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## Miramax v. Tarantino: Decoding A New Age of Intellectual Property Rights

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# Miramamax v. Tarantino: Decoding A New Age of Intellectual Property Rights

BY [RAVEN BERZAL](#)/ ON FEBRUARY 21, 2022



Photo by Artem Labunsky via *Unsplash*

Non-fungible tokens, or NFTs, are “unique files that live on a blockchain and are able to verify ownership of a work of digital art.”<sup>1</sup> They are essentially digital assets that represent a unique object—typically art, music, videos, or games.<sup>2</sup> An NFT only exists digitally, cannot be interchanged with any other digital asset, and yet has real world value.<sup>3</sup> Much of the conversation in this space contemplates NFTs as “an evolution of fine art collecting, only with digital art.”<sup>4</sup> In simpler terms, the owner of an NFT owns the certificate of authenticity to an original (albeit digital) work, comparable to the physical ownership of an original Banksy print.

In March 2021, an NFT by the artist known as “Beeple” sold for \$69 million.<sup>5</sup> According to the auction house, Christie’s, this positioned Beeple “among the top three most valuable living artists.”<sup>6</sup> Additionally, in 2021, a 50-second video by recording artist, Grimes, sold for \$390,000 and single LeBron James highlight NFT sold for over \$200,000.<sup>7</sup>

From obscure corners of the internet to art, music, and sports, the NFT goldrush eventually made its way to Hollywood. When it did, it sparked a complex intellectual property rights question—who can “mint,” or create, an NFT deriving from a pre-existing film or television series? This frontier question is the central dispute underlying the highly publicized lawsuit between film studio, Miramax, and writer-director, Quentin Tarantino.<sup>8</sup> In November 2021, Tarantino, recognizing the immense profit potential, announced a sale of NFTs based on excerpts from his original script of the cult classic film, *Pulp Fiction*.<sup>9</sup> In response, Miramax, the studio that produced the film in 1994, filed suit against Tarantino for breach of contract, as well as copyright and trademark infringement, in order “to enforce, preserve, and protect its contractual and intellectual property rights.”<sup>10</sup>

Considering U.S. copyright law, the copyright holder of an original work (and its licensees) has the authority to transform the work into an NFT.<sup>11</sup> Miramax asserts that its 1993 contract with Tarantino makes it the requisite copyright owner, and therefore grants it the right to mint NFTs related to *Pulp Fiction*.<sup>12</sup> However, at the time the contract was executed, nearly thirty years ago, cryptocurrency did not exist.<sup>13</sup> Thus, the language of the contract must be closely analyzed to determine appropriate ownership of the rights at issue.<sup>14</sup>

In the contract, Tarantino reserved the right to “print publication (including without limitation *screenplay publication*, ‘making of’ books, comic books and novelization, in audio and electronic formats as well, as applicable).”<sup>15</sup> Do Tarantino’s NFTs of the screenplay qualify as “publication” of the screenplay? This is the question on which *Miramax v. Tarantino* turns, the answer of which will undoubtedly shape the future of intellectual property law as interest in cryptocurrency erupts.

Miramax argues that Tarantino’s right to publication excludes NFTs. Since they are non-fungible by nature, the sale of an NFT would be a “one-time transaction.”<sup>16</sup> Thus, Miramax owns the rights to mint NFTs because it cannot be considered “screenplay publication,” as reserved by Tarantino.<sup>17</sup> Tarantino asserts the opposite—he is merely reproducing copies of the original script, a right which he unambiguously and explicitly reserved.<sup>18</sup>

Currently, this case remains undecided and the parties have not yet settled.<sup>19</sup> The parties’ lawyers are said to have their first conference on February 24, 2021.<sup>20</sup> However, Tarantino’s NFT sale indeed took place in late January 2021, despite the ongoing lawsuit.<sup>21</sup> Tarantino turned seven chapters from his *Pulp Fiction* script into one-of-a-kind NFT publications.<sup>22</sup> According to a press release from SCRT Labs, the team behind the network brokering the sale, “each NFT in the collection consists of a single iconic scene, as well as unique, personalized audio commentary by Tarantino himself.”<sup>23</sup> The first of the seven Tarantino NFTs of the sale sold for \$1.1 million.<sup>24</sup>

Although a judge has yet to decide whether Miramax or Tarantino ultimately possesses the right to mint the NFTs at issue, this particular case seems to lean in Tarantino’s favor (if it does

not otherwise settle outside of court).<sup>25</sup> By selling NFTs of the *Pulp Fiction* script, Tarantino is likely acting within his reserved right to publication.<sup>26</sup> If he can sell photos or copies of the script, which is largely undisputed as proper “publication” in this context, it seems to logically follow that he can sell NFTs of the script as well.<sup>27</sup> Miramax would rebut that the original NFT cannot be further shared beyond the purchaser, thus it is not being “published.”<sup>28</sup> However, this argument is weakened by the fact that in advertising the NFTs, Tarantino offered with the sale the ability to “shar[e] the secrets publicly with the world.”<sup>29</sup> This gives purchasers the ability to distribute copies of the NFT or post them online for the world to see.<sup>30</sup> To further analogize, individuals might own original Banksy prints, but can and do share photos, copies, and reproductions of the work, just as owners of a Tarantino NFT can do. It is difficult to argue that this does not fall under “publication.”

If the breach of contract claim resolves in Tarantino’s favor, Miramax’s infringement claims against him would resolve as well.<sup>31</sup> Tarantino cannot infringe upon a work that he contractually owns. Further, industry experts suggest that Miramax’s legal action could be a result of the larger ethical and competitive context of the situation.<sup>32</sup> Tarantino did not consult with the studio before planning and announcing the sale, and apparently Miramax had plans to mint *Pulp Fiction* NFTs themselves.<sup>33</sup> This lawsuit might serve as an example for film and television creators, like Tarantino, to clarify their rights and consult with the studio or production company before delving into the burgeoning NFT market with their works, and vice versa.

With every wave of technological advances, contractual disputes of this kind arise between parties. Typically, contracts between a creator, like Tarantino, and a production company, like Miramax, contain “forward-looking language that takes into account new technologies.”<sup>34</sup> Thirty years from now, NFTs might be as obsolete as Video Home System, or VHS, tapes. Accordingly, the language within contractual terms must be explicit enough to point to some applicable right, but broad enough to encompass related future developments.<sup>35</sup> Achieving this nexus is a difficult task for lawyers; it is a double-edged sword, which legal representation must anticipate while negotiating and drafting agreements for their clients. This dispute will certainly not be the last of its kind as NFTs, and whatever medium will inevitably succeed NFTs, further develop in the film and television industries, and society at large.

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