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# Turkey's position on non-fungible tokens

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> [Introduction](#)

> [What is an NFT?](#)

> [What is the courts' approach?](#)

> [What is Turkey's position?](#)

> [NFT IP disputes](#)

> [Comment](#)

## Introduction

On 20 September 2017, the term "NFT" (non-fungible token) was officially coined by Dapper Labs Chief Technology Officer Dete Shirley in the form of the [ERC-721 standard](#).

NFTs boomed in 2021 and have remained relevant since. Despite the drops observed in their market volume in 2023, NFTs are still in the spotlight as numerous global brands are continuing to launch NFT collections and many trademark applications with coverage including NFTs are being filed all around the globe.

## What is an NFT?

An NFT is a digital asset that uses blockchain technology and mostly operates within Ethereum. An NFT is a digital token that cannot be exchanged or replaced and may represent many tangible objects in the real world such as:

- songs;
- artworks;
- GIFs;
- virtual game items;
- videos; and
- cartoons.

An NFT is technically not the asset itself. Instead, it is a metadata file that contains the unique combination of a token ID and contract address. Therefore, NFT sales do not include the transfer of copyright on the work converted into an NFT. It only provides the right to use the relevant NFT format, unless the parties agreed otherwise, for assignment of the rights by meeting formal conditions.

NFTs are highly preferred, especially in the art community, because they function as a digital certificate or registry through blockchain technology, thus providing transaction security. They also allow transactions to be carried out quickly and without any central authority in the digital environment. On the other hand, purchasers of NFTs mostly want to have a unique digital asset for collecting purposes or use it as an investment tool.

NFTs are also very popular in trademark field. They allow brand owners to sell their virtual products bearing their trademark as an NFT and operate in the digital market and virtual universes (metaverse). Moreover, they are also regarded as a powerful tool to combat counterfeiting by authenticating physical products and ensuring transaction security due to the blockchain technology employed. Trademark owners are willing to obtain trademark registrations covering NFTs.

## What is the courts' approach?

In an environment lacking specific legislations on this area, court decisions have shed light on legal questions about NFTs over the recent years and it appears that many of them are yet to come.

Some cases of international relevance have tackled the question of who owns the right to convert a work into NFT format and in some it was assessed that "parties shall not be entitled to sell anything (including the NFT format of the works) that they do not own".<sup>(1)</sup>

## What is Turkey's position?

In Turkey, NFTs are defined as "qualified intellectual property deeds" by the Digital Transformation Office of the Presidency and are not regulated with specific legislation, as is the case in the rest of the world. However, the Turkish courts and Patent and Trademark Office (the TPTO) have started to deal with them.

In fact not too long ago, a Turkish court rendered a [preliminary injunction \(PI\) decision](#) concerning NFTs.

## Facts

The subject of the dispute pertains to exploitation of the portrait of the late Cem Karaca, who was an artist, songwriter and composer with a legendary reputation in Anatolian Rock music. Cem Karaca's heir, in requesting a preliminary injunction, claimed that the portrait of Cem Karaca was unlawfully, both in physical and NFT form;

- communicated to the public;

- exhibited online on various social media accounts; and
- listed and offered for sale on a global marketplace called OpenSea.

This offer for sale on OpenSea led to infringement of article 86<sup>(2)</sup> of Law on Intellectual and Artistic Works numbered 5846 (LIAW) that grants legal protection to pictures and portraits and article 24<sup>(3)</sup> of Turkish Civil Code (TCC) No. 4721 that regulates personal rights.

The plaintiffs requested the court to decide on the evidence in order to detect the alleged unauthorised depiction of Cem Karaca's look, and then block access to the respective contents and declare a PI to cease sale of the relevant portrait in NFT format on OpenSea.

### **Decision**

Intellectual property proceedings in Turkey rely heavily on the report of an expert appointed by the court to provide an assessment on relevant aspects of the dispute. Here, the Court appointed an expert report regarding the use of the portrait and communication to public. The expert found that portraying and ordering for sale Cem Karaca's look as an NFT for commercial purposes did constitute infringement within the scope of article 86 of LAIW and article 24 of TCC.

Thus, the court accepted the request for PI, ordered that the access to platforms where the portrait was being exploited be blocked, and the sale of "Cem Karaca" portrait in NFT format on the platform of Opensea be precluded. Access to the relevant infringing websites in Turkey has since been blocked through the Access Providers Union to execute of this court order. The defendant's objection to this PI decision was rejected. The trial phase on the merits of the dispute is still pending before the respective court.

This decision is importance as it is the first ever court decision rendered related to NFTs in Turkey and recognises that NFTs could be subject to a PI. While the court did not elaborate on the legal aspects of NFTs, the decision is still noteworthy as NFTs were considered a valid "format" by the court for the purposes of infringement cases and can be subject to a PI.

### **NFT IP disputes**

Many trademark applications covering NFTs are filed in Turkey as well. The TPTO handles these applications like any other trademark application with no reservation. Moreover, in a very recent decision, the TPTO determined that virtual and online goods or services were similar to physical goods or services and rejected the contested trademark application as per the existing provisions of IP code.

These assessments are consistent with the approach of the courts and IP offices in other countries.

### **Comment**

Despite the fact that any legislation specific to NFTs has yet to be established both in Turkey and in the rest of the world, developments are important as they acknowledge the protection in the NFT space by means of general principles and assess virtual and physical goods or services as similar or related. It is expected that principles that have begun to be established by trademark offices and courts will become more settled within the next few years.

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### **Endnotes**

(1) For more information please see:

- ["Miramax and Tarantino settle Pulp Fiction NFT dispute leaving NFT intellectual property issues in the valley of darkness"](#); and
- ["Boodle Hatfield's June NFT Litigation Roundup: Jay-Z and Roc-A-Fella settle dispute with Damon Dash, Bored Ape creators sue Ryder Ripps, and more..."](#).

(2) Article 86 of LAIW No. 5846 states that:

*Even if they do not qualify as works, pictures and portraits may not be exhibited or disclosed to the public in any other way without the consent of the person depicted in such picture or portrait or, in case of his death, without the consent of the persons referred to in the first paragraph of Article 19, unless 10 years have elapsed after the death of the person depicted. The provisions of Article 24 of Turkish Civil Code shall be reserved in cases where publication is permitted under the provisions of the first 46 and second paragraphs.*

(3) Article 24 of TCC No. 4721 with title of Protection of Personality and with subtitle of protection against infringements states that:

*Any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement. An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law.*