

# The Dark Side of the NFTs: The artists' need for new systems of collaboration

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## Abstract

NFTs are often imagined as the initiators of a democratic revolution in the art world, and yet their effects are much more complicated than meets the eye. While the financial independence and the new exposure channels they offer to the artists are undeniable, they also disturb the art world's current equilibrium, resulting in the emergence of a chaotic art ecosystem that makes the independent artists' already existing vulnerabilities even more pronounced. This paper defends the position that artists necessitate new systems of collaboration to sidestep these negative effects, overviews some promising examples of such attempts and discusses the potential solutions for the future.

## Keywords

Art ecosystem, digital art, NFT, blockchain, crypto art, artist communities, collaboration.

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## Introduction

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In today's art ecosystem radically reshaped by the conditions of the Covid-19 pandemic, the artists working with digital technologies have more exposure channels available to them compared to those working with traditional media. The former are able to exhibit their works online without facing the criticisms the artists using conventional media often receive for choosing a digital exposure platform, and they are free from the costs associated with transporting, insuring and installing a physical exhibition. Neither do they necessitate the partnership of a gallery or a museum to present their works; social media platforms and NFTs allow them to sidestep the gatekeepers in the mainstream arts and culture institutions, contributing to the emergence of a more democratic and decentralized art world. In fact, Sarah D. McDaniel and Denny Galindo observe that "art galleries and auction houses have been the market makers of the art world", and "NFTs and their marketplaces disrupt this process by allowing more artists to go straight to market and sell directly to buyers."<sup>1</sup>

The NFTs' market success empowers the artists in other ways as well. For instance, Bernard Marr draws attention to the individual power the NFTs have bestowed upon Ppplreasr, the artist also known as Emily Yang, who uses her NFT sales' revenue to support the other artists and especially those of Asian descent.<sup>2</sup> Artists without a digital background are also able to access this unfamiliar territory thanks to a new line of service providers facilitating migration into the digital realm without being lost in technicalities. A good example for such endeavors is Vive Arts, a company specialized in the sales and exhibition of art "in all digital formats", assisting its clients starting from the artwork's creation phase.<sup>3</sup> On the other hand, for the digital artists wishing to develop their skills, Visa launched the "Visa Creator Program" to "tutor a curated selection of digital artists through the NFT process, helping them maximize their talent and use the blockchain space as both a creative tool and marketplace."<sup>4</sup>

Although NFTs emerge as a convenient funding source for independent artists, they are also criticized for their adverse effects on the environment due to their heavy energy consumption and the subsequent carbon emission. But a more subtle phenomenon challenges the artists in other ways that might threaten their career sustainability in the long run unless they succeed at establishing new systems of alliance and collaboration.

The following section addresses both the NFTs' ecological impact and these relatively implicit effects in more detail.

## NFTs and Chaos in the Art Ecosystem

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### NFTs and Climate Change

The NFTs' impact on the environment has been a source of ardent debate since the beginning. Some artists have been among the leading opponents of their use in the art world due to their adverse effects on the planet, and they have also been expressing their concerns publicly. For instance, when media artist Joanie Lemercier discovered that the sale of his NFT series consumed the same amount of energy needed to run his studio for two years, he decided to cancel his two upcoming NFT releases.<sup>5</sup> Another media artist, Memo Akten, designed a system to assess Ethereum's carbon footprint in numeric values and created the website "cryp-toart.wtf" to share the most up-to-date information about the issue.<sup>6</sup> Nowadays, he continues to produce NFTs on "eco-friendly blockchains."<sup>7</sup> However, others like Eric James Beyer claim that "criticism is exaggerated and conflates hype with the truth." Beyer compares the NFTs' yearly energy consumption with that of the small mining industries, giant tech's data storage facilities or residential air conditioning devices, and reports that the former is relatively lower. He adds that new measures to reduce carbon emission rates are also being implemented, such as Ethereum's migration from a PoW (Proof-of-Work) to a PoS (Proof-of-Stake) system, and mentions various ecofriendly trading platforms as plausible alternatives.<sup>8</sup> Raisa Bruner is another optimist mentioning the success of the Canadian company CurrencyWorks in "turning oil waste into environmentally friendly energy that powers crypto mining", and the Israeli company StarkWare that was able to invent a technique to store more information in one block unit, reducing the system's overall energy consumption.<sup>9</sup> Even Mike Winkelmann, the artist widely known as Beeple, ensures the public that he will eventually manage to "completely offset emissions from his NFTs by investing in renewable energy, conservation projects, or technology that sucks CO2 out of the atmosphere."<sup>10</sup> Efforts at building synergy between the NFT min(t)ers and renewable energy sectors are already plenty. But whether the artists are ready to face the challenges brought about by this new technology reshaping the art ecosystem is seldom addressed.

## The NFTs' Negative Effects on the Artists

The problems regarding the NFTs are not limited to their ecological impact; in addition to their advantages, they have adverse effects on the artists' careers as well. In his article on *The Atlantic*, Anil Dash observes that "the current NFT market is drawing an extraordinary range of grifters and spammers" and the artists' works are regularly being hijacked on social media and converted to NFTs and sold by other people without their permission, so much so that, when an app designed for blocking user groups on Twitter was released, its leading customers were the artists "using it to block NFT spammers from hijacking their works and monetizing them as NFTs without permission."<sup>11</sup> The artists' vulnerabilities in the digital environment are also pointed out by Cass Marshall, who explains that the artists exhibiting work on social media and worrying about hijackers ultimately decide to avoid online presence altogether. And if the hijackers are able to generate the right type and amount of speculation around the work, they are able to obtain much higher revenue from the same work compared to the original artist.<sup>12</sup> Thus, as Simon Spichak says, it is no surprise that "much of the pushback against NFTs is coming from the artists that they were supposed to help", due to the unbridgeable difference between the copyright culture of the latter and those of the newly emerging NFT fans. He adds that only 50% of the artworks in the NFT market are sold for prices above 200 US dollars, and no correlation exists between the work's artistic quality and financial worth. To the contrary, the majority of the astronomic sales prices belong to works without artistic sophistication.<sup>13</sup> Andy Storey identifies yet other ways in which NFTs negatively impact the artists' careers, such as speculative and fluctuating prices hurting the artists' overall market value, the NFT platforms' high entry costs, low respect for the works' artistic value, and the possibility of the work being used in contexts the artist does not wish to be associated with.<sup>14</sup>

The NFTs have also become a source of conflict for various actors in the art world. The artists continuing to produce NFTs and the NFT platforms offering their works for sale are often pressurized by the anti-NFT artists to stop doing so. The pressure can be so serious that, for instance, the artist portfolio platform ArtStation had to cancel its upcoming NFT initiative due to intense online criticism by its users based on environmental concerns.<sup>15</sup> The platform was even compelled to release an official statement apologizing for "all the negative emotions" that their actions caused.<sup>16</sup> Similarly, the artists participating in the Art Wars project declared that the project's initiator, artist and curator Ben Moore did

not ask for their permission when producing their works' NFT versions. Consequently, the NFT marketplace OpenSea decided to remove the project from their inventory. And complaints do not only come from the artists either; they target the artists instead. Hermès, a giant brand, sued the artist Mason Rothschild for releasing "MetaBirkins" or "100 NFTs resembling the iconic Hermès Birkin handbag." The result of the lawsuit will also impact the collectors who have already bought items from the collection.<sup>17</sup> Rothschild defended himself by arguing that under the First Amendment, he had the right to "create art based on [his] interpretations of the world around [him]" and drew an analogy between his work and Andy Warhol's Campbell Soup Can, but it was not sufficient for the court to dismiss the case.<sup>18</sup> Put differently, the NFTs emerge as an important source of chaos and conflict in the art world, particularly in relation to issues around ecology and copyright.

In sum, the NFTs constitute an additional income source and an alternative exposure channel especially for the independent artists, allowing them to bypass the gatekeepers in the museums, galleries and auction houses. But they simultaneously give rise to a more chaotic art ecosystem in which artists have to choose between increased visibility and the violation of their intellectual property rights, or producing critical work referencing iconic images and facing corporate lawsuits. Environmental concerns associated with NFT minting and transactions add further complexity to the issue, increasing the tension between pro-and anti-NFT artists. Moreover, due to the medium's accessibility to everyone which appears to be an advantage, the artists have to compete against the NFT creators without an artistic background who prioritize financial return over artistic quality.

## New Systems of Alliance and Collaboration for the Artists

As a response to the challenges at hand, artists necessitate new systems of alliance and collaboration allowing them to navigate this chaotic art ecosystem more safely. Apparently, one of the basic strategies with fruitful results is to join forces with other artists in the form of co-productions. In fact, fine art photographer Gabriel Dean Roberts explains that he finds NFT collaborations with other artists and even cross-disciplinary collaborations with musicians highly beneficial, as each side brings their own audience into the picture while the uniqueness of the collaboration itself is a form of added value. Joint ventures also contribute to the sense of community among NFT artists by highlighting interconnectedness.<sup>19</sup> Such a solidarity project took place in 2021 when a hundred artists jointly

created a single NFT composed of a hundred parts that sold out within a few minutes. According to the project's curator Loopify, the artist list consisted of a few established figures and "one that is new to NFTs", and the idea emerged in response to "the current limitations for lesser-known artists to mint and sell their own NFTs such as high gas fees, limited understanding of the tech, and little visibility". Moreover, to ensure that the artists were exempt from paying additional fees, the revenue was first transferred into USD coin, from which each artist received an equal share.<sup>20</sup> These examples illustrate that artist alliances around NFT creation have the potential to enhance the visibility of every individual artist while reducing the costs associated with NFT production in comparison to doing so single-handedly, and they particularly benefit the emerging artists with limited experience in crypto art. These, in turn, could increase diversity in the art world, ultimately contributing to its long-term sustainability. Collective production also reduces the carbon emissions per capita associated with individual NFT minting, which would minimize the NFTs' negative impact on the environment and further contribute to the sustainability of the NFT art ecosystem.

The problems related to copyright, intellectual property theft and hijacking require even more organized action on the part of the artists and a closer collaboration with the legislative parties as well as with legal professionals specializing in this subject. Jessica Rizzo observes that, ultimately, the authority resides in the hands of the courts whose exemplary decisions will gradually establish the principles dominating the creation, distribution and trading of the NFTs. According to Juliet Moringiello from Widener University, the laws of intellectual property in the physical world are actually valid in the web3 environment as well, and she refers to the 1996 "Declaration of the Independence of Cyberspace" by John Perry Barlow as a similar example where his attempts at justifying the bypassing of the existing laws ultimately failed.<sup>21</sup> Yet, the legal framework is still insufficient for the artists even in the United States. For instance, on its official website, Thienel Law LLC refers to The Visual Artists Rights Act of 1990 (VARA) as well as The Lanham Act (Trademark Act) and the Copyright Act as only partially protective documents.<sup>22</sup> And as the current legal framework around NFTs is still in formation, the artists themselves should be more directly involved in the establishment of these principles. One way in which they have already begun to make a positive difference is to hold the minting and sales platforms accountable for regulating their clients' activities with regards to intellectual property. A good example for such systems is provided

by OpenSea; in 2022, the platform implemented an anti-plagiarism mechanism consisting of both algorithmic detection and review by actual humans.<sup>23</sup> OpenSea also enabled a stolen art reporting system thanks to which the original artist can file a takedown request against the plagiarist, although the system does not guarantee that the request will be accepted.<sup>24</sup> Another solution could be to have the NFT market platforms involve the artists themselves in the artwork curation and elimination processes, so that unethical behavior by a member of the community is directly sanctioned by that very community, e.g., by banning the user from the platform following the receipt of a certain number of complaints. In short, collective action on the part of the artists can be effective in pushing all NFT platforms to take the necessary measures, which would also accelerate the establishment of a basic legal, or at least ethical framework for NFT art creation and transaction around the world, and would help reduce the chaos in the NFT art ecosystem.

As illustrated by the MetaBirkin case, brands are another crucial party in the legal disputes over NFTs. One of the most difficult dilemmas emerges around the artists' right to borrow iconic imagery from popular culture vs. the brands' urge to protect their intellectual property. This is one of the most sensitive territories for the future of artistic creativity. If the courts decide to overprotect the brands, they will also have acknowledged that at least half of the seminal artworks from the 20th century are copyright violations. Such a verdict would condemn all the artistic practices involving appropriation, collage and pastiche, and it would do so because it "can" thanks to the digital technology facilitating surveillance and tracking. This, in turn, would seriously deprive the NFT world from the ability to produce art with a political or critical stance, almost "sterilizing" it into a corporate-friendly environment. The dilemma is further complicated by the fact that brands complain about the NFT artists in the same way that artists complain about their online hijackers, and technically differentiating the two contexts is not always easy. Introducing itself as "the first blockchain ecosystem built by the art community, for the art community," Arcual is a promising initiative in this regard. Jointly founded by Luma Foundation, Art Basel's parent company MCH Group and BCG Digital Ventures, the platform aims at creating a clean NFT trading environment and offering the artists additional revenue from secondary sales by using "smart contracts with embedded resale terms."<sup>25</sup> Again, the main dilemma presents itself as the trade-off between creative freedom and financial/legal safety, for companies founding such initiatives also have vested interests in the corporate world especially in the form of

sponsorships, and whether in the case of a dispute between an artist and a brand they would come in defense of the former instead of the latter leaves a big question mark.

## Conclusions and Ideas for Future Research

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As illustrated by the overview above, the NFT market's global outreach and independent environment is extremely beneficial for the artists, but it also intensifies their existing vulnerabilities especially in terms of intellectual property rights by destabilizing the art ecosystem as well as contributing to the deterioration of the ecological one. As the ethical framework of this newly emerging territory has not yet fully developed, the artists might still seize the opportunity to directly shape its future if they manage to act in solidarity, hold the NFT trading platforms accountable and insist on directly participating in the ongoing legislative processes. Further research is necessary to deepen our understanding of the dynamics dominating the NFT art world, the existing legislation at the national, regional and/or global level and how artist communities do and can operate in the face of the existing challenges. Most importantly, further study is necessary to explore how broader artist communities can be mobilized for collective action.

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