

## Mike McArthur in World IP Review: ‘The NFTs Clause: Are Licensors Waking Up to Digital Use?’

---

October 6, 2022 Michael McArthur

---

**PRACTICES** Trademark and Advertising, Copyright, Intellectual Property

---

Haynes Boone Associate [Mike McArthur](#) was featured in a *World IP Review* article. Below is an excerpt:

As the settled *Miramax v Tarantino* case failed to yield much-anticipated answers to licensing disputes involving non-fungible tokens, what key questions remain? ...

As Haynes Boone associate Mike McArthur points out, a key question in such cases will be whether the disputed licensing agreement “explicitly addresses NFTs”, or if NFTs “were presumed” by one or both parties to fall under the more general IP provisions. ...

In McArthur’s view, the specific question here is: did the licence explicitly authorise Amber Studio to mint NFTs based on the game or engage others to do so?

“Did it define the downstream treatment of these NFTs, especially in relation to ownership and royalty payments?” he further queries. “Portions of the complaint show that there was not an explicit reference to NFTs in the licence, but that both parties still allegedly understood the sale of game-related NFTs to be subject to royalty payments.”

If the agreement is silent on the subject, he notes, the court will still need to determine whether the sale of game-related NFTs by Amber Studio and its licensee infringed any of NC Interactive’s IP rights with respect to the game.

“Another interesting open question here is what will happen to the NFTs that have been sold by Amber Studio if they are found to infringe copyrights owned by NC Interactive.” ...

“It will certainly be helpful to see how courts balance IP rights with First Amendment protections in relation to NFTs as these cases are decided. But for now, parties must avoid some of this doubt by clearly defining the parameters and role of NFTs in their agreements,” says McArthur.

“It is essential to explicitly define within their agreements what its licensees are and are not authorised to do with respect to NFTs based on the subject matter.”

Excerpted from *World IP Review*. To read the full article, click [here](#).