors can also create legal entities and act as a collective collector (see, for example, [30, p. 981]. Both types of these associations have a cumulative reputation as the sum of individual reputations of their members - artists and collectors [31]. Thus, the reputation of the collective author enhances the value of the works created by the association of authors. The same is true for the reputation of the collective collector, which works to increase the price of tokens of community members.

The influence of the personal right of the owner

of the token is already taken into account by market participants today. NFT marketplaces support a tool to indicate the name of the owner of the token through the "owned by" attribute (belongs to someone), but quite often token owners remain incognito. This may be justified by financial and tax reasons, but it reduces the cost of the token. Therefore, if there is no reason to hide the identity or pseudonym of the authoritative owner, then the fact of ownership should be emphasized, since it will increase the value of the token through the value resonance mechanism. This pattern is supported by Chinese copyright doctrine and used by the Chinese NFT community.

5. Conclusion

In this article, we set ourselves the goal of analyzing the motives of NFT token purchasers. To achieve it, we applied the institutional legal and economic doctrine, which assumes the inseparability of the legal and economic aspirations of the participants in the relationship. The postulates of this theory have led us to formulate the concept of the personal right of the token owner, which in the emerging Russian legislation corresponds to the definition of utilitarian digital rights. We constructed the personal right of the owner of the token as consisting of two powers: as the right to designate one's name as the owner of the token for a specific work, and to demand such an indication from others; and also as a duty of platforms to support the function of informing about the name or pseudonym of the owner of the token.

The copyright legislation of the People's Republic of China made it possible to check the compatibility of the proposed concept with the doctrinal provisions of the intellectual property system and its practical applicability. The results of this study will be useful for further study of the NFT phenomenon and relations in the market for non-fungible tokens, which continue to be in a phase of intensive development.

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INFORMATION ABOUT AUTHOR

Ruslan A. Budnik – Doctor of Law; ¹Deputy Director, International Scientific and Educational Center "UNESCO Chair on Copyright, Related, Cultural and Information Rights"; ²Associate Professor, Russian-Chinese Center for Comparative Law

¹ *HSE University*

² *Shenzhen MSU-BIT University*

¹ 3, Bol'shoi Trekhsvyatitel'skii per., Moscow, 123022, Russia

² 1, International University Park Road, Dayun New Town, Longgang District, Shenzhen, Guangdong Province, 518172, China

E-mail: rusbudnik@gmail.com; rbudnik@hse.ru

ORCID: 0000-0001-8076-1560

RSCI SPIN-code: 5202-9106

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