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DJs, IP, and NFTs, Oh My!: A Closer Look at the Changing Music Industry Landscape of Today

BY SARA CASEY / ON NOVEMBER 14, 2023



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In generating over eleven million dollars and a lawsuit, the legal implications of American DJ, 3LAU's, record-setting Non-Fungible Token (NFT) auction in 2021 have yet to be fully understood by the music industry.¹ DJ 3LAU, or Justin Blau, is one of many artists convinced that NFTs are the catalyst to transforming the status quo of the industry's business model.² For Grammy-nominated DJ Steve Aoki, NFTs offer new expansive connections as Aoki communicates, and even collaborates with, fans through NFTs' digital realms.³

An NFT can be understood as a unique blockchain-based asset linked to another digital asset such as artwork, musical albums, or an individual song.⁴ As the entertainment industry on the whole is predicated upon the assumption that intellectual property (IP) can be monetized, NFTs' uniqueness has helped with furthering the creation, distribution, and commercialization of artists' works in the music industry.⁵ Although NFTs could potentially help with the protection of IP rights, the rapid pace of technological innovation could also enable NFTs' circumvention of the legal framework of IP protection of music copyrights and royalties.⁶

3LAU views NFTs not only as a technology capable of redefining the relationship between artists and fans, but according to the allegations of the lawsuit filed November of 2022, as a revenue source essentially exclusive to him.⁷ In February 2021, to celebrate the third

anniversary of his *Ultraviolet* album, 3LAU auctioned a collection of NFTs online, redeemable for special edition *Ultraviolet* vinyl records, unreleased music, and unique experiences.⁸ 3LAU's NFT auction produced \$11.6 million in initial sales and also furthered the success of his NFT platform "Royal." Royal has raised \$71 million dollars from investors and enabled the sales of Aoki and 3LAU's limited-edition NFTs in their collaborative venture "PUNX," an "audiovisual IRL meets metaverse supergroup," as the pair self describes.⁹

In only being offered \$25,000 by 3LAU after the fact for said multi-million-dollar *Ultraviolet* NFT auction, Angela Anne Flores took to the courts, filing a lawsuit against 3LAU.¹⁰ In 2017, 3LAU engaged Flores, a singer, songwriter, and producer professionally known as "Luna Aura," to co-author "Walk Away," a musical composition and recording initially released as a single, then as a featured track on the *Ultraviolet* album.¹¹ In November of 2017, Flores and 3LAU Entertainment, LLC, entered into an agreement setting forth the terms for furnishing musical performances, and royalty compensation payable to Flores with respect to their collaboration, "Walk Away."¹² While the agreement granted 3LAU Entertainment the sole and exclusive right to "manufacture, advertise, sell, license, or otherwise dispose of the Master," it also stated royalty compensation payable to Flores by 3LAU Entertainment.¹³ Specifically, the agreement purported that Flores would be entitled to a royalty rate equal to 50% of the net royalty, as it provided that Flores co-authored and controlled 30% of the composition of "Walk Away."¹⁴

Allegedly, when 3LAU re-released the *Ultraviolet* album as a series of NFTs, 3LAU did so without notifying or obtaining Flores' permission or license.¹⁵ The sale created at least eight NFTs specific to "Walk Away" and, concomitantly, auction proceeds attributable to sales of "Walk Away" NFTs.¹⁶ Notwithstanding what was mandated by the agreement and governing law, Flores claims she did not receive any royalties in connection with the sale of "Walk Away" and *Ultraviolet* NFTs insofar as she was only offered only \$25,000 in compensation.¹⁷

Thus, Flores brought legal action to obtain redress for 3LAU's breach of contract and unjust enrichment.¹⁸ Although the parties ultimately settled, ending the legal battle in May of 2023, the lawsuit constitutes a call to action for artists and lawyers alike in the entertainment industry with respect to legally binding reproduction rights and obligations indemnified via royalties.¹⁹ The major takeaway from Flores' complaint is simple: as a matter of law, music NFTs can constitute use of a composition subject to sound recording copyrights, and, in turn, reproduction royalties, imposing subsequent legal obligations for songwriters, artists, and producers alike. Incentivized by the capitalization the marketplace currently offers, NFTs could become a new industry norm, meaning both the law and industry agreements must consider the distribution of their potential revenue. Despite the vast monetary and legal impacts music NFTs can have—and although unprecedented—Flores's unprecedented complaint ratifies a cause of action for those insufficiently compensated by NFT sales and establishes complainants' right to indemnification. "Stuff is going to work a lot better," 3LAU says.²⁰ We can only hope he's right.

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