

NFT 交易的法律議題

JAMIE YANG 楊芝青



同質化代幣(FT)
BitCoin, Ethereum 作用類似*法幣

*還是有點不同
法幣有法定清償效力

•支援FT的協定：ERC 20、
ERC 1155



非同質化代幣(NFT)

- 可以將任何特別的事、物表彰為一個以以太鏈為基礎的*資產
- 利用以太鏈上智能合約運作

*廣義的資產
不是指不動產、動產、無體財產、
商譽等法律或會計上計算的財產

•支援NFT的協定：ERC 721、ERC 1155

NFTs are different from ERC-20 tokens, such as DAI or LINK, in that each individual token is completely unique and is **not divisible**. NFTs give the ability to assign or claim ownership of any unique piece of digital data, trackable by using Ethereum's blockchain as a public ledger. An NFT is minted from digital objects as a representation of digital or non-digital assets. For example, an NFT could represent:

- Digital Art:
 - GIFs
 - Collectibles
 - Music
 - Videos
- Real World Items:
 - Deeds to a car
 - Tickets to a real world event
 - Tokenized invoices
 - Legal documents
 - Signatures
- Lots and lots more options to get creative with!

- **NFT**代幣是特殊且不可分割的
- 可代表數位及非數位*資產

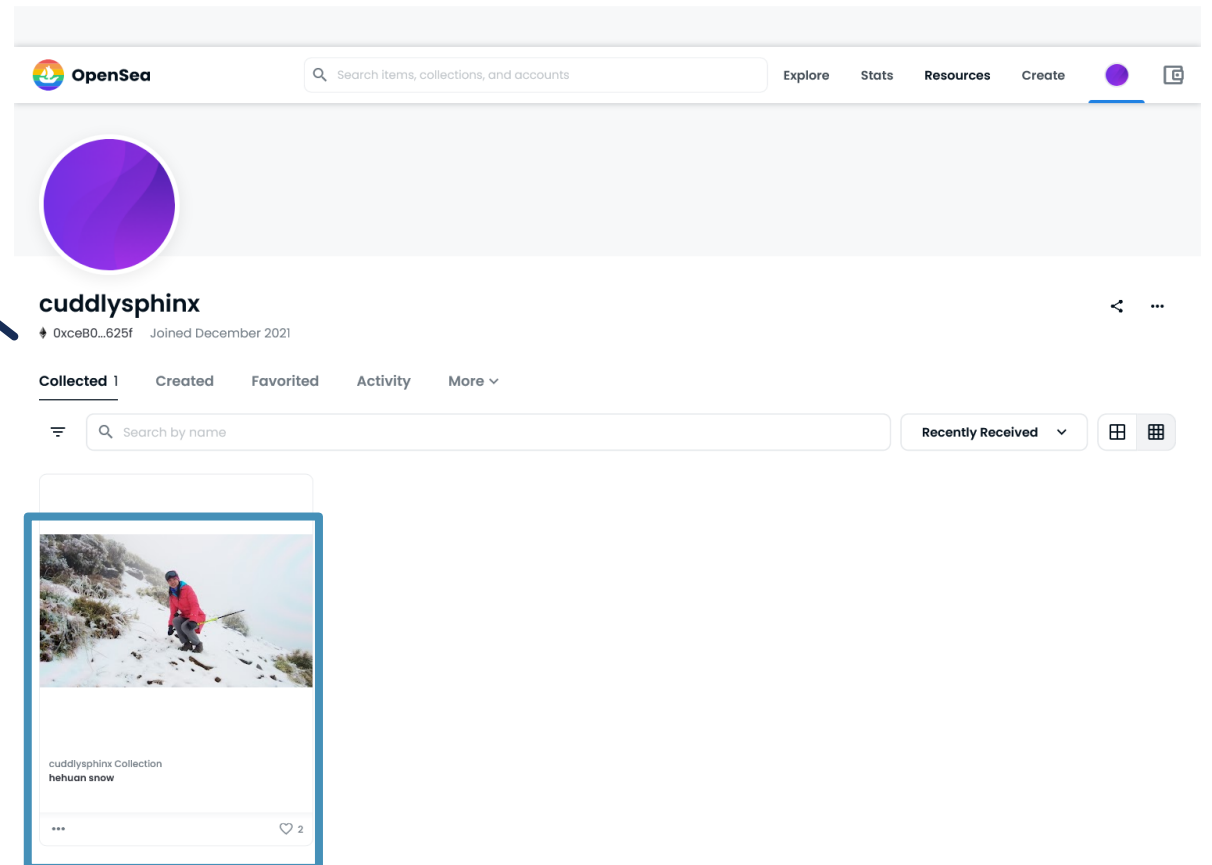
原文摘自<https://ethereum.org/en/nft/>

OPENSEA – 用METAMASK錢包登入



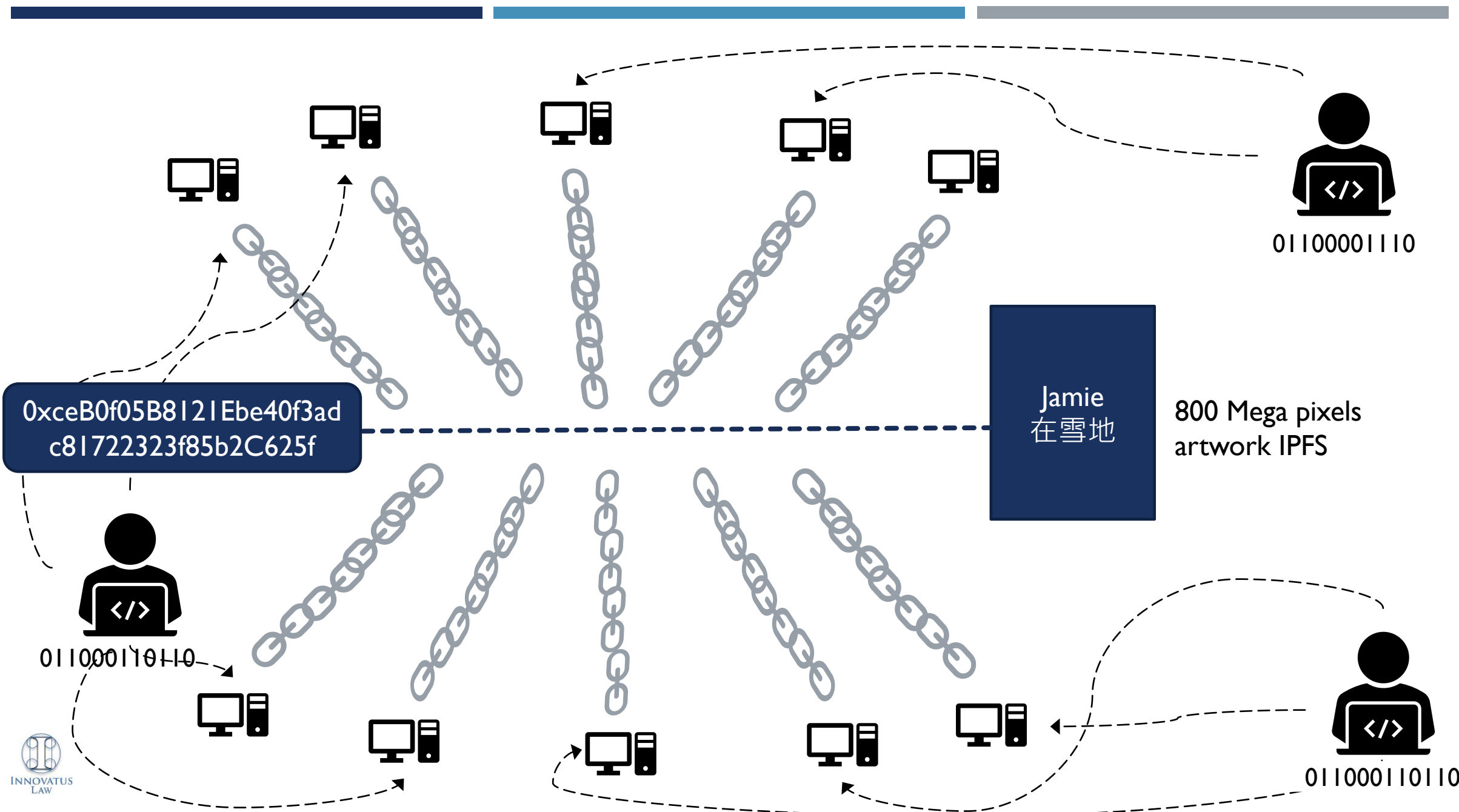
0xceB0f05B8121Ebe40f3ad
c81722323f85b2C625f

Format: 42-character
hexadecimal address



The screenshot shows the OpenSea profile for 'cuddlysphinx'. The profile includes a purple circular avatar, the name 'cuddlysphinx', and a link to their wallet address '0xceB0...625f'. Below the profile, there are tabs for 'Collected 1', 'Created', 'Favorited', 'Activity', and 'More'. A search bar is present with the text 'Search by name'. A collection titled 'cuddlysphinx Collection' with the name 'hehuan snow' is highlighted with a blue border. The collection image shows a person in a red jacket sitting on a snowy slope. The collection has 2 likes.

A NFT minted by Jamie : Jamie 在雪地



0xceB0f05B8121Ebe40f3ad
c81722323f85b2C625f

Jamie
在雪地

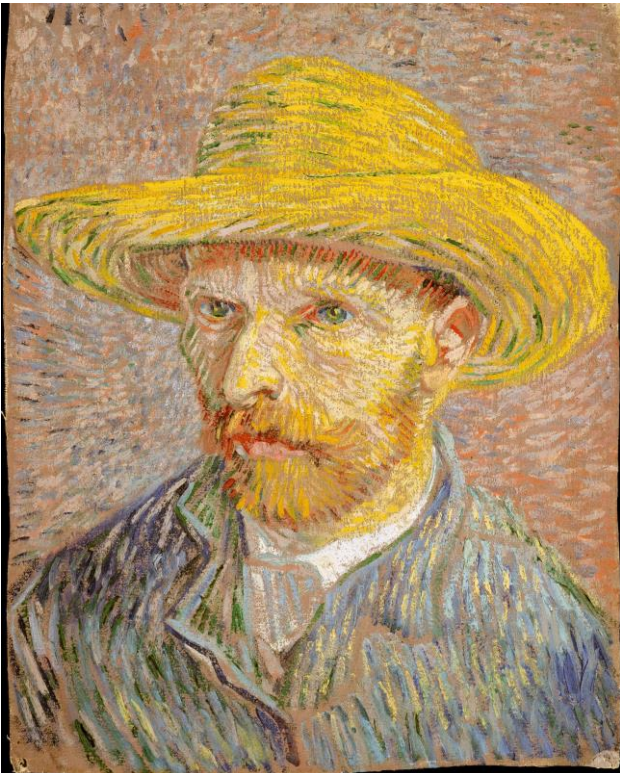
800 Mega pixels
artwork IPFS

011000011110

011000110110

011000110110

鑄造後，我的數位畫作在哪裡？



這有幾個byte？

幾個MB？

Self-Portrait with a Straw Hat (obverse: The Potato Peeler)
1887

Vincent van Gogh Dutch

I. 在鏈上嗎？

The actual content of the NFT, such as a piece of art, is not typically stored on the blockchain.

The reason why the content (such as a JPG, MP3, or Gif) of the smart contract associated with the actual NFT is stored on the web and not the blockchain is because of the size and cost.

II. 什麼東西在鏈上？

Typically, just the web address (of the location in which the NFT's information is stored) is kept on the blockchain. This location pointing to where the NFT is stored is kept on the blockchain and can't be tampered. This makes the blockchain extremely reliable.

III. 我的數位作品在哪裡？

If all media pertaining to the smart contract of the NFT was kept on the blockchain it would take up an enormous amount of space and therefore be quite computationally expensive. For this reason, it's important to mint NFTs on reliable marketplaces as the actual media for the NFT is likely stored by the firm which runs the marketplace.



Inter-Planetary File System

IPFS allows users to host and receive content in a manner similar to BitTorrent. As opposed to a centrally located server, IPFS is built around a decentralized system of user-operators who hold a portion of the overall data, creating a resilient system of file storage and sharing. Any user in the network can serve a file by its content address, and other peers in the network can find and request that content from any node who has it using a distributed hash table (DHT).

ERC
721
Chain

0xceB0f05B8121Ebe40f3ad
c81722323f85b2C625f

transaction 1

0x.....

transaction 2

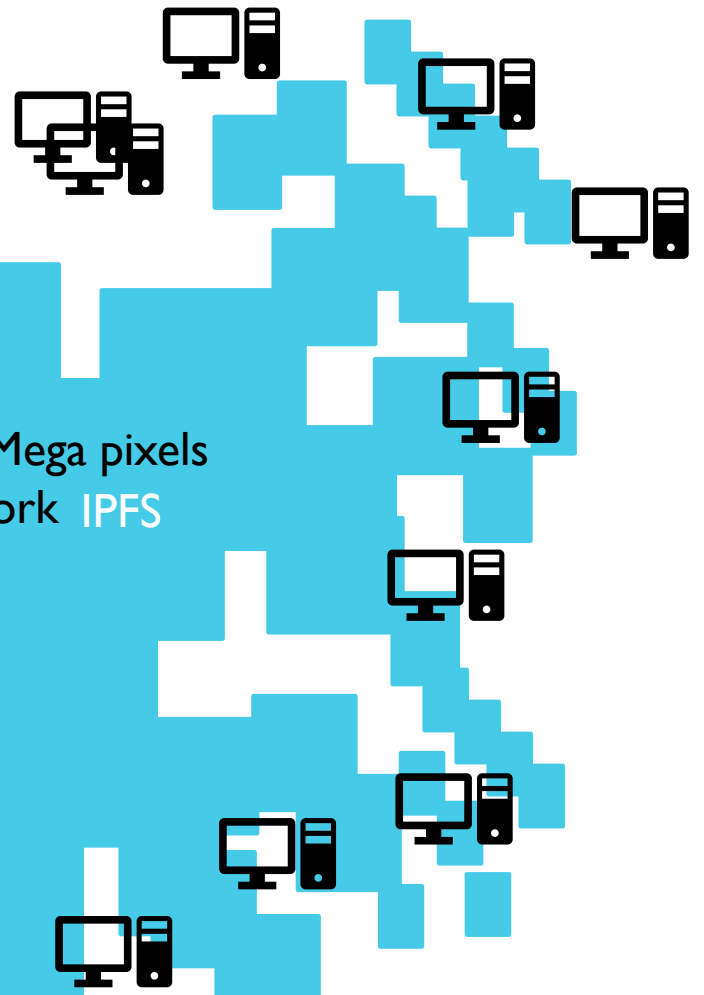
0x.....

mint

Metadata
















mint

800 Mega pixels
artwork IPFS





Top collections over last 24 hours ▼

1	 Great Goats Floor price: ETH 6.88 ETH 87,834.06	—	6	 We Are All Going to Die Floor price: ETH 0.73 ETH 818.21	-72.82%	11	 HALO OFFICIAL Floor price: ETH 3.8 ETH 440.45	+5206.66%
2	 goblintown.wtf Floor price: ETH 5.86 ETH 1,493.59	-46.79%	7	 ShitBeast Floor price: ETH 0.22 ETH 753.9	+821.27%	12	 VividLimited Floor price: ETH 0.11 ETH 366.75	+48.92%
3	 Bored Ape Yacht Cl... Floor price: ETH 94.69 ETH 1,070.82	+103.39%	8	 Tower of the Occult Floor price: ETH 0.03 ETH 664.02	—	13	 PsychonautzNFT Floor price: ETH 0.08 ETH 350.9	-51.68%
4	 Murakami.Flowers ... Floor price: ETH 4.6 ETH 909.46	+2858.44%	9	 Otherdeed for Othersi... Floor price: ETH 2.88 ETH 519.8	+36.10%	14	 mcgoblin.wtf Floor price: ETH 1.45 ETH 343.24	-43.66%
5	 FTC Official Floor price: ETH 0.3 ETH 894.49	—	10	 ill poop it nft Floor price: ETH 0.52 ETH 482.03	-3.65%	15	 Murakami.Flowers ... Floor price: ETH 5.49 ETH 293.47	+2553.47%

以村上隆作品集為例

Murakami.Flowers Official

By MFTMKKUS 

Murakami.Flowers is a work in which artist Takashi Murakami's representative artwork, flowers, are expressed as dot art evocative of Japanese TV games created in the 1970s. The work is being developed with the number 108 as the keyword; a combination of 108 backgrounds and flower colors make up a field, and there are 108 fields. Each field has 108 flower images, resulting in 11,664 flower images in total. The number 108 is a reference to bonnō, or earthly temptations.

Murakami.Flowers NFTs are subject to the Collector Terms available here: <https://murakamiflowers.kaikaiki.com/collector.html>. If you buy a Murakami.Flowers NFT, you do not receive commercial rights in the corresponding artwork.

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See less ^





Search items, collections, and accounts

Explore Stats Resources Create

Search by name or trait

Price: Low to High

- Status
- Buy Now
- On Auction
- Buy with Card
- Price
- Item quantity
- On sale in
- PROPERTIES
- Accessory 76
- Background 72
- Costume 72
- Eye 9

Murakami.Flowers Off...
Murakami.Flower #10954

Top Bid
3,5415
2 days left

13

Murakami.Flowers Off...
Murakami.Flower #1196

Top Bid
3.99
5 days left

36

Murakami.Flowers Off...
Murakami.Flower #8880

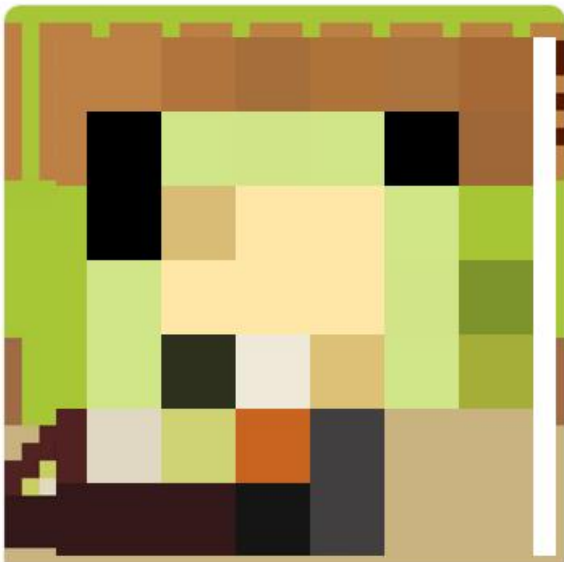
Top Bid
4
2 days left

72



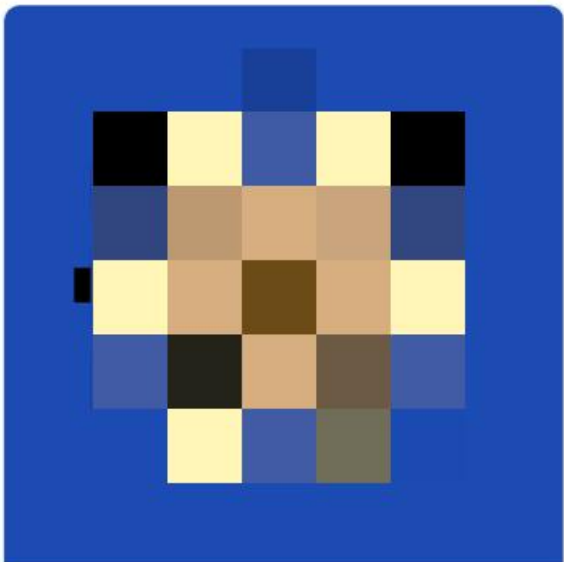
Murakami.Flowers Off...
Murakami.Flower #9836

Top Bid
4
6 days left



Murakami.Flowers Off...
Murakami.Flower #9461

Top Bid
4,0123
2 days left



Murakami.Flowers Off...
Murakami.Flower #1264

Top Bid
4.35
7 days left



Search items, collections, and accounts

Explore Stats Resources Create



Murakami.Flower #9461

Owned by 65633E 177 views 20 favorites

Sale ends June 8, 2022 at 10:55am GMT+8

01 Days 16 Hours 57 Minutes 01 Seconds

Top bid -- Reserve price not met.

4.0123 (\$7,639.82)

Place bid

Listings

Description

temptations.

Murakami.Flowers NFTs are subject to the Collector Terms available here:<https://murakamiflowers.kaikaikiki.com/collector.html>. If you buy a Murakami.Flowers NFT, you do not receive commercial rights in the corresponding artwork.

Offers

Price	USD Price	Floor Difference	Expiration	From
4.0123 WETH	\$7,632.88	13% below	4 days	FungGaan



Search items, collections, and accounts

Explore Stats Resources Create



Murakami.Flower #4861

Owned by -mew- 3.0K views 109 favorites

Sale ends October 11, 2022 at 3:42pm GMT+8

Top bid
5 (\$9,520.50)

Place bid

Listings

Offers

Price	USD Price	Floor Difference	Expiration	From
5 WETH	\$9,520.50	9% above	4 months	67F474
4.2 WETH	\$7,997.22	9% below	4 months	abdullahmailman

Description

Created by MFTMKKUS
Murakami.Flowers is a work in which artist Takashi Murakami's representative artwork, flowers, are expressed as dot art evocative of Japanese TV games created in the 1970s



MURAKAMI.FLOWERS

Murakami.Flowers Collector Terms

Last updated : February 28, 2022

These Collector Terms govern the rights of owners of non-fungible tokens minted on distributed digital ledgers or blockchains (“NFTs”) that contain or correspond to digital artworks (“Artworks”) created by Takashi Murakami or other artists (each, an “Artist”), which NFTs are first made available through the website operated by Kaikai Kiki New York, LLC. (“Kaikai Kiki”) currently located at murakamiflowers.kaikaikiki.com (the “Site,” as further defined in the [Terms of Service](#)). Such owners are referred to in these terms as “Collectors.”

If you mint or buy an NFT through the Site, you agree to be bound by these Collector Terms and the [Terms of Service](#), and if you buy or otherwise receive such an NFT from a previous owner, your rights to the NFT and the corresponding Artwork are governed by these Collector Terms and the [Terms of Service](#).

When we say, “we,” “us” or “our,” we mean Kaikai Kiki and its affiliates and its and their employees, officers, directors, shareholders, agents, representatives, licensors (including Artists), suppliers and service providers.

1.NFTs vs. Artworks.



If you mint or buy an NFT... license to the corresponding... **Presale for Whitelist**

Entry closed ~~Public Sale~~

will receive a limited... the Artwork, all of which

I. NFTs vs. Artworks.

If you mint or buy an NFT through the Site, the blockchain will identify your public blockchain address as the owner of the NFT and you will receive a limited license to the corresponding Artwork as described in these Collector Terms. But other than that license, you do not have any rights in the Artwork, all of which rights remain with and are reserved by us. For ease of reference, we refer to NFTs originally minted on or acquired through the Site as “Site NFTs,” and a Site NFT together with the license rights in the corresponding Artwork as a “Digital Item.”

I. NFT VS 藝術品

如果您通過本網站鑄造或購買 NFT，區塊鏈會將您的公共區塊鏈地址識別為 NFT 的所有者，並且您將收到相應藝術品的有限授權，如這些收藏家條款中所述。但除該許可外，您對藝術品沒有任何權利，所有這些權利仍歸我們所有並由我們保留。為便於參考，我們將最初在網站上鑄造或通過網站獲得的 NFT 稱為“網站 NFT”，將網站 NFT 與相應藝術品中的授權一起稱為“數位物品”。



2. License to Artworks.

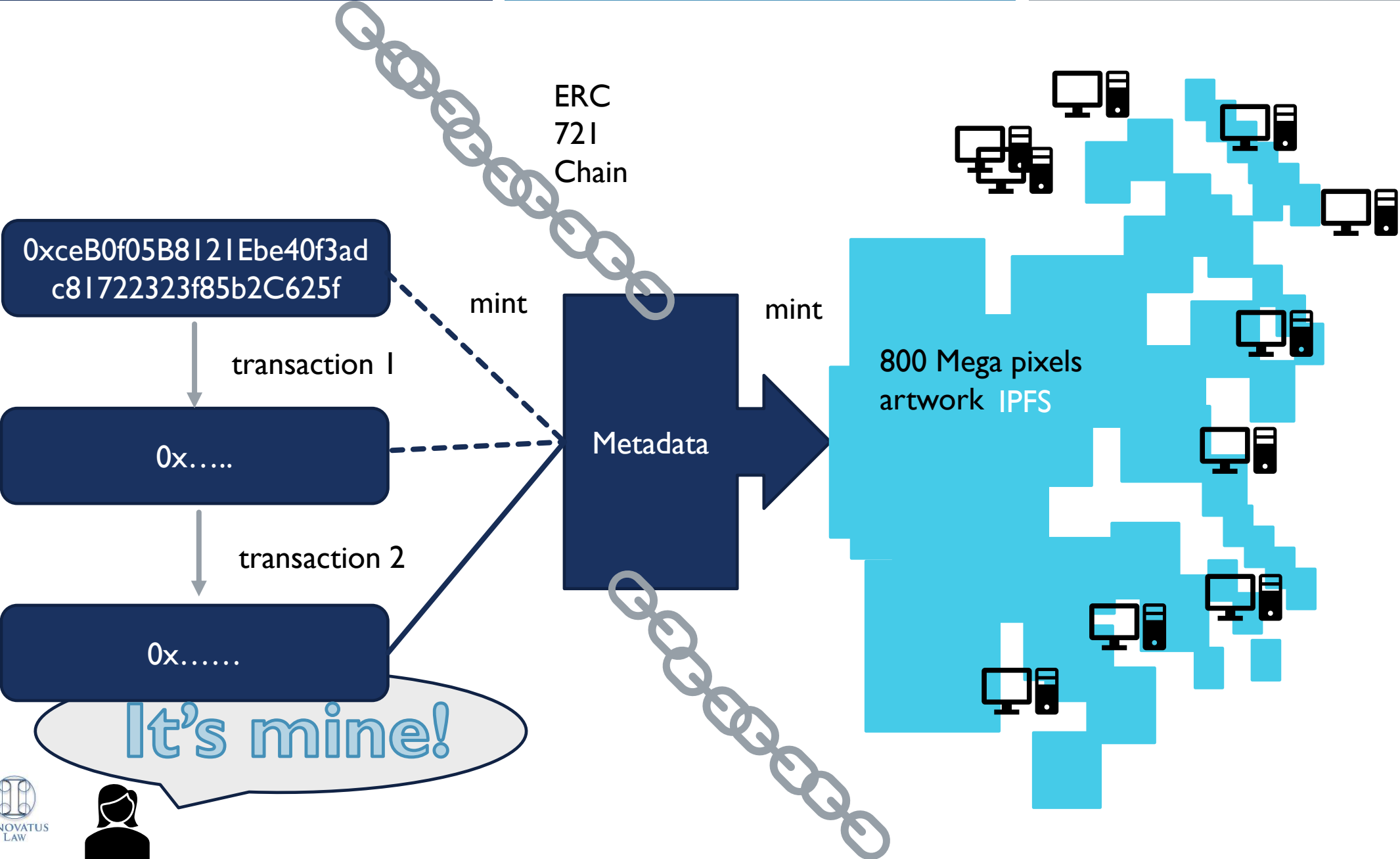
Subject to and conditioned upon your compliance with these Collector Terms, for as long as you own a Site NFT, we grant you a limited, personal, non-exclusive, non-sublicensable, non-assignable (except pursuant to your transfer of the Site NFT), worldwide license to display and perform the corresponding Artwork uniquely identified by the Site NFT, solely and exclusively for personal, non-commercial use. We grant you no other rights, whether express or implied, with respect to any Digital Item (in whole or in part), all of which we reserve. In particular, you receive no rights under any patent, trademark, trade secret or other intellectual property or proprietary right. This is true even if your exercise of any rights granted herein would be prevented, frustrated or impaired without such a license.

債權？物權？

2. 作品授權。

在您遵守這些收藏家條款的前提下，只要您擁有網站 NFT，我就授予您有限的、個人的、非排他性的、不可再許可的、不可轉讓的（除非您轉讓網站 NFT）的全球授權，以展示和執行由網站 NFT 唯一標識的相應藝術品，僅用於個人非商業用途。對於我們保留的任何數字項目（全部或部分），我們不授予您任何其他權利，無論是明示的還是暗示的。特別是，您不會獲得任何專利、商標、商業秘密或其他知識產權或專有權利下的權利。即使您在沒有此類許可的情況下行使此處授予的任何權利將受到阻礙、挫敗或損害，情況也是如此。

What's ownership?



3.Restrictions.

You may not modify or prepare any derivative work based upon any Digital Item, or commercialize any Digital Item, in whole or in part, or anything including or embodying it. Your license doesn't permit you to, and you won't, and you won't authorize, permit or assist any third party to:

- exercise any of the rights granted herein in any way that results in direct or indirect compensation, financial benefit or commercial gain of any kind to you or any third party;
- delete, remove or obscure any trademark notice, copyright notice or other proprietary rights notice on or in any Digital Item;
- register or attempt to register any trademark or copyright or otherwise acquire intellectual property rights in or to any Artwork;

3.限制。

您不得修改或準備基於任何數位物品的任何衍生作品，或將任何數位物品的全部或部分商業化，或任何包括或體現它的東西。您的許可證不允許，您也不會，您也不會授權、允許或協助任何第三方：以任何方式行使此處授予的任何權利，從而為您或任何第三方帶來任何形式的直接或間接補償、經濟利益或商業收益；刪除、移除或掩蓋任何數位物品上或其中的任何商標聲明、版權聲明或其他所有權聲明；註冊或試圖註冊任何商標或版權，或以其他方式獲得任何藝術品中或任何藝術品的知識產權；

- exercise any of the rights granted herein to create, endorse, support, promote or condone any content, material or speech that is defamatory, obscene, pornographic, indecent, abusive, offensive, harassing, violent, hateful, racist, discriminatory, inflammatory or otherwise objectionable or inappropriate as we determine in our sole discretion;
- use any Digital Item, in whole or in part, except as expressly authorized in these Collector Terms, or exercise any of the rights granted herein in any manner that violates applicable laws or regulations; or
- use any Digital Item, in whole or in part, in connection with any product, service, business, lobbying effort, political campaign, or message, or in any manner that could suggest or imply our sponsorship, affiliation or endorsement of any product, service, business, lobbying effort, political campaign, or message, or in any manner that is likely to cause confusion or dilute, blur or tarnish our rights in the Digital Item. Any use of a Digital Item, including any goodwill generated by such use, will inure to our benefit.

(禁止行為 (續)) :

行使此處授予的任何權利，以創建、認可、支持、宣傳或縱容任何誹謗、淫穢、色情、不雅、辱罵、冒犯、騷擾、暴力、仇恨、種族主義、歧視、煽動性的內容、材料或言論，或其他我們單獨決定為令人反感或不適當的內容；

全部或部分使用任何數位物品，除非本收藏者條款明確授權，或以違反適用法律或法規的任何方式行使此處授予的任何權利；或者

將任何數位物品全部或部分用於任何產品、服務、業務、遊說努力、政治活動或信息，或以任何可能暗示或暗示我們對任何產品、服務的讚助、從屬關係或背書的方式、商業、遊說努力、政治運動或信息，或以任何可能導致混淆或稀釋、模糊或損害我們在數位物品中的權利的方式。對數位物品的任何使用，包括由此產生的任何商譽，都應符合我們的利益。

5. Transferring Digital Items.

Unless you are otherwise prohibited from doing so, you may transfer a Site NFT together with the license to its corresponding Artwork to a third party, provided that:

- before making the transfer, you provide written notice to the intended transferee (i) of these Collector Terms and (ii) that their exercise of rights in the Digital Item are and will remain subject to and conditioned upon these Collector Terms (which notice may be provided in the sales listing for the Digital Item);
- you make the transfer on a platform that (i) verifies that the blockchain identifies your public blockchain address as the owner of the corresponding Site NFT and (ii) conforms to the highest industry standards and customs regarding royalty collection and payment;
- the transfer complies with applicable laws and regulations, and with the terms of the platform on which you effect the transfer; and
- you pay (or cause to be paid) the applicable royalty in accordance with Section 6 below.

5. 轉讓數位物品。

除非您被禁止這樣做，否則您可以將網站 NFT 連同其相應藝術品的許可一起轉讓給第三方，前提是：

- 在進行轉讓之前，您向 (i) 這些收藏者條款的預期受讓人提供書面通知，並且 (ii) 他們對數位項目的權利的行使將繼續受這些收藏者條款的約束和條件（該通知可能是在數位項目的銷售清單中提供）；
- 您在一個平台上進行轉移，該平台 (i) 驗證區塊鏈將您的公共區塊鏈地址識別為相應網站 NFT 的所有者，並且 (ii) 符合最高行業標準和有關版稅收取和支付的慣例；
- 轉讓符合適用的法律法規，以及您進行轉讓的平台的條款；和
- 您根據以下第 6 條支付（或促使支付）適用的版稅。

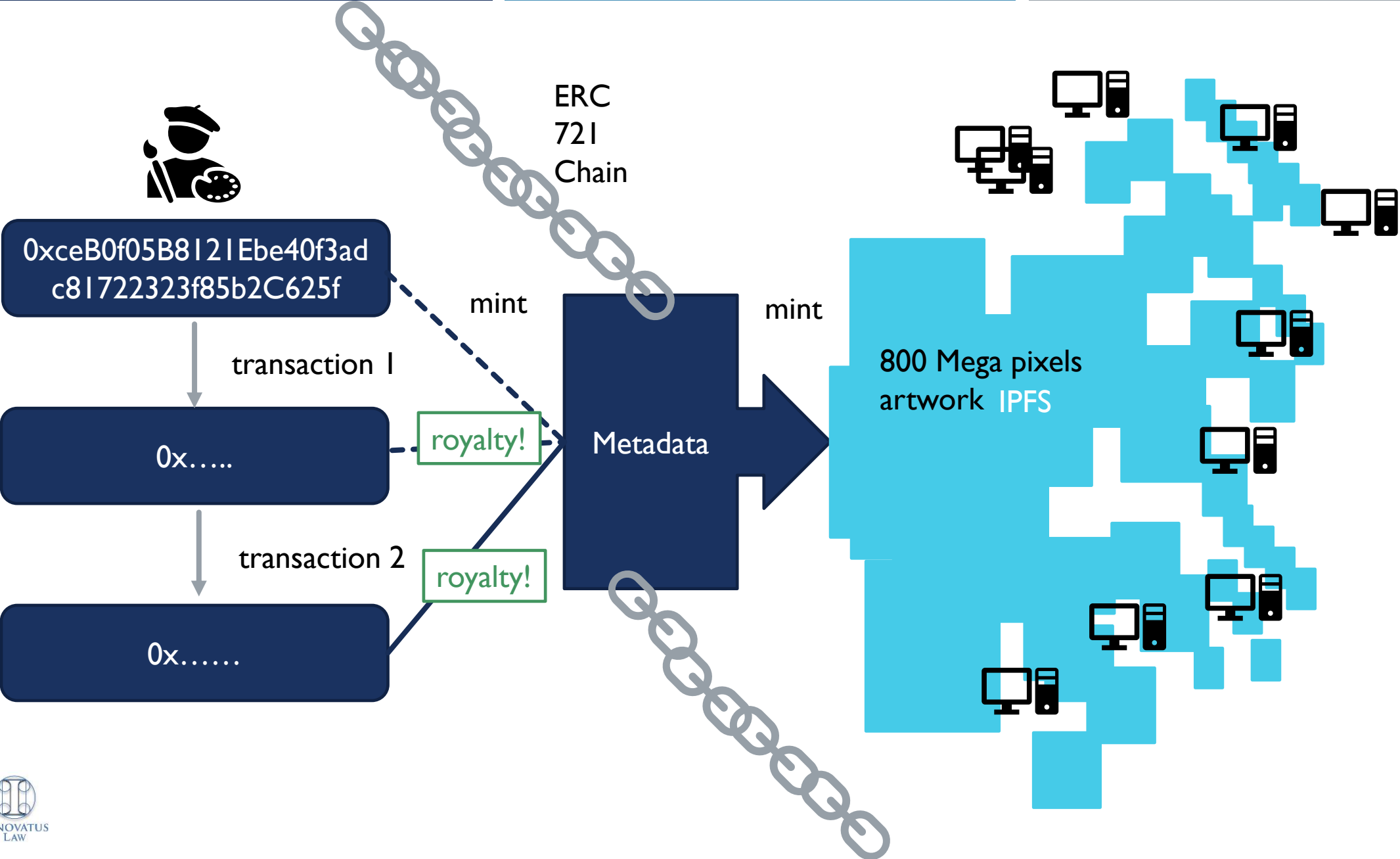
6. Royalty.

When you transfer any Digital Item, you shall pay us (or cause to be paid to us) a royalty equal to the amount paid by the transferee (without deductions of any kind) multiplied by 7.5 (seven point five) percent. **The platform on which you make the transfer may automatically collect and pay us the royalty, which payment would fulfill your obligation to pay the applicable royalty.** You shall pay all fees (e.g., “gas,” platform fees) and taxes (other than taxes on our net income) associated with the transfer and won’t deduct any such amounts from the applicable royalty. You shall pay all such amounts to an account or blockchain address that Kaikai Kiki designates, either in ETH or other cryptocurrency acceptable to Kaikai Kiki. **IF YOU OBTAIN A DIGITAL ITEM FROM A THIRD PARTY WHO HAS NOT PAID THE ROYALTY DUE IN CONNECTION WITH SUCH TRANSFER, YOU OBTAIN NO LICENSE TO CORRESPONDING ARTWORK (AND FOR CLARITY, THE LICENSE IN SECTION 2 ABOVE DOES NOT APPLY TO YOU WITH RESPECT TO THE CORRESPONDING ARTWORK) UNLESS AND UNTIL YOU HAVE PAID US (OR CAUSED TO BE PAID TO US) SUCH ROYALTY.**

6. 版稅。

當您轉讓任何數位物品時，您應向我們支付（或促使向我們支付）版稅，該版稅等於受讓人支付的金額（不包括任何形式的扣除）乘以 7.5（七點五）%。您進行轉移的平台可能會自動收取並支付給我們版稅，該付款將履行您支付適用版稅的義務。您應支付與轉讓相關的所有費用（例如油錢、平台費用）和稅款（我們的淨收入稅除外），並且不會從適用的版稅中扣除任何此類金額。您應以 ETH 或 Kaikai Kiki 可接受的其他加密貨幣向 Kaikai Kiki 指定的賬戶或區塊鏈地址支付所有此類金額。如果您從未支付與此類轉讓有關的版稅的第三方處獲得數位物品，則您不會獲得相應藝術品的授權（為了清楚起見，上述第 2 條中的授權不適用於您相應的藝術品）除非並且直到您已向我們支付（或導致向我們支付）此類版稅。

What's ownership?



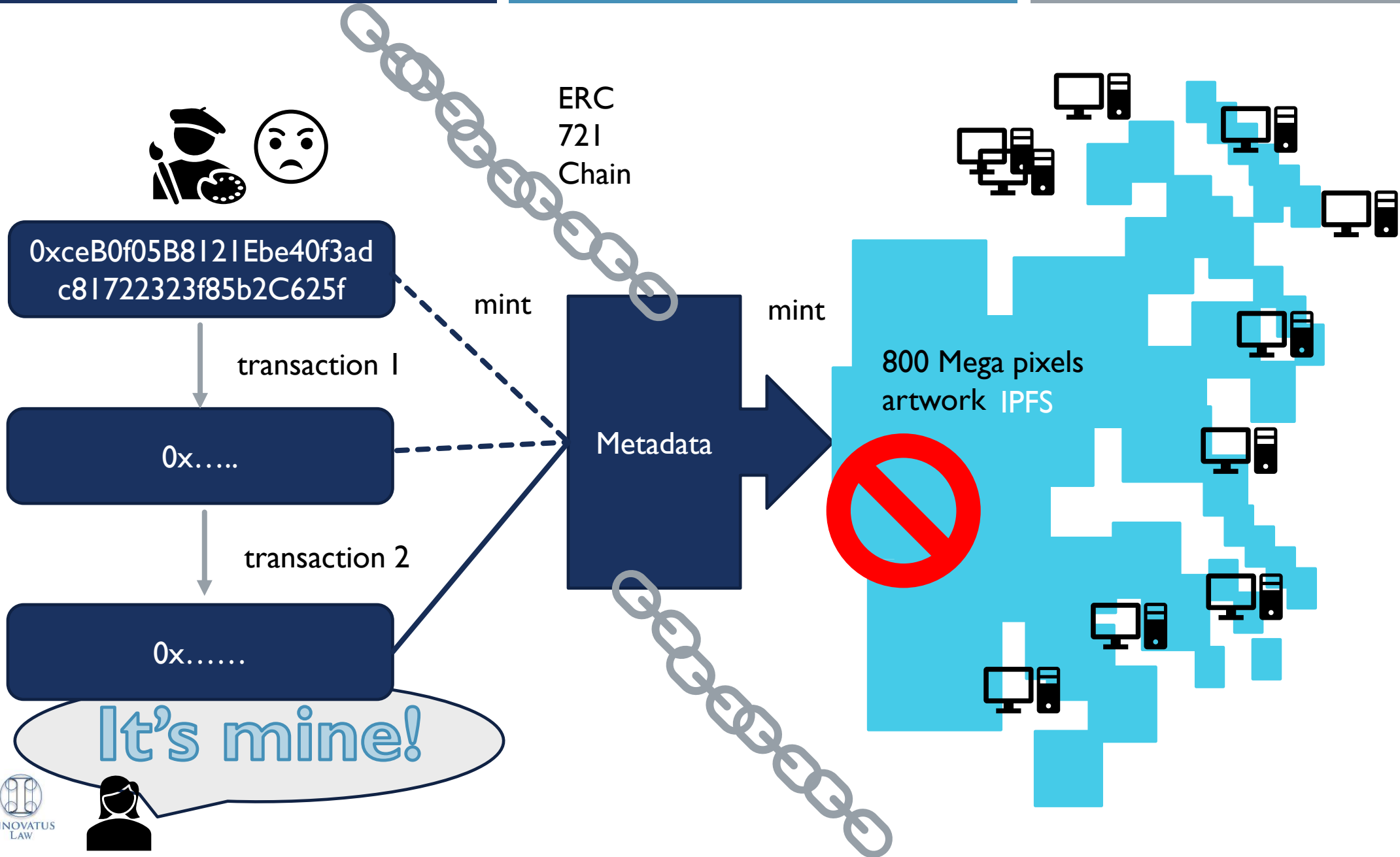
9. Termination.

If you breach these Collector Terms, the [Terms of Service](#), or any other policies posted on the Site, your rights to any Digital Items, including the rights to display and perform corresponding Artworks, will immediately terminate without notice. Kaikai Kiki may reinstate your rights by providing you with written notice of such reinstatement if Kaikai Kiki, in its sole discretion, (a) concludes that you have cured the breach (if capable of cure), or (b) waives the breach. **Kaikai Kiki may disable functionality for the affected Digital Items on the Site and on third-party sites, apps, platforms, and services, including by prohibiting third-party sites, apps, platforms, and services from retrieving or displaying any corresponding Artwork**, and take other steps to prevent unauthorized use of Digital Items. We won't have any obligation or liability to you for taking such actions, and you won't interfere or attempt to interfere with them.

9. 終止。

如果您違反這些收藏家條款、服務條款或網站上發布的任何其他政策，您對任何數位物品的權利，包括展示和執行相應藝術品的權利，將立即終止，且不另行通知。如果 Kaikai Kiki 自行決定 (a) 判斷您已改正違約行為（如果能夠改正），或 (b) 放棄追究違約行為，Kaikai Kiki 可以通過向您提供此類復權的書面通知來恢復您的權利。**Kaikai Kiki 可能會禁用網站和第三方網站、應用程式、平台和服務上受影響數位物品的功能，包括禁止第三方網站、應用程式、平台和服務檢索或顯示任何相應的藝術品，以及採取其他措施防止未經授權使用數位物品。我們不會因您採取此類行動而對您承擔任何義務或責任，您也不會干涉或試圖干涉他們。**

What's ownership?



常見問題

1. NFT購買人究竟取得了什麼？
2. 為什麼說NFT 的所有權是不可磨滅的 (immutable) ？
3. 有可能鑄造NFT的人，跟數位檔案之智慧財產權人為不同人嗎？
4. 爭議案例？

1-1 NFT購買人究竟取得了什麼？

- 某甲支付5顆以太幣，向某乙購買4861號小花
 1. 某甲支配的0x錢包減少5顆以太幣，某乙支配的0x錢包增加了5顆以太幣；某乙的0x賬號與4861號小花的門牌在以太鏈上產生連結，顯示某乙的0x賬號是最後一手
 2. 小花的數位檔案還在IPFS
 3. 小花的著作權還歸屬於Kaikai kiki
 4. 無論任何人用應用程式一看，可以發現4861號小花的最後一手是某乙的0x賬號
 5. 某乙可將小花印製在T-shirt上賣嗎？（請見我們剛才一起看過的收藏者條款2，也對照BAYC的條款）

1-2 NFT購買人將其賣出後，還能印T-SHIRT嗎？

- 前提：收藏者條款有允許商用。剛才可見，有的可以，有的不行。
- 應再檢視收藏者條款有無終止授權的規定。

2 NFT所有權如何不可磨滅？

- 在區塊鏈上，要取得50%以上的運算力才能篡改。
- 問題是，這只是區塊鏈。還記得藝術品存在不同的地方，不可磨滅的是詮釋資料。

3 有可能鑄造NFT的人，跟數位檔案之智慧財產權人為不同人嗎？

- 有權鑄造 vs 無權鑄造
- 無權鑄造可能會侵害著作權、商標權

4 侵權案例

- BAYC於US District Court for Central District of California 對Ryder Ripps提起訴訟，主張Ripps在市場上釋出大量仿冒猿，影響BAYC猿價值。（至Open Sea搜尋RR/BAYC及BAYC可以做比對）

4 侵權案例

- iii. Commercial Use. Subject to your continued compliance with these Terms, Yuga Labs LLC grants you an unlimited, worldwide license to use, copy, and display the purchased Art for the purpose of creating derivative works based upon the Art ("Commercial Use"). Examples of such Commercial Use would e.g. be the use of the Art to produce and sell merchandise products (T-Shirts etc.) displaying copies of the Art. For the sake of clarity, nothing in this Section will be deemed to restrict you from (i) owning or operating a marketplace that permits the use and sale of Bored Apes generally, provided that the marketplace cryptographically verifies each Bored Ape owner' s rights to display the Art for their Bored Ape to ensure that only the actual owner can display the Art; (ii) owning or operating a third party website or application that permits the inclusion, involvement, or participation of Bored Apes generally, provided that the third party website or application cryptographically verifies each Bored Ape owner' s rights to display the Art for their Bored Ape to ensure that only the actual owner can display the Art, and provided that the Art is no longer visible once the owner of the Purchased Bored Ape leaves the website/application; or (iii) earning revenue from any of the foregoing.

iii.商業用途。在您繼續遵守這些條款的前提下，**Yuga Labs LLC** 授予您在全球範圍內使用、複製和展示購買的藝術品的無限制許可，以創建基於藝術品的衍生作品（“商業用途”）。此類商業用途的示例將例如使用藝術生產和銷售展示藝術複製品的商品（T恤等）。為免疑義，本節中的任何內容都不會被視為限制您 (i) 擁有或經營一個允許一般使用和銷售無聊猿的市場，前提是該市場以加密方式驗證每個無聊猿所有者展示藝術的權利為他們的無聊猿確保只有實際所有者才能展示藝術品；(ii) 擁有或運營一個第三方網站或應用程序，通常允許 **Bored Ape** 包含、參與或參與，前提是第三方網站或應用程序以加密方式驗證每個 **Bored Ape** 所有者為他們的 **Bored Ape** 展示藝術的權利，以確保只有實際所有者才能展示藝術品，並且一旦購買的無聊猿的所有者離開網站/應用程序，該藝術品將不再可見；(iii) 從上述任何一項中賺取收入。



THANK YOU

打賞箱

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C81722323F85B2C625F

NFT交易的法律議題由 [Jamie Yang](#) 楊芝青製作，以 [創用CC](#) 姓名標示
4.0 國際 授權條款釋出。

簡報中引用村上隆畫面以及梵谷自畫像不在上述釋出範圍

