KILPATRICK TOWNSEND

5 KEY TAKEAWAYS

A Comprehensive Guide on Non-Fungible Tokens (NFTs): Managing Potentials and Perils

Kilpatrick Townsend's Rob Potter and Sarah Anderson recently participated in a panel of thought leaders to discuss the recent trends and significant challenges surrounding NFTs and the associated legal landscape, including helpful insights to avoid potential risks. The recent surge of non-fungible tokens (NFTs)—in number, value, and type—has become a clear sign of their high growth potential across all types of industries. By associating digital and physical goods with a unique identifier on a tamper-resistant blockchain, NFTs allow for unprecedented levels of security, authenticity, and digital provenance, while raising novel issues involving intellectual property, data privacy and identity management. The webinar was presented by The Knowledge Group.

Mr. Potter and Ms. Anderson's key takeaways from the discussion, include:

1. NFTs are likely to become mainstream and ubiquitous over time, used to authenticate both digital assets in the metaverse and physical goods in the real world.

2. Already, brands are beginning to offer NFTs within closed platforms, accepting credit cards instead of crypto, which vastly reduces the NFT learning curve.

3. From a trademark perspective, those looking to create NFTs should register their marks specifically for virtual goods or services.

4. From a copyright perspective, the resale royalty available through an NFT's smart contract seems potentially at odds with the Copyright Act's First Sale Doctrine (17 U.S.C. § 109), at least as to physical goods.

5. There is a rising tension between Web 3.0 enthusiasts pushing for a decentralized NFT marketplace, and more conservative corporations working to create a centralized and consumer-friendly platform specific to their brands.

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